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Attorneys at Law

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October 21, 2010

SUSAN L. EVANS
E-mail: susan_evans@live.com

Via FEDEX

Melissa Ferlita
Resort Manager
Pro Management of North Carolina
Located in the Hearthstone Center
448 Highway 64 West; Suite 2
Cashiers, NC 28717

Re: *Toxaway Views Homeowners Association, Inc. v. Toxaway Views, Inc.; John Anthony Fisher, III and Jeanette Kay Fisher*, General Court of Justice, Superior Court Division, Transylvania County, File No. 07 CVS 589

Dear Melissa:

Accompanying this letter please find executed settlement documents in the referenced matter. They include a fully executed Settlement Agreement and Release ("Release"), which forms the basis of the entire settlement agreement; a number of attachments; the original Supplemental Declaration and Restatement of Declarant Rights for Toxaway Views Condominium ("Supplemental Declaration"); and copies of court filings.

With respect to the Release, attachments are as follows:

1. Exhibit 1 is a copy of the Memorandum of Mediated Settlement, which in turn contains its own exhibits. It is supplemented and modified by other settlement documents.
2. Exhibit 2 is a document styled "Clarifications to the Memorandum of Mediated Settlement", which cures some technical items from the Memorandum of Mediated Settlement, and which is signed in counterparts.
3. Exhibit 3 is a copy of the Supplemental Declaration. The exhibit number is stricken through. The reason is that the original Supplemental Declaration was recorded with the Register of Deeds, not as an exhibit to anything, but rather as a free standing document. Thus, the exhibit number was stricken to prepare this document for registration.

Twenty-One Broad Street • Asheville, North Carolina 28801

Telephone: (828) 251-1588 • Facsimile: (828) 251-2214

www.ferikesbleynat.com

In addition, I am providing file-stamped court filings. One is a Notice of Cancellation of Lis Pendens. We filed the Notices of Lis Pendens to keep the Fishers from trying to sell condominium property in a way by which they might have avoided the sold property being subjected to the Supplemental Declaration and to our settlement terms, thereby driving up the price for the land they were trying to sell (at least in theory) while taking their chances on further litigation. The cancellation is now required, as the lawsuit to which it was related has been resolved by filing the Stipulation of Voluntary Dismissal.

The enclosed Stipulation of Voluntary Dismissal with Prejudice of the lawsuit draws the litigation to a close, much as a judgment would after a trial.

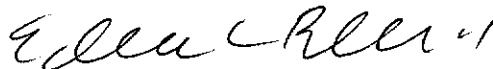
The Supplemental Declaration has different standards for courthouse filing - - maybe also for your own filing - - than typical suit papers. For instance, it should be properly viewed as a condominium document rather than a simple settlement document. The original (which contains the recording sticker from the Register of Deeds on the upper right hand corner) is enclosed.

It is my understanding that you will cause these papers to be scanned and sent to members of the TVHA Board.

I will hold the file open for remitting settlement funds to you, while allowing time for Mr. Dungan's own funds on the sanctions settlement to clear our trust account. We will need to be in communication next week about disposition of funds and rendering a final bill.

Please contact me with any questions.

Very truly yours,



Edward L. Bleynt, Jr.

ELB/dd
encls.

cc w/o encls: Dan Harless
Molly Granger

Tox

STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement" or "Release") is executed this the 27th day of September, 2010 by and between Toxaway Views Homeowners Association, Inc. ("plaintiff", "the Association" or "TVHA"), on the one hand, and Toxaway Views, Inc. ("TVI"), Anthony Fisher, III ("Mr. Fisher"), and Jeannette K. Fisher ("Mrs. Fisher") on the other hand. TVI, Mr. Fisher and Mrs. Fisher are sometimes collectively called "defendants" herein. Plaintiff and defendants are sometimes collectively described as "the Parties" herein.

WITNESSETH

WHEREAS, TVHA is a North Carolina not-for-profit corporation organized and existing under the Non-profit Corporation Act and Unit Ownership Act, whose members include property owners in the Toxaway Views Condominium Complex situated in Transylvania County, North Carolina (sometimes, "Toxaway Views Complex" or "the Condominium Complex"); and

WHEREAS, TVI is a North Carolina corporation with its office and principal place of business in Transylvania County, North Carolina, which at relevant times has engaged in the development of the Toxaway Views Complex; and

WHEREAS, Mr. Fisher and/or Mrs. Fisher, husband and wife, have, at relevant times, owned and/or operated TVI; and

WHEREAS, TVI entered into various real estate and other transactions with members of the Association, and/or their predecessors in interest; and

