



20211005000486910 1/4 \$31.00
Shelby Cnty Judge of Probate, AL
10/05/2021 03:51:58 PM FILED/CERT

This instrument prepared by
and after recording return to:

Justin D. Fingar, Esq.
DonovanFingar, LLC
1800 International Park Drive, Suite 230
Birmingham, Alabama 35243

NONENCUMBRANCE AGREEMENT

THIS NONENCUMBRANCE AGREEMENT (this “Agreement”), entered into as of the 5th day of October, 2021, is given by **FAIRWAY – SOUTHLAKE, LLC**, an Alabama limited liability company (“Owner”), in favor of **SYNOVUS BANK**, a Georgia banking corporation, as agent (“Agent”) for the Lenders under the Credit Agreement referred to below. Capitalized terms used but not defined herein shall have the meanings provided in that certain Second Amended and Restated Credit Agreement dated November 7, 2016, among Fairway Investments, L.L.C. (“Borrower”), Agent and the other Lender Parties a party thereto (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”).

Owner is a wholly-owned subsidiary of the Borrower. Borrower requested and received an Advance from the Lenders under the Credit Agreement, the proceeds of which were distributed by Borrower to Owner to refinance the Property (as defined below). In consideration of the Lenders’ agreement to continue to extend Advances to Borrower from time to time, all under and subject to the terms of the Credit Agreement, Owner hereby agrees as follows:

1. Covenant Against Further Encumbrance. Owner hereby represents and warrants to Agent that (i) Owner is a wholly-owned subsidiary of Borrower, (ii) Owner is lawfully seized and possessed of an indefeasible estate in fee simple in and to the real property more particularly described in Exhibit A attached hereto and made a part hereof (the “Property”), and (iii) as of the date of this Agreement, the Property is not encumbered by any Liens other than Customary Permitted Liens. For as long as this Agreement remains in effect, Borrower agrees that it shall neither permit nor suffer the existence of any Lien (except for any Lien in favor of Agent and Customary Permitted Liens) upon the Property unless the prior written consent of the Agent is first obtained. Any Lien on the Property made in contravention of this Agreement shall be null and void *ab initio*.

2. Covenant Against Transfer. Owner hereby covenants and agrees that Owner shall not transfer any portion of the Property, or any interest therein, other than Customary Permitted Liens, without the prior written consent of Agent. Any transfer or conveyance of the Property made in contravention of this Agreement shall be null and void *ab initio*.



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3. Indemnification. Owner agrees to indemnify and hold harmless Agent and the Lenders from and against any and all Indemnified Losses resulting from, due to or caused by Owner's breach of the foregoing covenants and agreements.

4. Expenses. Owner shall pay to Agent, immediately upon demand, all costs, fees and expenses incurred by Agent and/or the Lenders in connection with the enforcement of this Agreement. Without limitation of the foregoing, in the event it is necessary for Agent or any Lender to retain the services of an attorney in order to enforce this Agreement, or any portion thereof, or to collect any amounts owing hereunder, Owner agrees to pay to Agent any and all costs and expenses, including, without limitation, Attorneys' Fees, costs and disbursements, incurred by Agent and/or a Lender as a result thereof.

[*signatures appear on next page*]



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IN WITNESS WHEREOF, the Owner has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

OWNER:

FAIRWAY – SOUTHLAKE, LLC, an Alabama limited liability company

By: The Thompson Development Company, Inc.,
 an Alabama corporation, its Manager

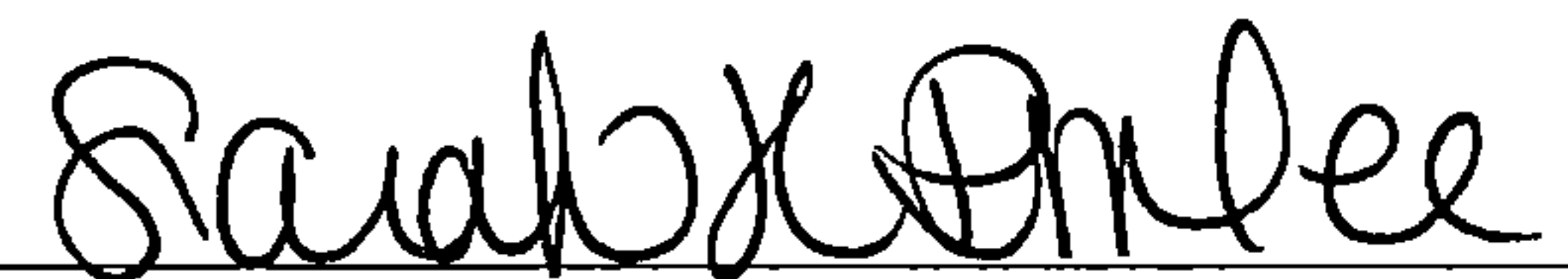
By: 
 A. Sims Garrison
 Chief Financial Officer

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that A. Sims Garrison, whose name as Chief Financial Officer of The Thompson Development Company, Inc., an Alabama corporation, as Manager of FAIRWAY - SOUTHLAKE, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 5 day of October, 2021.


 Notary Public

[AFFIX SEAL]

My commission expires: 3/24/25





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EXHIBIT "A"
(DESCRIPTION OF REAL PROPERTY)

Parcel 1

Lot 3, according to the survey of Village on Valleydale at Southlake, as recorded in Map Book 11, Page 84, in the Probate Office of Shelby County, Alabama.

Parcel 2

Easement for the benefit of Parcel 1 as created by Declaration of Restrictions and Grant of Easements dated February 29, 1988 and recorded in Real Volume 173, Page 355 and Indenture of Establishment of Protective Covenants, Conditions and Restrictions, and Grant of Easements dated February 29, 1988 and recorded in Real Volume 173, Page 364 for the purpose described in these Easements over, under and across Lots 1 and 2, with respect to Real Volume 173, Page 355 and Lot 4, with respect to Real Volume 173, Page 364. Subject to terms, provisions and conditions set forth in said instruments.