

COPY

IN THE LAW COURT FOR WASHINGTON COUNTY,
AT JOHNSON CITY, TENNESSEE

LIMITED EDITION CONDOMINIUM OWNERS)
ASSOCIATION, INC., ALBERTA CLYCE,)
ALFRED L. DiGREGORIO and wife,)
GENENE I. DiGREGORIO, NAT D. KING,)
and wife, PATRICIA C. KING,)
HILDA T. COLLINS, KATHLEEN USARY,)
FRED M. GLASSFORD and wife, SUSAN)
J. GLASSFORD, WAYNE L. SPARKS, and)
wife, ANNA S. SPARKS, VERNA L. HAWN,)
ROGER D. BROWN and wife, BRENDA K.)
BROWN, CHARLES H. RICH, SR. and wife)
WILLIE F. RICH, JANET M. NEAL,)
THELMA O. ROE, and THOMAS L. FLOYD)
and wife, SHEILA G. FLOYD,)

Plaintiffs)

vs.)

TITTLE CONSTRUCTION COMPANY, INC.,)
a Tennessee Corporation, and TITTLE)
and TITTLE, a Tennessee General)
Partnership,)

Defendants)

Case No. 15010

TITTLE CONSTRUCTION COMPANY, INC.,)
a Tennessee Corporation, and TITTLE)
and TITTLE, a Tennessee General)
Partnership,)

Counter-Plaintiffs)

vs.)

ALFRED DiGREGORIO, personally and as)
an officer of Limited Edition)
Condominium Owners Association, Inc.;))
JANET M. NEAL, personally and as an)
officer of Limited Edition)
Condominium Owners Association, Inc.;))
and LIMITED EDITION CONDOMINIUM)
OWNERS ASSOCIATION, INC.,)

Counter-Defendants)

SETTLEMENT AGREEMENT

This Agreement is made and entered into by and between Plaintiffs and Defendants and by and between Counter-Plaintiffs and Counter-Defendants for purposes of settling all controversies existing between them, including, without limitation, all claims asserted one against the other in the above-captioned action ("the Action").

DEFINITIONS

1. "Limited Edition" as used herein means a real estate development located in Johnson City, Tennessee consisting of 33 condominium units, three (3) unimproved building sites, and the common areas associated therewith.

2. "Plaintiffs" as used herein means and includes all persons identified as Plaintiffs in the captions of the complaint, amended complaint and/or the counterclaim in the Action, their heirs, successors and assigns. The term "Plaintiffs" shall also include those owners of the following units in Limited Edition:

Unit 46	--	Section 1	--	Plank
Unit 48	--	Section 1	--	Cantor

Unit 14	--	Section 2	--	Stewart
Unit 20	--	Section 2	--	Pearson
Unit 22	--	Section 2	--	Powell
Unit 24	--	Section 2	--	Wilson
Unit 26	--	Section 2	--	Rawls
Unit 28	--	Section 2	--	Carmichael
Unit 30	--	Section 2	--	Fox
Unit 52	--	Section 3	--	McIver
Unit 66	--	Section 3	--	Holben
Unit 68	--	Section 3	--	Vest
Unit 2	--	Section 4	--	Ledbetter
Unit 4	--	Section 4	--	Tardiff
Unit 6	--	Section 4	--	Saylor
Unit 8	--	Section 4	--	Aiken
Unit 10	--	Section 4	--	Aboundader
Unit 12	--	Section 4	--	Bryant
Unit 1	--	Section 5	--	Cooper
Unit 3	--	Section 5	--	Strickland

3. "Tittle" as used herein shall mean Tittle Construction Company, Inc., a Tennessee corporation, and Tittle and Tittle, a Tennessee general partnership. The term "Tittle" shall include Walter E. Tittle, Sr., Walter E. Tittle, Jr. and John E. Tittle in their individual and/or representative capacities as well as their heirs, successors and assigns.

4. "Collins" as used herein shall mean Hilda T. Collins, the owner of Unit 34 in Section 1 of Limited Edition.
5. "King" as used herein shall mean Nat D. King and wife, Patricia C. King, the owners of Unit 36 in Section 1 of Limited Edition.
6. "Usary" as used herein shall mean Kathleen Usary, the owner of Unit 38 in Section 1 of Limited Edition.
7. "Limited Edition Condominium Owners Association, Inc.", a Tennessee corporation, or "the Association" as used herein means the corporate entity which owns the common areas in Limited Edition and generally represents all unit owners.
8. "Counter-Plaintiffs" as used herein means the individuals appearing as "Counter-Plaintiffs" in the caption of the Action. Said term shall include all persons and/or entities identified under "Tittle".
9. "Counter-Defendants" as used herein shall be those individuals and entities appearing as "Counter-Defendants" in the caption of the Action.