WHEREAS, TVI from time to time performed various construction and

maintenance activities on the Toxaway Views Complex; and

WHEREAS, the transactions and activities described above have affected the Association and its members; and

WHEREAS, the Association ("plaintiff") filed a lawsuit on or about 11 December 2007 in Superior Court, Transylvania County, bearing file no. 07 CVS 589 ("the Lawsuit" or "Civil Action") to bring claims in litigation and to seek resolution of the parties' disputes; and

WHEREAS, all TVI, Mr. Fisher, and Mrs. Fisher ("defendants") have raised defenses in the Civil Action; and

WHEREAS, one or more of the defendants have made counterclaims against TVHA in the Civil Action; and

WHEREAS, the Parties have conducted discovery, had settlement discussions, and engaged in a mediated settlement conference to resolve this matter; and

WHEREAS, the Parties do not desire to continue to litigate these issues; and

WHEREAS, the Parties have agreed to settle their dispute pursuant to the terms set forth in the Memorandum of Mediated Settlement, entered into on 29 June 2009 ("the Memorandum of Mediated Settlement"), a copy of which is attached hereto as Exhibit 1, incorporated herein by reference, and made part and parcel of this Agreement; and

WHEREAS, the Parties have agreed to certain clerical revisions to the Memorandum of Mediated Settlement as incorporated into paragraphs 1, 8, and 13 of the document captioned Clarifications to the Memorandum of Mediated Settlement ("the Clarifications"), a copy of which is attached hereto as Exhibit 2, and the language

which does not go to the substance of the Memorandum of Mediated Settlement, but to its form; and

WHEREAS, the Memorandum of Mediated Settlement with the Clarifications shall still be described as the Memorandum of Mediated Settlement below, unless context indicates otherwise; and

WHEREAS, the Parties have discharged or are discharging their obligations set forth in the Memorandum of Mediated Settlement; and

WHEREAS, certain of those duties are reflected in the completion of a survey that has been recorded or will be recorded in the Transylvania County Registry and in certain quit claim deeds that have been executed or will be executed by TVI and/or the Fishers; and

WHEREAS, other such duties have been discharged or will be discharged as are more specifically described in that certain Supplemental Declaration and Restatement of Declarant Rights for Toxaway Views Condominium, a copy of which is attached hereto as Exhibit 3, which has been recorded or will be recorded in the Transylvania County Registry;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and actions set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties enter into this Settlement Agreement and Release, and do hereby agree as follows:

1. The Parties have complied or will comply with any and all provisions of the Memorandum of Mediated Settlement, attached hereto and made a part of this Release;

2. In consideration of the Parties' mutual promises, defendants do hereby release the Association, along with its members, agents, successors, assigns, heirs and representatives, from any and all claims, actions, causes of action, demands, damages, costs, interest, judgments, expenses, liabilities, attorneys' fees and legal costs of any nature whatsoever through this date June 29, 2009, and as amended with respect to Paragraphs 1, 8, and 13 of the Memorandum as set out in the July 15, 2009, letter from Declarant's attorney and as agreed to by all parties, including, without limitation, any and all claims, known and unknown, arising out of, or connected with, the Condominium Complex described above, including those events as alleged in the Lawsuit. This Release is not an acknowledgment of liability by the Association, by whom liability is expressly denied. Rather, it is an act by the Parties to resolve the controversy, to draw litigation to a close, and to terminate the Civil Action.

3. The duties of defendants set forth in the Memorandum of Mediated Settlement have not been discharged in full as of the date that plaintiff tendered this Release to defendants through counsel. Defendants reaffirm their obligations to discharge their duties as set forth in the Memorandum of Mediated Settlement, including the recording of a corrected survey, the filing of supplemental declarations, providing easements, executing a quit claim deed or deeds, and otherwise complying with and discharging their duties as set forth in the Memorandum of Mediated Settlement. Defendants ratify and reaffirm their duties to discharge the obligations set forth in the Memorandum of Mediated Settlement.

