

DRAFT

Excise Tax: \$	Recording Time, Book & Page
State of North Carolina	File Number: 19901172 (JC)
	<u>WARRANTY DEED</u>

County of Avery

This Deed, made this _____ day of _____, 2011, by and between

John L. Turley and wife, T.J. Turley
1585 Lyons Bend Knoxville, TN 37919
(hereinafter called "Grantor")

and

TBD

(hereinafter called "Grantees")

WITNESSETH

Return to Grantee

Prepared by: di Santi Watson Capua & Wilson
P O Box 193, 642 West King Street
Boone, NC 28607

Grantor(s) for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATIONS to them paid by the said Grantee(s), the receipt of all of which is hereby acknowledged, have, subject to any exceptions, conditions, provisions, restrictions or reservations herein contained, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said Grantees, their heirs, successors and assigns, in fee simple all that certain tract(s) or parcel(s) of land lying and being in **Banner Elk** Township, **Avery** County, North Carolina, more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by reference.

The property hereinabove described was acquired by Grantor(s) by instrument recorded in Book of Records 325 at Page 715 Avery County Public Registry.

To have and to hold the said premises above described, with every privilege and appurtenance thereunto belonging to the said Grantees, their heirs, successors and assigns, in fee simple to their only use and behoof forever, subject always to any exceptions, conditions, provisions, restrictions or reservations herein contained.

The Grantors covenant with the Grantees, their heirs, successors and assigns: that they are the owners of and are seized of the premises in fee simple; that they have a good right to convey the same in fee simple; that title is marketable and free and clear of all liens and encumbrances, except as herein set forth; and, that they will forever warrant and defend the title thereto against the claims of all persons whomsoever, other than the following exceptions:

1. Avery County 2011 ad valorem taxes and subsequent years.
2. Elk River Property Owners' Association Dues
3. Restrictions require a Resale Waiver
4. Terms and conditions of General Assignment and Bill of Sale of Developer's Rights
Recorded in Book 435, at Page 2033, Avery County Registry
5. Right of Way Bridle Court
6. Easements for utilities serving subject property
7. Riparian Rights, if any

Pursuant to N.C.G.S. 105-317.2, Grantors represent that the property conveyed herein (please initial one of the following): _____ IS _____ IS NOT their primary residence.

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IN TESTIMONY WHEREOF, the said Grantors have hereunto set their hands and seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

_____(SEAL)
John L. Turley

_____(SEAL)
T.J. Turley

STATE OF
COUNTY OF

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John L. Turley and wife, T.J. Turley

Witness my hand and official seal this ____ of _____, 2011

Notary Public

My commission expires: _____

W:\JC\Elk River\Saddle Ridge\Turley\Furrow Auction Company\Selldocs.DRAFT.doc

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EXHIBIT "A"

BEING all of LOT 190, SADDLE RIDGE Section of the property known as ELK RIVER DEVELOPMENT as shown on plat thereof recorded in Map Book 21 at Page 79 of the Avery County, North Carolina, Public Registry, to which plat reference is made for a more complete description.

This conveyance is subject to the Declaration of Restrictions recorded in Book 140, Page 1419, Supplemental Declaration of Restrictions recorded in Book 159 at Page 1256, as amended by Amendment recorded in Book 434, at Page 1203 and as further amended and restated by Amended and Restated Declaration of Covenants and Restrictions recorded in Book 447, at Page 776, Avery County, North Carolina, Public Registry, which restrictions are incorporated herein by reference.

OWNER AFFIDAVIT AND INDEMNITY AGREEMENT (NO RECENT IMPROVEMENTS)

PARTIES: All parties identified in this section must execute this Agreement.

Owner: John L. Turley and wife, T.J. Turley

(NOTE: There can be more than one Owner if the Property has been owned by multiple parties or has been conveyed within the 120-Day Lien Period. A separate Agreement is required for each successive owner in the 120-Day Lien Period.)

PROPERTY: Lot 190, Saddle Ridge, Elk River Development

(Insert street address or brief description and/or attach a description as Exhibit A. Include here any real estate that is a portion of a larger, previously unsegregated tract when that area is reasonably necessary for the convenient use and occupation of improvements on the larger tract.)

