

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. John C. Hayes, III
Presiding Circuit Court Judge

Consolidated case no. 2013-000-327

Juontonio Pinckney, et al. Appellants,
v.

Epcon Communities, Inc., Epcon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property Group, Inc.,
Stonecrest Villas of Tega Cay, LLC,
and

Stonecrest Villas of Tega Cay Owners' Association, Inc. Respondent

SUPPLEMENTAL RECORD ON APPEAL
VOLUME 2
0338-0593

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SC Court of Appeals

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Hon. John C. Hayes, III
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Juontonio Pinckney, et al. Appellants,

v.

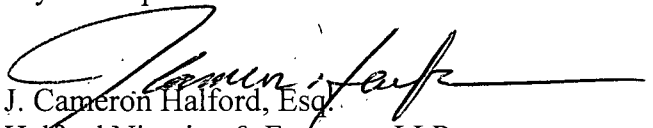
Epcon Communities, Inc., Epcon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property Group, Inc.,
Stonecrest Villas of Tega Cay, LLC,

And

Stonecrest Villas of Tega Cay Owners' Association, Inc. Respondent

CERTIFICATION OF APPELLANT COUNSEL

Pursuant to SCACR 201(g) the undersigned here certifies that the Supplemental Record on
Appeal contains all material proposed to be included by any of the parties and no other materials.


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February 18, 2014

PROOF OF SERVICE

I hereby certify that I am the attorney for the Appellants in the above captioned matter and that I did on September 10, 2013 serve a copy of one copy of the PROPOSED SUPPLEMENTAL RECORD ON APPEAL VOLUMES 2 – 5, and CERTIFICATION OF APPELLANT COUNSEL on counsel for the parties listed below by U.S. mail, postage prepaid, and addressed as follows:

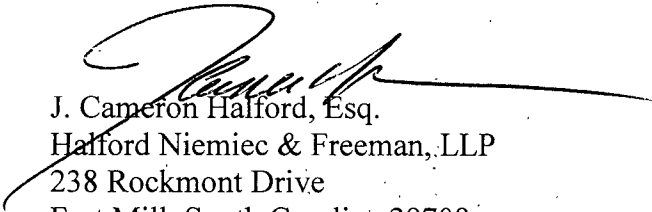
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

JUONTONIO PINCKNEY, JOSPEPHINE
SCIACCA, ADDIE SMITH, JAMES BARONE,
and DEBORAH BARONE,

Plaintiffs,

V.

**BROCK L. FANHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; and
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,**

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

V.

EXTERIOR EXPRESSIONS OF NC, INC., AL-
AL-MEGA CONSTRUCTION, INC.; PROCAR,
INC.; THE SOUTHEASTERN GROUP, INC.;
And JOSE SIMENEZ, Individually and d/b/a
M&L ROOFING CO., LLC and/or MB
ROOFING COMPANY.

Third-Party Defendants.

STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

(CONSOLIDATED)

Civil Action No.: 10-CP-46-2326

CONSENT ORDER TO AMEND
CONSOLIDATED COMPLAINT
JOINING PLAINTIFF PARTIES
AND ADDING PARTY DEFENDANT
(EPCON COMMUNITIES)

FILED-RECEIVED
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9/23/10 consented 8/20/10

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juontonio Pinckney Addie Smith	Josephine Sciacca James Barone	Brock L Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore	Ismael Gonzales Joe Moore		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/John C. Hayes, J99

Circuit Court Judge

2049

Judge Code

8/27/2012

Date

CPFORM4M

SCCA SCRPC Form 4C (Revised 10/2011)

For Clerk of Court Office Use Only

This judgment was entered on **August 27, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **August 27, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

***SEE ATTACHED CERTIFICATE OF SERVICE**

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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

SCA. No.: 2010-CP-46-2326

Juontonio Pinckney, et al.,

Plaintiffs,

vs.

Brock L. Fankhauser, et al.,

Defendants.

ORDER

Re: Stonecrest Villas of Tega Cay
Condominium Owners' Motion for
Judgment on the Pleadings as to
Plaintiffs' Claim for Exterior Damages

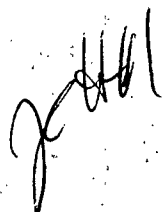
Stonecrest Villas of Tega Cay Condominium Owners (COA) by this Motion asserts a standing issue as to Plaintiffs' claims for damages to the common elements of the Stonecrest Villas development.