4. Upon execution of the Agreement, the Parties will dismiss the Lawsuit with prejudice by stipulation, said dismissal to be filed by counsel for TVHA. However, any obligations hereunder not satisfied by the time a dismissal is filed are not discharged by the filing of the dismissal or the execution of this Agreement. Such obligations shall survive and remain fully enforceable.
5. Except as specifically contemplated in this Agreement and the Memorandum of Mediated Settlement, which define duties that defendants currently owe or will continue to owe to plaintiff until discharged, plaintiff releases defendants, along with their shareholders, agents, successors, assigns, heirs, and representatives, from any and all claims, actions, causes of action, demand, damages, costs, interest, judgments, expenses, liabilities, attorneys' fees and legal costs of any nature whatsoever through the date of this Release, including, without limitation, any and all claims, known and unknown, arising out of or connected with the Condominium Complex described above, including those as alleged in the Lawsuit. This Release is not an acknowledgment of liability by defendants, by whom liability is expressly denied. Rather, it is an act by Parties to resolve the controversy, to draw litigation to a close, and to terminate the Civil Action.
6. The Parties further release Defendants' Insurers, Nationwide Insurance and Travelers Insurance Company, from any and all claims arising out of or relating to the Civil Action; this release, however, does not extend to

claims unrelated to this Civil Action, or to other obligations the insureds or insurers might owe beyond the scope of the Civil Action.

7. Nothing in this Release or the Voluntary shall discharge the Parties from their duties hereunder or under the Memorandum of Mediated Settlement that have not yet been fulfilled.
8. Notwithstanding any other provision of this Settlement Agreement or attachments thereto, TVI shall promptly bring current any and all obligations that it may have for condominium assessments, including, but not limited to, those set forth in the Memorandum of Mediated Settlement, along with any and all accrued assessment obligations, interest and late fees owed thereupon.
9. This Agreement shall be governed and construed by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Parties have executed or authorized their agents to execute this Settlement Agreement and Release as of the date first above written.

TOXAWAY VIEWS HOMEOWNERS ASSOCIATION, INC.

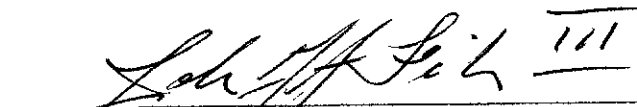
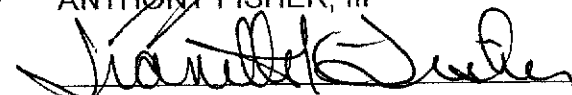
By: 

Its: President

TOXAWAY VIEWS, INC.

By: 

Its: PRESIDENT


ANTHONY FISHER, III


JEANETTE K. FISHER

3. Closing papers (consent judgment or voluntary dismissal) will be filed with the Court by ~~_____ (date)~~. Bleyard (attorney or party) will be responsible for filing the closing papers with the Court. Upon completion of the documentation, the parties shall file mutual dismissal with prejudice.

CCP
WJAF
JKP
WJA

4. Each of the parties hereto shall bear his/her/their/its own attorney fees, costs and pro rata share of the costs of this Mediated Settlement Conference.

5. The parties and their respective attorneys agree and consent to the Court entering and enforcing an Order based upon the terms and conditions contained in this Agreement.

For the Plaintiff
Toxaway Views Homeowner's
Association, Inc.

by: [Signature]

For the Defendants
Toxaway Views, Inc.

by: [Signature]

[Signature]
John Fisher

[Signature]
Jeanette Fisher

Consented to:

[Signature]

[Signature]

[Signature]

[Signature]
for David Hood



Exhibit "A"

1. John Fisher and Jeanette Fisher (hereinafter, "Fisher" which reference shall include any legal entity controlled by Fisher) and Toxaway Views, Inc. (hereinafter "TVI") shall obtain a new survey of the entire property encompassed in the Toxaway Views Development (approximately 11.7 acres) together with any encroachments by the common facilities of Toxaway Views Development ("development") on the personal property of Fisher, and TVI shall then file one or more supplemental declarations to subject all of said property to the Declaration Creating Ownership and Establishing Restrictions, Covenants, and Conditions for Toxaway Views (Book 130 at Page 971) together with amendments thereto, subject to the terms and conditions of this agreement.
2. Fisher and TVI shall effect conveyance to Toxaway Views Homeowner's Association, Inc. (hereinafter, "HOA") of an easement for the subject drain field located on property controlled by Fisher into which a portion of the sewage from Building 1 flows. Once Fisher completes construction of a sewage treatment plant on Fisher's property, or other property not part of the condominium then HOA agrees on behalf of itself and the owners of the units in Building 1 that Fisher may disconnect the units in Building 1 from the 'septic tank' and subject drain field described herein and connect those units to the private sewage system constructed by Fisher and TVI, provided that the construction of the system and the connection of the owners to the system is at no cost to the HOA or the owners of the units in building one, and further provided that the owners of the units in building one at the time of the connection to the sewage system will be entitled to use the system for as long as they own their units at no charge. Subsequent owners will not be charged at a higher amount than the going rate, but such exemption from charges for sewerage treatment will

Justice Matters

terminate upon conveyance of each unit in building one.