10. "Escrow Agent" as used herein means the depository for monies, deeds or other items, including releases to be executed and/or exchanged by the parties. Valley Title Company, 1212 North Eastman Road, P. O. Box 3740, Kingsport, Tennessee 37664, a Tennessee corporation, is hereby designated as "Escrow Agent" under the terms of this Agreement.

TERMS AND CONDITIONS

In consideration for the mutual covenants exchanged herein, the parties agree as follows:

1. In return for Releases executed by all Plaintiffs, Tittle or his representatives shall pay to the Escrow Agent for the benefit of Plaintiffs the cash sum of One Hundred Sixty Thousand Dollars (\$160,000.00).

2. In return for Releases executed by all Plaintiffs, Tittle shall convey to Limited Edition Condominium Owners Association, Inc. ("the Association") the following three (3) unimproved parcels of real property located in Limited Edition:

Lot/Unit 58, Section 3

Lot/Unit 9, Section 5

Lot/Unit 11, Section 5

Said parcels of real property shall be conveyed by deeds containing general warranties of title, free and unencumbered, except for restrictions and easements of record. Said deeds shall be prepared by Appalachian Title Company and delivered to the Escrow Agent following their execution and acknowledgement by Tittle. Ad valorem taxes shall be prorated as of the date said deeds are delivered to the Association by the Escrow Agent.

3. In return for a Release executed by Counter-Plaintiffs, Counter-Defendants or their representatives shall pay to the Escrow Agent for the benefit of Counter-Plaintiffs the cash sum of Ten Thousand Dollars (\$10,000.00).

4. That Tittle Construction Company, Inc. ("Tittle Construction Company") will purchase the Collins Unit (34), the King Unit (36) and the Usary Unit (38) for an average price of \$115,000.00 per unit. The amounts which shall be paid to the owners of any particular unit will be made known to the Escrow Agent by counsel for Plaintiffs; however, in no event shall the aggregate sum to be paid for all three units exceed \$345,000.00. Should the total sum paid by the Escrow Agent to the owners of said units be less than \$345,000.00, then the difference shall be paid by the Escrow Agent to the Association.

5. That Collins, King and Usary may remain in possession of their respective units for a period not to exceed

ninety (90) days following the execution of this Agreement. At the end of said 90-day period or at such time as the last of the three owners vacates the premises, whichever shall first occur, deeds for said units shall be delivered to Tittle Construction Company, Inc. ("Tittle Construction Company") by the Escrow Agent in exchange for Tittle Construction Company's payment of the cash sum of \$345,000.00. The Escrow Agent shall thereupon issue checks totalling \$345,000.00 to the payees and in the amounts made known to it by counsel for Plaintiffs. Ad valorem taxes shall be pro-rated as of the date the deeds for said units are delivered to Tittle Construction Company by the Escrow Agent. The owners of said units shall be liable to pay all assessments levied by the Association against their respective properties until such time as the deeds to same are delivered to Tittle Construction Company.

6. In return for the payment of the cash sum of an amount to be subsequently determined and approved by counsel for Plaintiffs, Collins shall convey to Tittle Construction Company, Inc. ("Tittle Construction Company") Unit 34 of Section 1 of Limited Edition. Said parcel of real property shall be conveyed by deed containing general warranties of title, free and unencumbered, except for restrictions and easements of record. Said deed shall be prepared by Appalachian Title Company and delivered to the Escrow Agent

following its execution and acknowledgement by Collins. Ad valorem taxes shall be prorated as of the date said deed is delivered to Tittle Construction Company by the Escrow Agent. Said deed shall contain a provision removing Unit 34 from certain maintenance responsibilities by the Association as hereinafter set forth in this Agreement. Collins, the Association and Tittle Construction Company shall each be a signatory on said deed.

7. In return for the payment of the cash sum of an amount to be subsequently determined and approved by counsel for Plaintiffs, King shall convey to Tittle Construction Company, Inc. ("Tittle Construction Company") Unit 36 of Section 1 of Limited Edition. Said parcel of real property shall be conveyed by deed containing general warranties of title, free and unencumbered, except for restrictions and easements of record. Said deed shall be prepared by Appalachian Title Company and delivered to the Escrow Agent following its execution and acknowledgement by King. Ad valorem taxes shall be prorated as of the date said deed is delivered to Tittle Construction Company by the Escrow Agent. Said deed shall contain a provision removing Unit 36 from certain maintenance responsibilities by the Association as hereinafter set forth in this Agreement. King, the Association and Tittle Construction Company shall each be a signatory on said deed.