Prior to the hearing the Court shared with the parties the attached order in the case of Pulliam v. M.U.I. Carolina Corporation. Counsel for the COA, while in no way bowing to the efficacy of the attached Order, recognizes the Court's prior disposition of this issue.

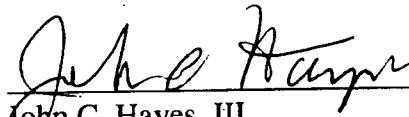
Realizing that foolish consistencies (without conceding that such are here created), are the hobgoblins of little minds the Court denies COA's motion for the reasons set forth in the Pulliam Order. The Pulliam Order, attached hereto, is incorporated by reference insofar as context permits.

To summarize, the Court recognizes a real problem with the dichotomy that seems to exist as to who may bring suit for damages regarding the common elements of condominium development and the right to recover damages for such damage.

Wherefore, the COA's motion is dismissed.



IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

August 6, 2012
York, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Brian and Deborah C. Pulliam,
Monica Bradshaw, Helen K. Cook,
Kala Craig, Victor E. Dirienzo,
Cynthia Ditursi, J. Scott Drexel,
Kathleen Kramer, Robert Loebe,
Melanie McDaniel, Don and Debbie Neff,
David Osborne, Celeste Arrowood,
Vincent Dionna, Mikel Marcuse,
James P. Wheaton, Jr., Joseph Manfredini,
Elena Manfredini, David Cox,
Jonathan B. Dillard, and Eric Wilson,
and Marianna Junda,

Plaintiffs,

vs.

M.U.I. Carolina Corporation, and
Kensington Place Owners'
Association, Inc., and Regent Carolina
Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2008-CP-46-²¹⁵⁸~~2158~~

ORDER
"Catch 22"
Doc Daneeka¹

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YORK COUNTY, SC

*Catch-22, A situation in which a desired outcome is
impossible because of inherently illogical rules or conditions.
American Heritage College dic-tion-ar-y., 4th Ed., 2002, page 227.*

The Court heard arguments on several motions in this matter on March 24, 2011. No court reporter was present. Plaintiffs were represented by W. Jefferson Leath, Jr., Esq. and Michael S. Seekings, Esq.; MUI Corporation (MUI) and Regent Carolina Corporation (Regent) were represented by Robert T. Lyles, Jr., Esq. and Kensington Place Owners' Association, Inc. (KPOA) by Kenneth R. Raynor, Esq.

¹ Catch-22, Joseph Heller, Simon and Schuster (1961).

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Back Ground

Briefly, Plaintiffs are owners of some of the condominiums in Kensington Place a Horizontal Property Regime (HPR). MUI is the developer of Kensington Place and Regent Carolina Corporation (Regent) is a subsidiary of MUI. MUI, as developer, established a property owners association (POA) and controlled same until it transferred the control of the POA to a Board comprised of the Kensington Place owners. The transfer established control and maintenance of the Kensington Place common elements in the Kensington Place POA (KPOA).

Plaintiffs claim that when MUI transferred control of the common areas to KPOA, these common areas were not in good condition, and MUI did not set aside enough funding to put the common areas in good, safe, usable order.

The Court will not elaborate on the struggle within KPOA as to the membership of the board and pursuit of claims regarding the common areas.

In an earlier Order, Judge S. Jackson Kimball, in addressing several motions, set forth this case's background succinctly, thusly²:

Plaintiffs brought this action against MUI and Kensington, asserting causes of action relating to the construction and maintenance of the condominium project in which each of them owns a unit. Kensington is made a party based on alleged breaches of duty owed by Kensington to Plaintiffs. The alleged breaches are premised upon the actions or inactions of the board of directors of Kensington, the homeowners association of the Horizontal Property Regime ("HPR"). Some of Plaintiffs are on the current board of Kensington.

² Defendant Regent Carolina Corporation was later added by amendment of the Complaint.

MUI's Motion for Summary Judgment

MUI argues it is entitled to summary judgment as to Plaintiffs' claims based on Plaintiffs' lack of standing to pursue same.

While the motions before Judge Kimball were motions to dismiss, he treated them as motions for summary judgment since the arguments and exhibits presented went beyond the pleading.

As to MUI's motion, Judge Kimball held:

It is clear that Plaintiffs may have the right to pursue their claims in their own right. Given the complexity of this litigation, I believe that the individual claims asserted by the Plaintiffs should be decided based on a full development of the facts as to each claim, and the defenses applicable to each claim, at trial. Therefore, the motion is denied.

