To: Joe Abounader, Harry Buck, Paul Kelley, Bob Shelton and Angela Webb.
From: Joe Tummers
Subject: Some History on the Settlement of 12/15/1994
Date: April 7, 2017

This information has been gathered from the (Limited Edition Condo-Owners) Association's and Court records.

In 1992 a sinkhole developed between units 16 and 18, that was filled, re-emerged again and caused damage to those units resulting in the Gas Company cutting off the gas supply to those units. Tittle put the blame on the owners for landscaping and building additions to those units, that had not been approved, causing drainage problems. The owners of the 2 units, together with the Association went public with this sinkhole and with overall drainage problems in the sub-division. They petitioned the County for tax relief and the City for assistance, since they allowed Tittle to build the units. They also went on TV, put an article in the local newspaper and even notified the FBI, accusing Tittle of creating environmental problems. Even though Tittle offered to repair the sinkhole and damage to units 16 and 18 at no cost, the Association refused the offer, assessed all owners and had the problem fixed by Norman Construction Co. to the tune of some $18,000.

However, the overall drainage problem was not addressed at that time, because Tittle asserted, that the problems were a result of home owners removing drain tiles, that take the roof water away from the foundation.

By now, cracks were found in the brick veneer of units 34, 36 and 38. The Association hired Foundation Systems Engineering to assess the situation. Their report, supported by several experts, asserted that these 3 units suffered from insufficient foundation strength to resist the softening of the soils due to poor drainage control. They also opined, that units 40, 42, 44, 56 and 62 were built on soil, that was not sufficiently compacted and that these units would develop settlement problems.

On July 13,1992 the Association filed suit against Tittle.

Over the next year or two lawyers spent money writing to each other in the hope of reaching a settlement. At the same time several insurance companies got involved to determine what their liability would be.

On August 15, 1994 an offer was made by three insurance companies and Tittle to settle the issues for a lump sum of $150,000 (paid by the insurance carriers) plus the purchase of units 34, 36 and 38 by Tittle for a cash-out of $100,000 each, provided Tittle could secure financing for the 3 units. It was suggested, that the Association cover the shortfall for each unit out of its insurance award. (At that time the Association estimated an average selling price of $125,000 for each of the 3 units.). It was pointed out, that this offer would be on the table until the separate lawsuit filed in Federal Court by Tittle against the various insurance carriers would go to trial. The Association counter-offered: $100,000 in cash to the Association, plus $100,000 in attorney's fees, plus Tittle purchasing units 32, 34, 36, 38, 40, 42 and 44 at $125,000/unit.

In August and September 1994 complaints and counter-complaints were filed in the Law Court for Washington County (case #15010). Also, on September 12 and 13, 1994 Tittle gave a deposition in his federal lawsuit against the insurance companies, in which he asserted, under oath, that he never realized a profit on the development and construction of Limited Edition. He also claimed, that he repaired the first, shallow sinkhole between units 14 and 16 in the summer of 1991, and that he offered to repair the deeper sinkhole that re-appeared within 6 months (even though he considered this an act of God), at no cost to the Association, only to be rebuffed.

On October 13, 1994 Tittle's lawyers solicited a proposal from the Association, that would center around a $215,000 cash payment to the Association and a $300,000 cash price for units 34, 36 and 38; losses for the owners of units 34, 36 and 38 would have to be covered by the money's awarded to Association. In this letter Tittle points out, that he will file for bankruptcy and that he will press for judgements against several individual owners and the Association if a settlement cannot be reached before the federal lawsuit will go to trial in Greeneville. Since the depositions taken by the insurance carriers are ready for submission to the Federal Court, after which the cash offer by the insurance carriers will evaporate, time is running short for a settlement. Counsel for the Association strongly advised to settle quickly, because Tittle had consulted with a bankruptcy attorney and a Chapter 7 bankruptcy would completely alleviate any liability on Tittle's part, but would leave his claim against the Association and the owners of units 14 and 16 intact. Moreover, the legal defenses of the various insurance carriers in Federal Court appeared to be sound, which would result in a loss of their settlement moneys.

After some back and forth a settlement is reached and affirmed by the court on December 15, 1994:

1. Tittle shall pay $160,000 (insurance money);
2. Tittle shall convey to the Association title to unimproved lots 9, 11 and 58;
3. The Association shall pay Tittle $10,000;
4. Tittle shall purchase units 34, 36 and 38 for a total of $345,000;
5. The Association shall negotiate with the owners of units 34, 36 and 38 the purchase price of each of their units, not to exceed $345,000; any aggregate sum less than $345,000 shall benefit the Association;
6. The Association shall receive 50% of the net proceeds of each unit (34, 36 and 38) in excess of $125,000.

Other notable provisions of the settlement include the fact that units 34, 36 and 38 are no longer the Association' s responsibility to maintain or repair, resulting in a reduced maintenance fee **A.** "based solely upon fire and hazard insurance, mowing and any other Association expense not for the purpose of unit repair and maintenance". It further states that **B.** "Tittle Construction Company shall, for each of said units, pay to the Association fifty (50%) of the fee assessed by the Association for any other unit in Limited Edition. This arrangement shall be binding upon Tittle Construction Company's successors in title and deemed a covenant running with the land. Unfortunately, both **A.** and **B.** statements appear in the same paragraph. It will take a lawyer and a judge to determine whether "This arrangement etc." pertains to **A.** or **B.** If it is deemed to pertain to **B.** the Association will have to carry the uncovered expenses for maintenance of the common grounds, driveways, walkways and utility supply lines from distribution point to unit in perpetuity. For the first 22 years this amounted to a subsidy for these 3 units of some $20,000. There is no provision in the Settlement for this subsidy!

On February 13, 1995 the lawsuit was dismissed with full prejudice.

As for the proceeds of this settlement to the Association an additional $4,530 was realized in the sale of units 34, 36 and 38 bringing the total to $164,530.
Expenses for the Association amounted to $126,490.50 ($40,000 attorney's fees, $63,155 drainage system, $17,400 assessment refund, $5,935.50 expert advice). No mention is made of the $10,000 the Association paid to Tittle in the Settlement.

In my opinion the Board should consult an attorney to assess the possibility of increasing the dues for units 34, 36 and 38 to the intent of statement **A**; it is our fiducial duty.