BILL GARRETT, Davidson County
Trans:T20110006909 DEEDWARR
Recvd: 02/02/11 15:23 6 pgs
Fees:33.00 Taxes:13497.64
20110202-0009496

This Instrument prepared by
Bone McAllester Norton, PLLC
1600 Nashville City Center
511 Union Street
Nashville, Tennessee 37219

| Address New Owner(s) | Send Tax Bill To: | Map & Parcel Nos.: |
|---|---|---|
| The Bank of Nashville 401 Church Street<br>Nashville, TN 37219<br>Attn: Bill Glaus | New Owner | 149-03-0-160.00<br>149-03-0-161.00 |

## DEED IN LIEU OF FORECLOSURE

**THIS DEED IN LIEU OF FORECLOSURE** ("Deed") entered into by and between Murfreesboro Edge-O-Lake, LLC, a Tennessee limited liability company ("Grantor") and The Bank of Nashville a Division of Synovus Bank ("Grantee").

**WHEREAS**, Murfreesboro Edge-O-Lake, LLC, a Tennessee limited liability company by a Deed of Trust dated October 13, 2006, of record in Instrument No. 20061016-0127965, as modified of record in Instrument No. 20071004-0118284, further modified in Instrument No. 20071221-0146541, and corrected by Scrivener's Affidavit of record in Instrument No. 20090529-0049490, Register's Office for Davidson County, Tennessee ("Deed of Trust"), conveyed to Linda Hood, Trustee, the Property as hereinafter described to secure to Grantee a Promissory Note, etc. as described in said Deed of Trust ("Note"); and

**WHEREAS**, Grantor has defaulted under the terms of said Note secured by said Deed of Trust and the Grantee, as owner and holder of said Note, has demanded that the Property (as defined herein) be advertised and sold in satisfaction of said debt and the cost of foreclosure in accordance with the terms and provisions of said Note, Deed of Trust and applicable law; and

**WHEREAS**, Grantor has offered to convey said Property to Grantee in lieu of Grantee holding the foreclosure sale and incurring the attorneys fees, costs and expenses associated with a foreclosure sale and the time to advertise and conduct a foreclosure sale; and

**WHEREAS**, Grantor and Grantee agree that there is not equity in the Property over and above the amount of the Indebtedness due Lender other than what is to be credited to Grantor pursuant to the Forbearance Agreement dated November 2, 2010, between Grantor and Grantee; and

**WHEREAS**, Grantee is willing to accept the Deed in Lieu of Foreclosure in full release of the personal liability of Grantor and its Guarantor, Mark A. Marshall, for the unpaid balance of the Note in reliance upon Grantor's execution and delivery of an Owner's Affidavit and Indemnity Agreement of even date, and Grantor's assurance that other than 2009 and 2010 Davidson County real property taxes, Easement of record in Instrument No. 200608100098639, and all matters shown on the Plan of First Revision to Final Plat of The Shoppes of Edge-O-Lake of record in Instrument No. 20060926-0118879 ("Permitted Exceptions"), said Property is unencumbered.

**NOW, THEREFORE,** in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor has this day bargained and sold and by these presents does transfer and convey unto the said Grantee its successors and assigns, a certain tract or parcel of land in Davidson County, Tennessee described on Exhibit A attached hereto and incorporated herein with the appurtenances, estate, title, and interest thereto belonging ("Property").

To have and to hold the Property, to the said Grantee, its successors and assigns forever. Grantor covenants to the said Grantee, its successors and assigns, that Grantor is lawfully seized and possessed of said Property in fee simple, has a good right to convey the Property and the Property is unencumbered except for the Deed of Trust and Permitted Exceptions. Grantor does further covenant and bind itself, its successors and assigns, to warrant and forever defend the title to the said Property to the said Grantee, its successors and assigns, against the lawful claims of all persons, whomsoever.

In further consideration of the Grantor's conveyance herein and the forbearance by Grantee of its right to foreclose under the Deed of Trust and other good and valuable consideration, the parties do specifically and mutually agree and bind themselves as follows:

1. Grantor acknowledges that the total balance of principal and interest owing and unpaid to Grantee on the Note as of November 2, 2010 is Four Million Four Hundred Ninety Thousand Four Hundred Seventy-four and 44/100 Dollars ($4,490,474.44) (the "Indebtedness").

2. Grantor and Grantee agree that the reasonable and fair value of the Property being conveyed to Grantee is equal to the Indebtedness plus the credit amount to be issued to Grantor pursuant to the Forbearance Agreement dated November 2, 2010 between Grantor and Grantee.

3. Grantor acknowledges and agrees that it has no equity in the Property other than the equity being credited to Grantor pursuant to the Forbearance Agreement dated November 2, 2010, between Grantor and Grantee.