The undersigned finds Judge Kimball's denial of summary judgment to MUI is the law of the case and may not be, in effect, reversed by the Court in ruling on MUI's instant motion.

The undersigned feels compelled to elaborate on MUI's motion as this is the eve of trial. As did Judge Kimball, MUI's motion for summary judgment is denied for the reasons set forth below in addition to Judge Kimball already denying MUI's previous motion for summary judgment. The status of Regent as a proper party is elsewhere discussed. For purposes of this Order, and this Order only, the Court treats Regent as amalgamated with MUI.

First, as observed, this is a complex case and a full record needs to be established.

Second, the undersigned finds the issue presented by MUI as to Plaintiffs' standing and their not being the real party in interest is a novel issue in South Carolina.

All parties rely on Concerned Dunes West Residents, Inc. v. Georgia Pacific Corporation, 349 S.C. 251, 562 S.E.2d 633 (Sup. Ct. 2002) to some extent. (Abbreviate CDWR herein). The

Jeffrey H. 3

undersigned finds CDWR is dichotomous on the instant issue. In CDWR the Plaintiff was not the Dunes West POA³, but rather an incorporated group of Dunes West owners. The owner's posture in CDWR is analogous to that here.

The dichotomy occurs because throughout the Opinion the Court discussed the rights of property owners associations and nowhere addresses the rights of an individual owner, a group of owners, or a legal entity comprised of owners to bring a suit such as that here. The Court simply accepted the parties' posture as plead. That is, the property owners brought suit in their own right. No challenge to the institution of the suit by the owners is mentioned in CDWR.

It should be noted that CDWR is a case in which the Supreme Court answered certified questions from the United States District Court. None of the certified questions raised the standing or real party in interest issue and, therefore, the Supreme Court could not, or at least would not, address questions outside those certified. The Court confined its Opinion to examining three of the five questions certified from the District Court.

The Opinion does not address the CDWR Plaintiffs standing in the body of the Opinion. The sole holding of CDWR is:

The developer of a PUD owes a duty to the POA to turn over common areas that are not substandard and that are in good repair. Failure to do so, subjects the developer to liability for bringing the common areas up to standard. (349 S.C. at 257).

CDWR does not address who may pursue the claim against the developer.⁴ In CDWR, it was not the POA, but rather a legal entity composed of individual owners that pursued the claim

³ Dunes West is a Planned Unit Development or PUD. Kensington Place is not a PUD, but the Court finds HPRs and PUDs are similar and the holding in CDWR applicable to a HPR.

⁴ There is no question, the POA could pursue the instant claim. See Queen's Grant Villas Horizontal Property Regimes I-V. vs. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365 (Sup. Ct. 1985).

against the developer. The Plaintiffs in CDWR do not differ significantly from Plaintiffs here other than CDWR's Plaintiffs' corporate formality.

Third, the By-Laws of KPOA (Exhibit "F" to the Master Deed of Kensington Place Horizontal Property Regime) have a section that establishes certain rights in individual members to sue the POA, its officers, or Board under certain circumstances (Article XV of By-Laws). This Article actually does not pertain to Plaintiffs' claims against the developer, MUI, but to claims against the KPOA, its officers or directors. Nothing has been cited to the Court that precludes any owner from seeking redress against the developer for a breach of its duties, as was done in CDWR. The By-Laws do not require owners to first request KPOA to act before proceeding on their own.

It seems fundamental that an individual may seek redress for any property rights they may have. That is not to say that these rights are exclusive to the individual owners. The duty owed by the developer is to the POA (*See CDWR*), and the POA could maintain the action. (*See Queen's Grand Villas Horizontal Property Regimes I-V. vs. Daniel International Corp.*, 286 S.C. 555, 335 S.E.2d 365 (Sup. Ct. 1985) and cases cited in CDWR from Florida and California).⁵

The Court should point out that the CDWR Court seems to confine the developer's liability to pay damages solely to the POA (349 S.C. at page 260). As observed by Judge Kimball, there may only be one recovery for damages pertaining to the common elements. CDWR, by implication, establishes the POA as the only entity entitled to recover damages, but the Court need not and indeed cannot make any findings or rulings as to the damages issue at this time. This will most probably require further development if Plaintiffs obtain a verdict. However, the Court would be derelict if it did not point out the CDWR language as to damages.