3. HOA agrees on behalf of itself and its members not to interfere in the construction of any additional units described herein by TVI, and TVI agrees to adhere to reasonable construction guidelines to avoid interference with use of the condominium property in line with construction practices found in other similarly situated residential developments in western North Carolina.
4. So long as the declaration of covenants is amended to require the use of fiber cement siding on the units in the development, TVI agrees to use only fiber cement siding on any new units constructed. TVI further agrees to vote any interest they may have in favor of such an amendment of declaration. TVI further agrees that it will use the same color fiber cement siding on any new units as that in the existing units.
5. The parties hereto agree to execute a general release of all claims except for claims arising out of a breach of this settlement agreement.
6. TVI agrees to abandon all declarant and/or development rights within the development and as set forth in the declaration as amended, except the right to build and to market the units more fully described herein including use of reasonable signage attendant to marketing.
7. The parties agree to take such steps as are necessary to "clean up the title and tax issues" consistent with the laws of the state of North Carolina and as they may pertain to the submission of real property to the condominium property.
8. Within 3 months from the date hereof, TVI shall demobilize all construction activity and remove construction equipment in the development except for the internal finish work to be completed in Unit 801. If there are any other times during which Fisher or

TVI are not engaged in construction for a period of three months or more, they must demobilize then as well.

9. Within 7 years from the date hereof, TVI may begin construction of the first additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, the first building must be complete within 2 years thereof. This building will be constructed within the "center" area marked on the attached plat.

10. Within 10 years from the date hereof, TVI may begin construction of the second additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, which in this document means issuance of a building permit, the second building must be complete within 2 years thereof, which in this document means issuance of a certificate of occupancy. This building will be constructed within the "center" area marked on the attached plat.

11. Within 13 years from the date hereof, TVI may begin construction of the third additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, the third building must be complete within 2 years thereof. This building will be constructed within the "center" area marked on the attached plat.

12. Within 20 years from the date hereof, but only upon completion of the three additional buildings described in paragraphs 9-11 above, TVI may construct two additional buildings consisting of up to 6 units each within locations marked as X4 and X5 on the attached plat.

13. If the Fishers and TVI fail to meet any of the deadlines set forth in paragraphs 9-12, then Fishers' and TVI's rights to build hereunder shall cease, except that they may complete the building then in progress.

14. During the period of construction of the buildings described in paragraphs 9-12, TVI shall have the right to maintain a model unit for sales purposes in each building constructed.

15. TVI agrees, that upon the completion of construction of any additional building and the sale of the first unit therein, the individual assessments for the units sold to any purchaser shall be made to HOA. TVI further agrees that from that point until the point at which the last unit in said building is sold, TVI shall be responsible for paying a 25% share of a regular assessment to HOA, and that TVI shall also be responsible for maintenance of said building, said maintenance to meet the community-wide standard, until the last unit in it is sold.

16. From 1 July 2009 forward, TVI shall be responsible for payment of a 25% share of the regular assessment on Unit 801 until said unit is sold. During the period in which TVI is paying a 25% share of an assessment, they shall be entitled to a ¼ vote in HOA matters for each such 25% share of an assessment paid.

17. Within 30 days hereafter Fisher and TVI shall pay HOA \$15,000.00.

18. The parties agree to execute such documents as are reasonably necessary to effectuate this agreement.

STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

CLARIFICATIONS TO THE
MEMORANDUM OF
MEDIATED SETTLEMENT

This Exhibit 2 to the Settlement Agreement and Release (“Agreement”) is executed this, the 25th of September, 2010 by and between the parties to the Agreement. It contains clarifications to the Memorandum of Mediated Settlement referenced in the Agreement as Exhibit 1. Certain paragraphs in the Memorandum of Mediated Settlement are revised as follows, and deemed to be part and parcel of the Memorandum of Mediated Settlement:

1. Paragraph 1 is revised by striking “(Book 130 at Page 971)” and substituting “(CD 4, Page 42, Transylvania County Register of Deeds)”.

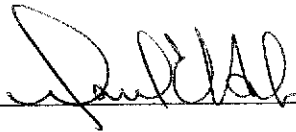
8. Paragraph 8 is revised by striking the second sentence and substituting the following sentence for it: “If there are any other times during which TVI is not engaged in construction for a period of three months or more, it must demobilize then as well.”

13. Paragraph 13 is revised by striking its current content, and substituting the following paragraph for it: “If TVI fails to meet any of the deadlines set forth in paragraphs 9-12, then TVI’s rights to build thereunder shall cease, except that TVI may then complete the building then in progress.”