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- **Improvement:** All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways on the Property as defined below.
- **Labor, Services or Materials:** Labor or professional design (including architectural, engineering, landscaping) or surveying services or materials or rental equipment for which a lien can be claimed under NCGS Chapter 44A, Article 2.
- **Contractor:** Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an Improvement thereon. (Note that services by architects, engineers, landscapers, surveyors, furnishers of rental equipment and contracts for construction on Property of Improvements are often provided before there is visible evidence of construction.)
- **120-Day Lien Period:** The 120 days immediately preceding the date of recordation of the latter of the deed to purchaser or deed of trust to lender in the Office of the Register of Deeds of the county in which the Property is located.
- **Owner:** Any person or entity, as defined in NCGS Chapter 44A, Article 2, who has or has had any interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Owner includes: (i) a seller of the Property or a borrower under a loan agreement secured by the Property; (ii) a person with rights to purchase the Property under a contract and for whom an Improvement is made and who ordered the Improvement to be made; and (iii) the Owner's successors in interest and agents of the Owner acting within their authority.
- **Company:** The title insurance company providing the title policy for the transaction contemplated by the parties herein.
- **Property:** The real estate described above or on Exhibit A and any leaseholds, tenements, hereditaments, and improvements placed thereon.
- All defined terms shall include the singular or plural as required by context.

AGREEMENT: For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as an inducement to the purchase of the Property by a purchaser and/or the making of a loan by a lender secured by a deed of trust encumbering the Property and the issuance of a title insurance policy or policies by Company insuring title to the Property without exception to liens for Labor, Services or Materials; Owner first being duly sworn, deposes, says and agrees:

1. Certifications: Owner certifies that at no time during the 120-Day Lien Period have any Labor, Services or Materials been furnished in connection with a contract, express or implied, for Improvements to the Property (including architectural, engineering, landscaping or surveying services or materials or rental equipment for which a lien can be claimed under NCGS Chapter 44A) OR only minor repairs and/or alterations to pre-existing Improvements have been made and Owner certifies such repairs and/or alterations have been completed and those providing Labor, Services or Materials for the repairs have been paid in full.

2. Reliance and Indemnification: This Agreement may be relied upon by the purchaser in the purchase of the Property, a lender to make a loan secured by a deed of trust encumbering the Property and by Company in issuance of a title insurance policy or policies insuring title to the Property without exception to matters certified in this Agreement. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Owner and anyone claiming by, through or under Owner.

Owner agrees to indemnify and hold purchaser, lender, and Company harmless of and from any and all loss, cost, damage and expense of every kind, and attorney's fees, costs and expenses, which the purchaser, lender or Company shall or may incur or become liable for, directly or indirectly, as a result of reliance on the certifications of Owner made herein or in enforcement of the Company's rights hereunder.

3. NCLTA Copyright and Entire Agreement: This Agreement and any attachments hereto represent the entire agreement between the Owner and the Company, and no prior or contemporaneous agreement or understanding inconsistent herewith (whether oral or written) pertaining to such matters is effective.

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THIS IS A COPYRIGHT FORM and any variances in the form provisions hereof must be specifically stated in the blank below and agreed to in writing by the Company.

No modification of this Agreement, and no waiver of any of its terms or conditions, shall be effective unless made in writing and approved

PROVIDING A FALSE AFFIDAVIT IS A CRIMINAL OFFENSE		
EXECUTION BY OWNER		
_____ John L. Turley (SEAL)	State of _____ County of _____ Signed and sworn to (or affirmed) before me this day by: John L. Turley and wife, T.J. Turley	(Affix Official/Notarial Seal)
_____ T.J. Turley (SEAL)	Date: _____	
	Notary Public _____	
	My Commission Expires: _____	

**INSTRUCTIONS FOR COMPLETION OF
OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(NO RECENT IMPROVEMENTS)**

1. This Owner Affidavit and Indemnity Agreement (the "Agreement") form is for use with any title insurer (the "Company") regarding owner and lender coverage for transactions affecting title to particular real estate in North Carolina (the "Property"), a description of which must be included in this Agreement, where there have been no Improvements made to the Property within the 120-Day Lien Period (as defined).
2. The closing attorney must *notify underwriting counsel for the Company prior to closing* regarding any filed Claim of Lien on Real Property or Notice of Claim of Lien upon Funds, or any Notice of Claim of Lien upon Funds known by the attorney or Owner to have been delivered to the Owner, whether on the Property or on any property in the state of North Carolina, as this may affect the Company's decisions about whether to insure and on what basis.