⁵ Counsel for MUI argues that the POA had the right, by statute and by-laws to represent all condominium owners. The Court cannot find this statutory authorize in Section 27-31-10, et seq., S.C. Code of Laws, 1976, as amended.

This is one of many points of contention. The Court observes that CDWR did not address who could pursue the claim against the developer as it did not have that issue before it. However, the Supreme Court seems to have established who is the beneficiary of any recovery. The Court uses the word "seems" advisedly. Here lies the catch 22. Plaintiffs can sue, but CDWR seems to vest the right of recovery in KPOA.

The issues here are not only complex, as observed by Judge Kimball, but novel. Novel issues should be decided with a full and complete record. Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). (See also KPOA's Memorandum of March 22, 2011).

KPOA argues Plaintiffs cannot sue it because the Plaintiffs are in effect suing themselves. MUI adopts this argument also. There is a paucity of cases dealing with the relationship and rights of property owners relative to POAs.

In Murphy v. Yacht Cove Homeowners Assoc., 289 S.C. 327, 345 S.E.2d 709 (Sup. Ct. 1986), members of an unincorporated condominium association (husband and wife) sued the POA in tort. The Supreme Court held in Murphy that members of a condominium association could, pursuant to The Horizontal Property Act, sue the Association in contract or tort.

The Murphy Court held that the below language from Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel International Corporation, 286 S.C. 555, 335 S.E.2d 365 (sup. Ct. 1986), "implies that an association can be sued by the unit owners for its failure to discharge its duties," 289 S.C. 368:

We have noted that [s]hould the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains it may be liable to the homeowners for its omissions.
286 S.C. at 556.

This is one of many points of contention. The Court observes that CDWR did not address who could pursue the claim against the developer as it did not have that issue before it. However, the Supreme Court seems to have established who is the beneficiary of any recovery. The Court uses the word "seems" advisedly. Here lies the catch 22. Plaintiffs can sue, but CDWR seems to vest the right of recovery in KPOA.

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We have noted that [s]hould the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains it may be liable to the homeowners for its omissions.
286 S.C. at 556.

The Supreme Court clairvoyantly foresaw the imbroglio extant here. The Murphy Court observed:

While the issues raised by appellant are a source of legitimate concern, it is the function of the Legislature and not this Court to anticipate problems such as the ones envisioned by appellant and enact legislation to deal with them. (289 S.C. at 369).

While the Horizontal Property Act has in part been amended since 1986, the Legislature has not addressed the problems foreseen by the Supreme Court in Murphy. (1999 Act. No. 25; 1999 Act No. 86; and 2006 Act No. 250).

MUI's Motion for Summary Judgment is DENIED.

Plaintiffs Motion for Partial Summary Judgment as to Liability Against POA

There exists genuine issues of material fact as to KPOA's liability, if any, and Plaintiffs are not entitled to judgment as a matter of law on this issue.

Plaintiffs have presented the affidavit of Michael R. Parades, PCAM, in support of their motion for partial summary judgment. This affidavit is insufficient to support Plaintiffs' motion. The affidavit relies on a survey of Gary Freeman, AIA, and Repair Estimates by Procon⁶. Such reliance is appropriate under SCREvid 703. However, a witness's reliance on the reports of others does not, per se, establish the correctness or general reliability of the reports. That is to say the expert, Mr. Parades, relies on the accuracy of third party reports. The reports are not presented as sworn affidavits nor have they been subject to scrutiny by cross-examination.

⁶ Plaintiffs' brief also references a Miller Dodson report which was not attached nor mentioned in Mr. Parades affidavit. Of course, a report is just that, nothing else.

Plaintiffs Motion to Substitute Real Party in Interest Defendants

MUI is, based on a corporate structure chart provided the Court⁷, a subsidiary of one or more other corporate entities. Plaintiffs have moved to add two legal entities they argue are so interrelated with MUI as to be necessary defendants. Plaintiffs argue these two entities are additional real parties in interest based on the theory of amalgamation pursuant to Kincaid v. The Landing Development, 289 SC 89, 344 S.E.2d 869 (Ct. App. 1986). Defendant Regent is one of many entities on the chart and, by earlier Order, has been added since Plaintiffs filed and served the original Complaint.