IN WITNESS WHEREOF, the Parties have executed or authorized their agents to execute this document captioned "Clarifications to the Memorandum of Mediated Settlement" as of the date first above written.

TOXAWAY VIEWS HOMEOWNERS ASSOCIATION, INC.

By: 

Its: President

TOXAWAY VIEWS, INC.

By: _____

Its: _____

ANTHONY FISHER, III

JEANETTE K. FISHER

STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

CLARIFICATIONS TO THE
MEMORANDUM OF
MEDIATED SETTLEMENT

This Exhibit 2 to the Settlement Agreement and Release (“Agreement”) is executed this, the _____ of _____, 2010 by and between the parties to the Agreement. It contains clarifications to the Memorandum of Mediated Settlement referenced in the Agreement as Exhibit 1. Certain paragraphs in the Memorandum of Mediated Settlement are revised as follows, and deemed to be part and parcel of the Memorandum of Mediated Settlement:

1. Paragraph 1 is revised by striking “(Book 130 at Page 971)” and substituting “(CD 4, Page 42, Transylvania County Register of Deeds)”.

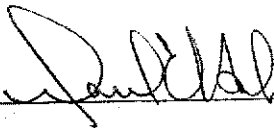
8. Paragraph 8 is revised by striking the second sentence and substituting the following sentence for it: “If there are any other times during which TVI is not engaged in construction for a period of three months or more, it must demobilize then as well.”

13. Paragraph 13 is revised by striking its current content, and substituting the following paragraph for it: “If TVI fails to meet any of the deadlines set forth in paragraphs 9-12, then TVI’s rights to build thereunder shall cease, except that TVI may then complete the building then in progress.”



IN WITNESS WHEREOF, the Parties have executed or authorized their agents to execute this document captioned "Clarifications to the Memorandum of Mediated Settlement" as of the date first above written.

TOXAWAY VIEWS HOMEOWNERS ASSOCIATION, INC.

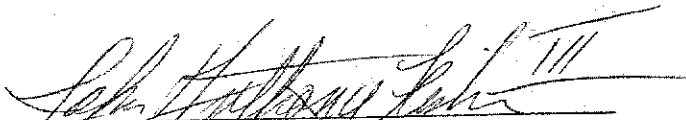

By: 

Its: President

TOXAWAY VIEWS, INC.

By: 

Its: PRESIDENT


ANTHONY FISHER, III

JEANETTE K. FISHER

2010005225
TRANSYLVANIA CO, NC FEE \$35.00
PRESENTED & RECORDED
10-14-2010 04:02:08 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: TERESA D MORTON
DEPUTY REGISTER OF DEEDS
BK: DOC 552
PG: 774-781

Please return to Robert E. Dungan, Esq., One Rankin Avenue, Third Floor, Asheville, North Carolina 28801

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

**Supplemental Declaration and Restatement of
Declarant Rights for Toxaway Views Condominium**

Toxaway Views, Inc., a North Carolina corporation, ("Declarant") does hereby make this Supplemental Declaration and Restatement of Declarant Rights for Toxaway Views Condominium (sometimes "Toxaway Views") with the mutual agreement of the Toxaway Views Homeowners Association, Inc., a North Carolina nonprofit corporation ("Association").

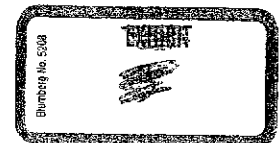
WITNESSETH

WHEREAS the Declarant, as the developer of Toxaway Views Condominium, is the owner of remaining portions of two tracts comprising approximately 11.11 acres that were described in the Declaration for Phase I of Toxaway Views as being the real property intended for development of as many as 176 condominium units and that are more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof ("Condominium Property"); and

WHEREAS, the Declarant created Toxaway Views condominium under the North Carolina Unit Ownership Act (NCGS, Chapter 47A) by recording the initial Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for Toxaway Views, Phase I ("Declaration") on June 17, 1983, in Condominium Drawer (Book) 4, Page 42, Transylvania County Registry of Deeds; and

WHEREAS, in accordance with the Declaration, the Declarant has been developing the Condominium Property in phases; and, to effect that process, the Declarant has retained the right and authority to record Supplemental Declarations in connection with the development; and

WHEREAS the Declarant has currently constructed 49 condominium units in 8 buildings on portions of the Condominium Property; and



WHEREAS the Declarant has only submitted to the Declaration those portions of the Condominium Property on which the existing buildings are located; and

WHEREAS the Declarant has the right to construct additional condominium units as set forth in the Declaration; and