8. In return for the payment of the cash sum of an amount to be subsequently determined and approved by counsel for Plaintiffs, Usary shall convey to Tittle Construction Company, Inc. ("Tittle Construction Company") Unit 38 of Section 1 of Limited Edition. Said parcel of real property shall be conveyed by deed containing general warranties of title, free and unencumbered, except for restrictions and easements of record. Said deed shall be prepared by Appalachian Title Company and delivered to the Escrow Agent following the execution and acknowledgement by Usary. Ad valorem taxes shall be prorated as of the date said deed is delivered to Tittle Construction Company by the Escrow Agent. Said deed shall contain a provision removing Unit 38 from certain maintenance responsibilities by the Association as hereinafter set forth in this Agreement. Usary, the Association and Tittle Construction Company shall each be a signatory on said deed.

9. It shall be the sole responsibility of the Association to negotiate with Collins, King and Usary concerning the total price they will be paid for their respective units. It is understood and agreed that Tittle Construction Company has no obligation to look to the terms of any agreement which may be entered into by and between the Association and the owners of Units 34, 36 and 38 concerning

the amount of money or other consideration said owners, or any of them, shall ultimately receive for their property. In no event shall the aggregate sum paid for Units 34, 36 and 38 of Section 1 exceed \$345,000.00. Should the sums paid to Collins, King and Usary total less than \$345,000.00, then, in that event, the difference between \$345,000.00 and the aggregate amount paid to Collins, King and Usary shall be paid by the Escrow Agent to the Association. It shall be the responsibility of counsel for the Plaintiffs to make known to the Escrow Agent the amounts owing to the respective parties. Collins, King and Usary shall each have access of up to \$5,000.00 from the escrow funds on deposit with the Escrow Agent for down payments on new housing. This can take the form of actual cash advances or written guarantees by the Escrow Agent to the seller or the selling realtor that such down payment is being held in escrow for the seller of the real property being purchased by Collins, King and Usary, or any of them.

DUTIES AND RESPONSIBILITIES OF ESCROW AGENT

As evidenced by its signature to this Agreement, the Escrow Agent acknowledges and agrees to be bound by the following instructions and procedures:

1. That it will acknowledge receipt of the sum of \$150,000.00 from Tittle and/or Tittle's representative to be credited to the account of the Plaintiffs.

2. That it will acknowledge receipt of the sum of \$10,000.00 from Counter-Defendants or their representatives to be credited to the account of Tittle.

3. That it will acknowledge receipt of the sum of \$345,000.00 from Tittle Construction Company, Inc. or its representatives to be credited to the account of Collins, King, Usary and the Association as their interests may subsequently appear. The amounts of these respective interests will be made known to the Escrow Agent by a duly authorized letter delivered to it by counsel for the Plaintiffs.

4. That it will acknowledge receipt of the three (3) warranty deeds wherein Tittle conveys three (3) parcels of unimproved real property in Limited Edition to the Association.

5. That it will acknowledge receipt of the general warranty deed wherein Collins conveys Unit 34 of Section 1 Tittle Construction Company, Inc.

6. That it will acknowledge receipt of the general warranty deed wherein King conveys Unit 36 of Section 1 to Tittle Construction Company, Inc.

7. That it will acknowledge receipt of the general warranty deed wherein Usary conveys Unit 38 of Section 1 to Tittle Construction Company, Inc.

8. That it will acknowledge receipt of a Release executed by Counter-Plaintiffs in favor of Counter-Defendants.

9. That it will acknowledge receipt of the Releases executed by all Plaintiffs in favor of Tittle.

10. That it will acknowledge receipt of an Order approved by counsel for the parties whereby all claims and counterclaims in Civil Action No. 15010 are dismissed with full prejudice.

11. That it will make such cash advances or execute such guarantees to or on behalf of Collins, King and Usary, or any of them, as heretofore provided for in this Agreement.