4. Grantor declares this conveyance is voluntary and fairly made, is equitable, beneficial and to the best interest of Grantor. This conveyance is made without force or duress and in exchange for the receipt of substantial and adequate consideration and that this is an absolute conveyance (and not a conveyance for security purposes, a mortgage, Deed of Trust or security interest of any kind).

5. Grantor agrees and understands that all proceeds received from the subsequent sale of said Property by Grantee is property of the Grantee.

6. Grantor warrants and covenants that it has neither done nor permitted to be done, any act, claim, instrument, document, deed of trust, lien, etc. nor has any lien or claim arisen by operation of law (specifically including any mechanic or materialmen's liens) that are or shall be a lien against the Property. It is the expressed intention of Grantor that the conveyance of the Property to Grantee is subject only Permitted Exceptions.

This Deed shall not effect the Deed of Trust and the Deed of Trust shall remain in full force and effect after the date of this Deed and the interest of Grantee, its successors and assigns in the Property upon effectuation of the conveyance as provided in this Deed shall not merge with the interest of Grantee or any affiliate of Grantee or any successors or assigns of Grantee nor shall this Deed extinguish the lien of the Deed of Trust, but rather the Deed of Trust shall be and remain at all times separate and distinct, notwithstanding any unity or commonality of interest in Grantee and the holder of the Deed of Trust and the Deed of Trust shall be and remain at all times a valid and continuous lien on the Property subject only to such written and recorded releases and reconveyance of the Deed of Trust as the holder of the Deed of Trust may execute, in its sole and absolute discretion. The execution, delivery and acceptance of this Deed shall not be construed to create or effect a merger of the lien of the Deed of Trust with the interest conveyed under this Deed. The holder of the Deed of Trust, its successors, affiliates and assigns, shall have the right to foreclose the lien of the Deed of Trust against all persons claiming an interest in or lien on any or all of the Property conveyed under this Deed.

WITNESS our hands this the 9th day of November, 2010.

**GRANTOR**:

MURFREESBORO EDGE-O-LAKE, LLC,
a Tennessee limited liability company

By: _____
Mark A. Marshall
Chief Manager

**GRANTEE**:

THE BANK OF NASHVILLE
a Division of Synovus Bank

By: _____ EVP
William Glaus
Executive Vice President

STATE OF TENNESSEE )
)
COUNTY OF DAVIDSON )

Before me, Julie L. Long, a Notary Public in and for said County and State, aforesaid, personally appeared Mark A. Marshall, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath acknowledged himself to be the Chief Manager of Murfreesboro Edge-O-Lake, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such Chief Manager, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of Murfreesboro Edge-O-Lake, LLC by the said Mark A. Marshall as such Chief Manager.

Witness my hand and official seal at Nashville, Tennessee, this 4th day of November, 2010.

Notary Public

My Commission Expires: 11/4/2013

JULIE L. LONG
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires November 4, 2013

STATE OF TENNESSEE )
)
COUNTY OF DAVIDSON )

Before me, Kimberley J. Raymond, a Notary Public in and for said County and State, aforesaid, personally appeared William Glaus, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath acknowledged himself to be the Executive Vice President of The Bank of Nashville a Division of Synovus Bank, the within named bargainor, and that he as such Executive Vice President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of The Bank of Nashville a Division of Synovus Bank by the said William Glaus as such Executive Vice President.

Witness my hand and official seal at Nashville, Tennessee, this 9th day of November, 2010.

Kimberley J Raymond
Notary Public

My Commission Expires: 3-3-14

KIMBERLEY J. RAYMOND
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

STATE OF TENNESSEE )
)
COUNTY OF DAVIDSON )

The actual consideration for this transfer or value of property whichever is greater is $364801 2.00. This is equal to or greater than the property would bring at a fair and voluntary sale.

Affiant

Sworn to and subscribed before me on

this 9th day of November, 2010.

Notary Public

My Commission Expires: 11/4/2013

JULIE L. LONG
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires November 4, 2013

## EXHIBIT A

Land in Davidson County, Tennessee, being Lot Nos. 2 and 3 on the Plan of First Revision to Final Plat of The Shoppes of Edge-O-Lake, of record in Instrument No. 20060926-0118879, Register's Office for Davidson County, TN to which plan reference is hereby made for a complete description thereof. Said plat amends the Final Plat of The Shoppes of Edge-O-Lake of record as Instrument No. 20060912-0112737, Register's Office for Davidson County, Tennessee.

Being the same property conveyed to Murfreesboro Edge-O-Lake, LLC, by deed from Mark Marshall of record in Instrument No. 20030422-0053164, Register's Office for Davidson County, Tennessee.

The street address of Lot 2 is believed to be 2510 Murfreesboro Pike, Nashville, Davidson County, Tennessee. The street address of Lot 3 is believed to be 0 Murfreesboro Pike, Nashville, Davidson County, Tennessee. Such addresses are not part of the legal description of the property. In the event of any discrepancy, the legal description herein shall control.