WHEREAS, disputes with respect to the construction of condominium units and with respect to the scope of Declarant rights have arisen between the Association and the Declarant; and

WHEREAS, the Association filed a legal action Case No. 07 CVS 589 Transylvania County Superior Court against the Declarant and its owners; and

WHEREAS, the Declarant and its owners answered the action and filed counterclaims against the Association; and

WHEREAS, at mediation the plaintiff and the defendants agreed to settle the above-referenced litigation in accordance with the Memorandum of Mediated Settlement dated June 29, 2009, as amended with respect to Paragraph 1, 8, and 13 of the Memorandum as set out in the July 15, 2009, letter from Declarant's attorney and as agreed to by all parties; and

WHEREAS, in order to satisfy the terms of the Memorandum of Mediated Settlement, as amended, the Declarant must submit all of the Condominium Property to the Declaration through this Supplemental Declaration, but at the same time preserve and guarantee the retention of certain Declarant rights including the right to construct as many as thirty (30) more condominium units in five (5) buildings.

NOW THEREFORE, the Declarant with the agreement of the Association makes the following Supplemental Declaration for Toxaway Views:

1. Declarant hereby submits the Condominium Property as described in Exhibit "A" attached hereto and by this reference incorporated herein to the Declaration, as amended, for Toxaway Views.
2. Declarant, its successors, and assigns, subject to the conditions set forth below, retain the right to build no more than thirty (30) additional condominium units ("Additional Units") on the Condominium Property with such units being constructed in no more than five (5) separate additional buildings ("Additional Buildings").
3. The five additional building sites will be located approximately as shown and labeled "Proposed Condo Bldg" on that plat of the Condominium Property recorded in Plat File Book 13, Page 346, Transylvania County Registry of Deeds, ("Condominium Plat").
4. Declarant's right to construct the Additional Buildings shall be limited with respect to time of construction as follows:

A. Within seven (7) years from July 1, 2009, Declarant, its successor or assigns may begin construction of the first additional building to be constructed, which building may consist of up to six (6) units. Upon commencement of construction which means issuance of a building permit, the first additional building must be completed within two (2) years thereof, which means issuance of a certificate of occupancy. This building along with two other additional buildings will be constructed within the circular "center" area shown on the Condominium Plat.

B. Within ten (10) years from July 1, 2009, Declarant, its successor or assign may begin construction of the second additional building to be constructed, which building may consist of up to six (6) units. Upon commencement of construction, which means issuance of a building permit, the second additional building must be completed within 2 years thereof, which means issuance of a certificate of occupancy. This building will also be constructed within the circular "center" area shown on the Condominium Plat.

C. Within thirteen (13) years from July 1, 2009, Declarant, its successor or assign may begin construction of the third additional building to be constructed, which building may consist of up to 6 units. Upon commencement of construction, which means issuance of a building permit, the third additional building must be completed within 2 years thereof, which means issuance of a certificate of occupancy. This building will also be constructed within the circular "center" area shown on the Condominium Plat.

D. Within twenty (20) years from July 1, 2009, but only upon completion of the three additional buildings described in subparagraphs A-C above, Declarant, its successor, or assign may construct two additional buildings consisting of up to six (6) units each at approximate locations shown on the Condominium Plat. Upon commencement of construction of either of these two Additional Buildings, which means issuance of a building permit, any such Additional Building must be completed within two years thereof, which means issuance of a certificate of occupancy. Therefore, any and all construction allowed must be completed no later than twenty-two (22) years from July 1, 2009 (re. July 1, 2031) ["Construction Period"].

E. If the Declarant, its successor or assign fails to meet any of the deadlines set forth in subparagraphs A-D, then its rights to build set forth above shall cease, except for completion of any building then under construction.

5. Neither the Association nor any of its members shall interfere with the construction of the Additional Units by the Declarant, its successors or assigns, provided that such construction is done in compliance with the Declaration and all applicable laws. Declarant, its successor or assign shall during the construction of any Additional Building on the Condominium Property adhere to reasonable construction guidelines to avoid

interference with use of the Condominium Property in line with constructions practices found in other similarly situated residential developments in western North Carolina.

6. In connection with the construction, marketing, and sale of any and all Additional Units, Declarant, its successor or assign shall have and retain during the pendency of the Construction Period the following rights:

- A. Right to maintain and to operate a model condominium unit for sales purposes in each Additional Building constructed;
- B. Right to erect and maintain reasonable signage for the sale and marketing of any and all Additional Units;
- C. Right of ingress and egress of construction vehicles on to the Condominium Property for purposes of constructing Additional Buildings;
- D. Right to file Supplemental Declarations for the purposes of submitting Additional Buildings and Additional Units as contemplated herein to the Toxaway Views Condominium.