12. That following its receipt of all the monies and other items enumerated in 1 through 10 above, it will

contemporaneously make the following disbursements and/or deliveries:

- a. Issue a check payable to Limited Edition Condominium Homeowners Association, Inc. and Samuel B. Miller, II, Attorney, in the amount of \$160,000.00 and deliver same to Samuel B. Miller, II, Esq.
- b. Issue a check payable to Collins in an amount to be made known to it by counsel for Plaintiffs and deliver same to Samuel B. Miller, II, Esq.
- c. Issue a check payable to King in an amount to be made known to it by counsel for Plaintiffs and deliver same to Samuel B. Miller, II, Esq.
- d. Issue a check payable to Usary in an amount to be made known to it by counsel for Plaintiffs and deliver same to Samuel B. Miller, II, Esq.
- e. If the aggregate sum paid to Collins, King and Usary is less than \$345,000.00, issue a check payable to Limited Edition Condominium Homeowners Association, Inc. for the difference and deliver same to Samuel B. Miller, II, Esq.
- f. Deliver deeds for Lots/Units 58, 9 and 11 to Samuel B. Miller, II, Esq.
- g. Deliver deeds for Units 34, 36 and 38 of Section 1 to Tittle Construction Company's attorney of record, William T. Wray, Jr., Esq.
- h. Deliver Releases executed by Plaintiffs in favor of Tittle to Tittle's attorney of record, William T. Wray, Jr., Esq.
- i. Deliver Release executed by Counter-Plaintiffs in favor of Counter-Defendants to Counter-Defendants' attorney of record, Samuel B. Miller, II, Esq.

- j. Deliver the Order of Dismissal to Tittle's attorney of record, William T. Wray, Jr., Esq., for subsequent filing with the clerk.

SPECIAL PROVISIONS REGARDING UNITS 34, 36 and 38

Upon delivery of the deeds from Units 34, 36 and 38 to Tittle Construction Company, Inc. ("Tittle Construction Company") by the Escrow Agent, the following provisions shall become applicable to Units 34, 36 and 38:

1. Tittle Construction Company agrees to make and complete repairs to Units 34, 36 and 38 within a period of six (6) months following the date said deeds are delivered to Tittle Construction Company by the Escrow Agent. The method and extent of said repairs shall be and remains in the sole discretion of Tittle Construction Company. Copies of any certificates of completion filed by Tittle Construction Company with the City of Johnson City shall be delivered to the Association.

2. Units 34, 36 and 38 shall be maintained by Tittle Construction Company or its successors in title at the same level of maintenance as the other units in Limited Edition.

*Association KOSPO 1477
for Tom w/ 38 owners!
Not what.*

"General upkeep and
maintenance."

3. Units 34, 36 and 38 shall be removed from the Association's responsibility to maintain or repair any part thereof, except repairs as hereinafter set forth, and the deeds from the owners of said units to Tittle Construction Company shall contain a provision to this effect. Tittle Construction Company agrees that the deeds executed and delivered by Tittle Construction Company to subsequent purchasers of Units 34, 36 and 38 will contain a same or similar provision which shall be deemed a covenant running with the land.

NOTE:
I WANT TO SEE
THE ORIGINAL DEEDS
THE STRUCTURE NOT INCLUDED

4. The owners of Units 34, 36 and 38 shall pay a reduced Association fee based solely upon fire and hazard insurance, mowing, street maintenance, general cost of lighting the streets, and any other Association expense not for the purpose of unit repair and maintenance, except repairs as hereinafter set forth. Accordingly, it is agreed that, effective the date that deeds for Units 34, 36 and 38 are delivered to Tittle Construction Company by the Escrow Agent, Tittle Construction Company shall, for each of said units, pay to the Association fifty percent (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.

IF GAS ON
MY ALTERN
ASSOCIATION USE
P.M.

IN ESSENCE, IF ANY DAMAGE IS DETERMINED TO BE
THE FAULT WITH THE SETTLEMENT, I AM RESPONSIBLE.
IF DETERMINED TO NOT BE FAULT OF SETTLEMENT
'ASSOCIATION WIN PAY. INSURANCE WIN'
NOT OWNER STRUCTURE 15 -
INTEGRITY

5. To the extent that any loss, repair or cost to Units 34, 36 or 38 occurs, the Association shall be responsible for the payment of any associated unpaid portion of a claim deemed to be covered under the terms of the Association's insurance policy or policies. If a type or manner of loss, repair or cost is excluded or not covered under the terms of the Association's insurance policy or policies, the Association shall have no financial responsibility to pay any portion of same.

6. Any lease or lessee of Tittle Construction Company for Units 34, 36 and 38 shall be subject to the approval by the Association as per current rules and by-laws.

7. Following the completion of the repairs by Tittle Construction Company, and as soon thereafter as reasonably possible, it will undertake to sell Units 34, 36 and 38. The Association shall be entitled to receive fifty percent (50%) of the net proceeds of each unit in excess of \$125,000.00. "Net proceeds" is hereby defined as the gross sales price less (a) realtor's commission not to exceed six percent (6%) of the gross sales price and (b) other closing costs chargeable to Tittle Construction Company as seller not to exceed \$350.00. All decisions regarding the sale of Units 34, 36 and 38, including selection of a realtor, if any, sales price, terms of financing, etc., shall rest solely with Tittle Construction Company.