Plaintiffs' Motion is denied. Without giving the matter short shrift, the Court finds adding additional parties is not necessary for the resolution of Plaintiffs' claims, would delay trial scheduled within two months of this date, would prejudice the current parties as new claims or cross-claims may arise through the addition of parties, extensive and expensive discovery would have to be retreaded, and repairs would be pushed farther in the future, perhaps allowing more deterioration of the common elements and a greater cost to repair.

Plaintiffs' Motion to Dismiss Cross-Claim of KPOA

Plaintiffs argue that KPOA lacks standing to pursue the cross-claim. The basis for Plaintiffs' argument is that KPOA does not own the common elements or any part thereof, that KPOA has not obtained the necessary votes to pursue the cross-claim, and that Article XV, as noted above, gives the Plaintiffs the right to pursue this claim as do the laws of this State.

Donald Triplett, President of KPOA, has admitted, under oath, that KPOA has not been authorized to commence or prosecute any action against MUI. (Triplett's deposition, page 65,

⁷ Exhibit "C" to Plaintiffs' Memorandum in Support of their motion to add a statutory cause of action and to add a real party in interest.

line 12 through page 66, line 6).⁸ There is no evidence in any of the record before the Court that KPOA has properly voted to institute the cross-claim or ratified its institution. For this reason, KPOA may not maintain its cross-claim against MUI.

It might be argued that MUI would be the party to challenge the cross-claim⁹. However, Plaintiffs instituted this action and are entitled to have it litigated and resolved with only proper parties at the table. Also, as members of KPOA, Plaintiffs have a right to protect their interests as such and insist that KPOA function according to its by-laws.

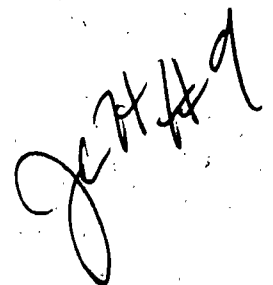
The complexity of this case is highlighted by this instant motion. As noted, Judge Kimball, without additional comment, denied MUI's Motion to Dismiss KPOA's cross-claim. This is the law of the case as to MUI and KPOA. In spite of this, Plaintiffs have an independent right to move to dismiss the cross-claim as members of the POA. The Plaintiffs have exercised their independent rights and are entitled to the relief they seek, i.e., dismissal of the cross-claim. This creates a conundrum. KPOA's By-Laws do not address cross-claims in Article XI of the by-laws but does allow counterclaims in proceedings instituted against it. (Article XI (d)). The reason and wisdom in such distinction is not for the Court.

This conundrum is resolved by the undersigned finding (without any real authority to so do) that a subsequent, successful motion by Plaintiffs trumps the denial of MUI's motion by Judge Kimball and KPOA's cross-claim against MUI is dismissed.

As noted, Plaintiffs have a separate and distinct interest in the actions of KPOA. I find Plaintiffs' rights are direct, not tangential as MUI's are.

⁸ The deposition was taken November 11, 2009.

⁹ Judge Kimball has denied MUI's Motion to Dismiss KPOA's cross-claim.



**Plaintiffs Motion to add a cause of action pursuant to
Section 27-31-430, S.C. Code of Laws, as amended**

Section 27-31-430, South Carolina Code of Laws, 1976, as amended, relates to the conversion of rental units to condominium ownership. This Section requires certain disclosures to be reported to a purchaser. Plaintiffs assert that some Kensington units were rental units prior to their sale as condominium units.

The Plaintiffs' motion to add this cause of action is denied. There is no evidence any of the Plaintiffs purchased any rental unit. The nature of the rental of any units is unclear. Any cause of action under The Unfair Trade Practices Act under Section 27-31-140 would inure only to the purchaser of a particular unit which was a "rental unit."

Also, for the reason set forth as to Plaintiffs' Motion to Substitute Real Party in Interest, addition of a new cause of action would work to the prejudice of Defendants. Specifically, the trial of this case would necessarily be pushed into the future.

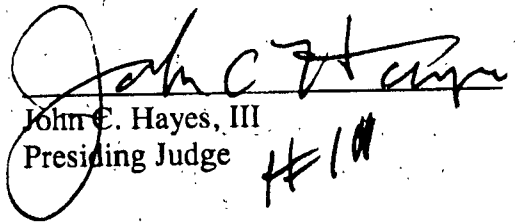
Plaintiffs' motion to add a cause of action pursuant to Section 27-31-430, S.C. Code of Laws, 1976, as amended is denied.