7. Condominium assessments shall be paid on all Additional Units as follows:

- A. Upon the sale of each condominium unit in any Additional Building, the purchaser shall pay regular assessments on each such unit to the Association.
- B. Declarant, its successor or assign shall pay after the sale of the first unit in any Additional Building, twenty-five percent (25%) of the regular assessments on each remaining unit in the Additional Building until each unit is sold. During the period in which the Declarant is paying a twenty-five percent (25%) share of an assessment, the Declarant shall be entitled to a one quarter member vote in the Association for each such twenty-five percent share of an assessment paid.
- C. Until the last unit is sold in any Additional Building, Declarant, its successor, or assign shall be responsible for maintenance of such Additional Building.

8. Except for the Declarant rights set forth above in this Supplemental Declaration, the Declarant hereby abandons any and all other Declarant rights that may be contained in the Declaration.

9. The rights, duties, and obligations of the Declarant set forth herein shall inure to any and all successors and/or assigns.

This the 24th SEPTEMBER day of ~~JUNE~~, 2010.

Declarant: Toxaway Views, Inc.

John P. Fisher III
President
Attest: Janette Fisher
Secretary

NORTH CAROLINA
BUNCOMBE COUNTY

I JEANNE T. WARNER, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 24th day of SEPTEMBER, 2010.

(SEAL)

Jeanne T. Warner
Notary Public
Buncombe County, NC
My Commission Expires
April 20, 2015

Jeanne T. Warner
Notary Public

My commission expires APRIL 20, 2015.

Association: Toxaway Views Homeowners Association, Inc.

(Seal)

by: _____
President

Attest: _____
Secretary

NORTH CAROLINA
_____ COUNTY

[Signature]
President

Attest: [Signature]
Secretary

NORTH CAROLINA State of FL
St. Johns COUNTY

I Kevin Mackiewicz, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 22nd day of September, 2010.



[Signature]
Notary Public

ELG
[Signature]
MJB

My commission expires March 15, 2012

Association: Toxaway Views Homeowners Association, Inc.

(Seal)

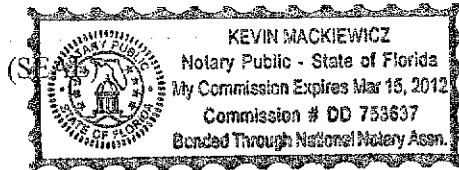
by: [Signature]
President

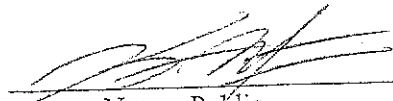
Attest: [Signature]
Secretary

NORTH CAROLINA Florida
St. Johns COUNTY

I Kevin Mackiewicz, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views Homeowners Association, Inc., a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 22nd day of September, 2010.




Notary Public

My commission expires MARCH 15, 2012.

EXHIBIT "A"

BEGINNING at a six inch by eight inch rock with and "X" mark scribed on its top, on the south side of an old road in the line of property belonging to Lake Toxaway Company and running thence from the point of beginning with the line of Lake Toxaway Company, two calls as follows: North 19 deg. 59 min. East, 1013.32 feet to an iron pipe; thence North 02 deg. 38 min. East, 182.85 feet to an iron pipe; thence North 8 deg. 36 min. West, 67.51 feet to a point in the center of the pavement of U.S. Highway 64; thence with the center of the Highway three calls as follows: South 82 deg. 55 min. East, 143.40 feet; North 81 deg. 21 min. East, 106.02 feet; North 54 deg. 46 min. East, 41.18 feet; thence leaving the Highway and running South 27 deg. 48 min. East, 101.30 feet to an iron pipe; thence North 40 deg. 03 min. East, 257.63 feet to an iron pipe; thence South 35 deg. 03 min. East, 94.38 feet to an iron pipe; thence South 14 deg. 22 min. East, 90.29 feet to an iron pipe; thence South 04 deg. 22 min. West, 88.12 feet to an iron pipe; thence South 04 deg. 59 min. East, 62.50 feet to an iron pipe; thence South 04 deg. 59 min. East, 160.24 feet to an iron pipe; thence South 04 deg. 59 min. West, 63.35 feet to an iron pipe; thence South 61 deg. 54 min. West, 136.48 feet to an iron pipe; thence South 49 deg. 30 min. West, 96.50 feet to an iron pipe; thence South 38 deg. 09 min. West, 90.07 feet to an iron pipe; thence South 54 deg. 08 min. West, 111.14 feet to an iron pipe; thence South 69 deg. 32 min. West, 75.41 feet to an iron pipe; thence South 84 deg. 53 min. West, 103.27 feet to an iron pipe; thence South 63 deg. 37 min. West, 86.05 feet to an iron pipe; thence South 29 deg. 30 min. West, 153.51 feet to an iron pipe; thence South 39 deg. 54 min. West, 108.60 feet to an iron pipe; thence South 39 deg. 21 min. West, 120.30 feet to the point of beginning. Containing 10.90 acres, more or less, as surveyed and platted by William Leonard, RLS on September 14th, 1982.