At the very least, any **filed Claim of Lien on Real Property** must be paid in full and canceled of record. **Any delivered or filed Notice of Claim of Lien upon Funds** (by a subcontractor) must be paid in full and a waiver obtained from the subcontractor. The attorney must discuss any questions or issues regarding these with underwriting counsel for the Company prior to closing.

3. This form is appropriate for use in transactions wherein *no* recent Improvements have been made on the Property. If Labor, Services or Materials (including surveying, architectural, engineering services or rental equipment) for Improvements to the Property have been provided within the 120-Day Lien Period (as defined in the Agreement) (other than minor repairs to existing Improvements completed by Owner without the assistance of a Contractor or supplier, or with evidence of payment at or before closing of completed work), then either the
 - NCLTA Form #2: OWNER/CONTRACTOR AFFIDAVIT, WAIVER OF LIENS AND INDEMNITY AGREEMENT (FOR CONSTRUCTION RECENTLY COMPLETED) or
 - NCLTA Form #3: OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT (FOR CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED WITH CONSTRUCTION LOAN) should be used.

Note, however, that in the situation in which vacant unimproved Property is to be conveyed and the *purchaser* has already retained Contractors, the *seller* may execute this form, and the purchaser would provide NCLTA Form #3, as noted above, with regard to any potential combined purchase and construction loan.

4. Any variances in execution of this form or in parties signing must be approved by underwriting counsel for the Company prior to closing.

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INFORMATION FOR REAL ESTATE 1099-S REPORT FILING

Section 6045 of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, requires the reporting of certain information on every real estate transaction. From the information you provide below, a Form 1099S will be produced, and a copy of it will be furnished to the I.R.S. and to you no later than January 31 of the next year. If you fail to furnish adequate information (in particular, a taxpayer ID number), thence you will be subject to all I.R.S. Regulations, including the possible withholding of twenty percent (20%) of the current sale price.

File #19901172

INDIVIDUAL SELLER NAME AND ADDRESS:

John L. Turley

TaxID/SS#: _____

T.J. Turley

TaxID/SS#: _____

Address:

1585 Lyons Bend

Knoxville, TN 37919

TRANSACTION INFORMATION:

CLOSING DATE: **TBD**

CONTRACT SALES PRICE: **\$ TBD**

REAL ESTATE TAXES PAID AT CLOSING: \$

DESCRIPTION OF PROPERTY: **Lot 190, Saddle Ridge Section, Elk River Development**

BUYERS NAME: **TBD**

Is there any trade or exchange of property or services with the buyer? NO

We, **John L. Turley and wife, T.J. Turley** certify that the above information is correct and understand that it will appear on a Form 1099S that will be sent to us and to the Internal Revenue Service.

Date: _____

John L. Turley

Date: _____

T.J. Turley

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State of North Carolina

County of Avery

BILL OF SALE

THIS BILL OF SALE made this ____ day of _____, 2011, by and between **John L. Turley and wife, T.J. Turley**, herein referred to as Sellers, and _____(TBD), herein referred to as Buyers;

W I T N E S S E T H

That Sellers, for and in consideration of the sum of Five Dollars and other valuable considerations, to them paid, the receipt of which is hereby acknowledged, have bargained and sold and by these presents does bargain, sell and convey unto the Buyers, their heirs and assigns, all articles of personal property as described in the Offer to Purchase and Contract for property located at **Lot 190, Saddle Ridge Section, Elk River Development.**

To have and to hold said personal property to them, the Buyers and their heirs and assigns in fee simple.

And the Sellers covenant that they are seized of said property in fee and have the right to convey the same in fee simple, that the same is free and clear of all encumbrances whatsoever, and that they will warrant and defend the title thereto against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Sellers have set their hand and seal the day and year first above written.

SELLERS:

WITNESS: _____

John L. Turley

WITNESS: _____

T.J. Turley

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