Wherefore:

1. MUI's Motion for Summary Judgment is DENIED, and
2. Plaintiffs Motion for Partial Summary Judgment as to Liability Against KPOA is DENIED, and
3. Plaintiffs' Motion to Substitute Real Party Interest is DENIED, and
4. Plaintiffs' Motion to Dismiss Cross-Claim of KPOA is GRANTED, and
5. Plaintiffs' Motion to Add a Cause of Action (§ 27-31-430) is DENIED.

JEH #10

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #10

April 1, 2011
York, South Carolina

ADDENDUM ATTACHED

ADDENDUM

The court has gone through the morass of paperwork in this file in order to determine which pleadings are the operative pleadings and what issues are for trial. The Court begs correction, promptly, if the Court's grasp of the posture of this case as set forth below, is incorrect in any manner.

Fifth Amended Complaint

1. Defendants:

- A. MUI
- B. KPOA
- C. Regent

2. Causes of Action

- A. First; Breach of Fiduciary Duty as to all Defendants.
- B. Second; Breach of Implied Warranty of Habitability as to MUI and Regent.
- C. Third; Negligence as to all Defendants

Answers

1. Regent and MUI

- A. Qualified General Denial
- B. 12(b)(6) (handled through summary judgment motions)
- C. Statute of Limitations
- D. Statute of Repose
- E. Laches
- F. Waiver
- G. Accord and Satisfaction
- H. Settlement and Release
- I. Lack of Standing (ruled on)
- J. Set Off
- K. Conditions Precedent
- L. Joinder (out?)
- M. Real party in Interest (ruled on)
- N. Implied Warranties Disclaimed
- O. Failure to Mitigate
- P. Intervening and Superseding Negligence
- Q. Comparative Negligence

R. Negligence of Third Party
(unnecessary as raised by qualified General Denial);
See Funderburke v. Johnson
253 S.C. 430, 171 S.E.2d 597 (1969)

- S. Acceptance
- T. Economic Loss Rule
- U. Open and Obvious
- V. Counterclaim (MUI Only)

2. Plaintiffs' Reply to MUI's Counterclaim

3. KPOA

- A. Qualified General Denial
- B. Standing (ruled on)
- C. Failure to comply with Rule 23 SCRPC (out)
- D. Counterclaim
 - 1. Breach of Contract by Plaintiffs
- E. Cross-claim against MUI and Regent (ruled on)

4. Plaintiffs Reply To KOPA's Counterclaim

5. Pending Motions

- 1. To exclude Evidence
- 2. To Quash Subpoena

Jc 74 #13

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326**

Juontonio Pinckney Addie Smith	Jospephine Sciacca James Barone	Brock L Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore	Ismael Gonzales Joe Moore		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: J. Cameron Halford	Attorney for: ☒ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
----------------------------------	--

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow)

☐ Statement of Judgment by the Court:

ORDER

**(DENIAL OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT AGAINST STONECREST VILLAS OF
TEGA CAY HOMEOWNERS ASSOCIATION INC)**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ John C Hayes III

Circuit Court Judge
CPFORM4M
SCCA SCRPC Form 4C (Revised 10/2011)

2049
Judge Code
S.ROA Vol.2 p. 0361

10/15/2012
Date

For Clerk of Court Office Use Only

This judgment was entered on **October 15, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **October 15, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

See Attached List

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ATTORNEY(S) FOR THE DEFENDANT(S)

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David Hamilton - Clerk of Court

Court Reporter

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Greenville, SC 29602

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

C.A. No.: 2010-CP-46-2326

Juontonio Pinckney, *et al.*,

Plaintiffs,

vs.

Epcon Communities, Inc.,

Epcon Communities Franchising, Inc.,

Brock L. Fankhauser, Fankhauser Property

Group, Inc. and Stonecrest Villas of Tega

Cay Home Owners Association, Inc.,

Defendants.

ORDER

Re: Denial of Plaintiff's Motion for Summary
Judgment Against Stonecrest Villas of Tega Cay
Home Owners Association, Inc.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

vs.

Architectural Alliance, Ltd., Exterior

Expressions of North Carolina, Inc.,

Al-Mega Construction, Inc., Procar, Inc.,

The Southeastern Group, Inc., Lucas Lawn

and Landscape, Inc., and Jose Simenez,

Individually and d/b/a M&L Roofing Co.,

LLC and/or MB Roofing Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay

Condominium Owners Association, Inc.,

Third-Party Plaintiff,

vs.