8. Neither the Plaintiffs nor their representatives shall come upon the premises or in close proximity of Tittle Construction Company's equipment and personnel during the period that said units are being repaired.

SPECIAL PROVISIONS REGARDING UNIT 32

1. Inasmuch as Unit 32 is physically attached to Unit 34, Tittle Construction Company, Inc. ("Tittle Construction Company") hereby agrees that if the repair work performed on Unit 34 should result in any additional damage to Unit 32, it will repair and/or otherwise correct such additional damage.

2. It is hereby agreed by and between Plaintiffs and Tittle Construction Company that the services of Hal T. Spoden ("Spoden") and Claude LeFevere, Jr. ("LeFevere"), each of whom is a structural engineer, will be retained to make an inspection of Unit 32 prior to the commencement of repair work on Unit 34 for the purposes of noting any existing damage. Also, following the completion of the repairs to Unit 34, Spoden and LeFevere will conduct an inspection of Unit 32 for the purposes of determining if any additional damage has been

experienced by Unit 32 because of the repair work performed on Unit 34. If additional damage has resulted, same shall be repaired by Tittle Construction Company in accordance with plans and/or specifications submitted by Spoden and LeFevere. Upon determination by Spoden and LeFevere that no additional damage has resulted, or that any additional damage that may have resulted has been repaired in accordance with their plans and specifications, Spoden and LeFevere shall forthwith certify this fact to both Tittle Construction Company and the Association. Such certification shall relieve Tittle Construction Company from any further responsibility or liability to the Plaintiffs and/or the Association insofar as Unit 32 is concerned.

3. Neither Spoden nor LeFevere shall incur any liability to any of the parties to this action because of their activities and/or certifications with regard to the repairs performed by Tittle Construction Company on Unit 34 and/or Unit 32.

4. Spoden's services shall be paid for by Tittle Construction Company. LeFevere's services shall be paid for by the Plaintiffs.

MISCELLANEOUS PROVISIONS

1. That the Escrow Agent shall be entitled to a fee of \$750.00 for its services, same to be divided equally between Plaintiffs and Tittle.
2. That Appalachian Title Company shall be paid the sum of \$300.00 for the six deeds to be prepared by it from and to Tittle, same to be divided equally between Plaintiffs and Tittle.
3. That the clerk's costs shall be paid by Tittle. Neither Plaintiffs nor Tittle shall be deemed the prevailing party in this Action. Each party shall bear his, her or its own costs except as otherwise expressly provided herein.
4. That Tittle shall be under no obligation to look to the application and/or allocation of any of the monies paid by the Escrow Agent to the Plaintiffs.
5. That each contracting party shall be deemed to have participated equally in the preparation of this Agreement.
6. That this Settlement Agreement and its terms shall be considered confidential except for the recordation of any document memorializing the existing controversy and the resolution thereof.

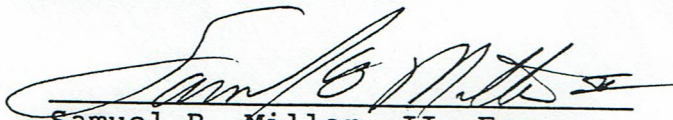
7. That this Agreement may not be amended except by written consent of all the parties.

8. That the undersigned counsel represent they have been authorized by their respective clients to enter in this Settlement Agreement on their clients' behalf.

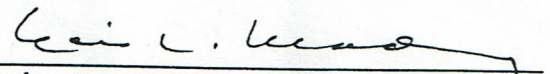
EFFECTIVE DATE

This Settlement Agreement shall be deemed to have been entered into as of the 15th day of December, 1994.

Counsel named below shall each execute a triplicate original to be exchanged with all other counsel.




Samuel B. Miller, II, Esq.
Counsel for Plaintiffs and
Counter-Defendants
WELLER, MILLER, CARRIER,
MILLER & HICKIE
P. O. Box 3217 CRS
Johnson City, TN 37602-3217
Tel: (615) 282-1821



Edwin L. Treadway, Esq.
Counsel for Defendants
and Counter-Plaintiffs
HUNTER, SMITH & DAVIS
P. O. Box 3740
Kingsport, TN 37664
Tel: (615) 378-8800

Escrow Agent:

VALLEY TITLE COMPANY

By 
T. Arthur Scott, Jr.
President