Second Tract

BEGINNING at a point in the center of the pavement of U.S. Highway 64 which said point stands the following two calls: from a concrete monument (said monument being the southeast corner of the Cash property in the line of Lake Toxaway Company) South 86 deg. 35 min. East, 152.50 feet and North 8 deg. 36 min. West, 67.51 feet and running thence from the said point of beginning thus established South 8 deg. 36 min. East, 67.51 feet to an iron pin the Northeastern corner of a tract of land owned by Lake Toxaway Company; thence with the Toxaway line North 86 deg. 35 min. West, 152.50 feet to a concrete monument the Southeast corner of the Cash property described in Deed Book 219, page 810; thence with the Cash line North 1 deg. 54 min. East, 600.0 feet to a point in the center of the pavement of U.S. Highway 64; thence with the center of the pavement in a south and then southeast direction, to the point of beginning containing 0.8 acres, more or less, as surveyed and platted by William Leonard, RLS.

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 07 CVS 589
FILE NO. 10 M 354
FILE NO. 10 M 362

TOXAWAY VIEWS HOMEOWNERS
ASSOCIATION, INC.

Plaintiff,

vs.

TOXAWAY VIEWS, INC.; JOHN
ANTHONY FISHER, III AND JEANETTE
KAY FISHER

Defendants.

NOTICE OF CANCELLATION OF LIS

PENDENS

2010 OCT 14 PM 4:04
TRANSYLVANIA CO., O.S.C.

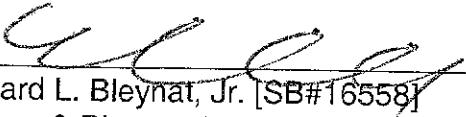
FILED

Plaintiff's undersigned counsel, pursuant to N.C.G.S. §1-120, hereby gives notice of cancellation of lis pendens as to certain real property located in Transylvania County, North Carolina described as follows:

1. That certain 11.7 acres, adjacent to Highway 64 in Lake Toxaway, as recorded in Book 130, Page 971 of the Transylvania County Register of Deeds.
2. That certain 11.7 acres, adjacent to Highway 64 in Lake Toxaway, as recorded in CD 4 Page 42, Transylvania County Register of Deeds.

In connection with this Notice of Cancellation of Lis Pendens, plaintiff has caused to be filed with the Transylvania County Register of Deeds a Supplemental Declaration and Restatement of Declarant Rights for Toxaway Views Condominium which remains in full force and effect and which is not cancelled hereby. A copy is attached hereto.

This, the 14th of October, 2010.


Edward L. Bleynat, Jr. [SB#16558]
Ferikes & Bleynat, PLLC
21 Broad Street
Asheville, NC 28801

CERTIFICATE OF SERVICE

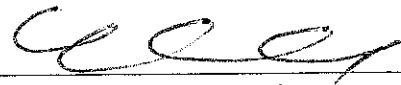
This is to certify that the undersigned has this date served the foregoing **NOTICE OF CANCELLATION OF LIS PENDENS** on all parties in this action via first class mail, addressed to their attorneys of record:

W.O. Brazil, III
COGBURN & BRAZIL, P.A.
P.O. Box 120
Asheville, NC 28802
Attorney for Defendant, Toxaway Views, Inc.

Robert E. Dungan
DUNGAN & ASSOCIATES, P.A.
One Rankin Ave. 3d Floor
Asheville, NC 28801
Attorney for Defendant Toxaway Views, Inc, John Anthony Fisher, III and Jeanette Kay Fisher

David W. Hood
PATRICK, HARPER & DIXON, LLP
P.O. Box 218
Hickory NC 28603

This the 14th day of October, 2010.


Edward L. Bleynat, Jr.
FERIKES & BLEYNAT, PLLC
21 Broad Street
Asheville, NC 28801
828-251-1588

TRANSPYANIA CO., C.S.C.

2010 OCT 14 PM 4:04

FILED