Stonecrest Villas of Tega Cay, LLC and

Epcon Communities Franchising, Inc.

Third-Party Defendants.

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CLERK OF COURT
C.C.C.P. & G.S.
YORK COUNTY, SC

207144

Exterior Expressions of North Carolina,
Inc.

Fourth-Party Plaintiff,

vs.

Marcos Gonzalez,

Fourth-Party Defendant.

Procar, Inc. and Procar II, Inc.,

Fourth-Party Plaintiffs,

vs.

Marcos Zertuche, David Carbajal,
Victorina Cortez, Balancos Construction
Co., Balanos Framing, Inc., Ricardo
Hernandez, and Silverio Cortez,

Fourth-Party Defendants.

Al-Mega Construction, Inc.,

Fourth-Party Plaintiff,

vs.

Noe Perez, Juan Abundez Saucedo, and
Moisese Chavarra Hernandez,

Fourth-Party Defendants.

This matter came before the Court on the Motion of Plaintiffs for Summary Judgment against the Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc., which was filed on or about September 11, 2012. This Court conducted a hearing on Plaintiff's Motion on September 27, 2012. In addition to the oral arguments presented at the hearing, the Court has

considered documents the parties submitted in connection with the Motion, including memoranda of law. Plaintiff's Motion for Summary Judgment is DENIED.

STANDARD OF REVIEW

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Because this is a Motion for Summary Judgment, the facts are viewed in the light most favorable to the Association, the non-moving party. See Rule 56, SCRCP; see also *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (noting standard for summary judgment).

PROCEDURAL HISTORY

Plaintiffs filed this action on or about June 2, 2010. The Stonecrest Villas of Tega Cay Home Owners Association, Inc., ("Association") filed an "Answer, Cross-Claim and Third-Party Complaint of Defendant Stonecrest Villas of Tega Cay Homeowner's Association, Inc." on August 6, 2010. In that pleading, the Association brought a cross-claim against Brock Fankhauser, Fankhauser Property Group, Inc., and then brought third-party claims against Stonecrest Villas of Tega Cay, LLC, Exterior Expressions Of North Carolina, Inc., Al-Mega Construction, Inc., Procar, Inc., The Southeastern Group, Inc., Lucas Lawn And Landscape, Inc., Jose Jimenez, Individually and/or d/b/a M&L Roofing Co., LLC and/or MB Roofing Company and Marcos Gonzalez. The basis for the cross-claims arise out of the same transactions and/or occurrences that are the subject matter of this litigation, i.e., that there exist alleged construction defects and alleged defective workmanship in the common areas of the Condominium. The Association has not brought any claims against the Plaintiffs.

CONCLUSIONS OF LAW

The Court addresses each of the Plaintiffs' grounds for summary judgment against the Association as follows:

1. The Court holds that the doctrine of laches is an affirmative defense under Rule 8 of the South Carolina Rules of Civil Procedure and that the defense is not applicable in this instance as the Association has not made any claims or filed suit against the Plaintiffs.
2. The Court holds that the "first in time" argument advanced by the Plaintiff does not apply because there is no other action pending between the Association and the Plaintiffs, or the Association and any of the other Defendants.
3. The Court holds that in the context of pleadings and claims in this litigation, there is no issue regarding permissive claims.
4. The Court holds that the Association's claims are not derivative of the claims asserted by Plaintiffs, nor are they, to the extent such concepts exist under the law, junior or inferior.
5. The Court notes that the Plaintiffs, in their oral presentation to the Court, argued that the Association has failed to comply with S.C. Code Section 40-59-840 in exhausting its administrative remedies. The Court has construed Plaintiffs' argument to mean the Association lacks standing because it purportedly failed to comply with Section 40-59-840, even though the Court observes that Section 40-59-840 does not provide any administrative remedy. The Court notes that Section 40-59-840 must be read in conjunction with Section 40-39-830, which provides for a stay where there is a failure

to comply with Section 40-59-840. See Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197 (S.C. 2010).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment Against The Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc.'s Claim for Damages is DENIED.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

October 11th, 2012
York, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juontonio Pinckney Addie Smith	Jospephine Sciacca James Barone	Brock L Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore	Ismael Gonzales Joe Moore		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow)☐ Statement of Judgment by the Court:

ORDER GRANTING STONECREST VILLAS OF TEGA CAY OWNERS' ASSOCIATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND APPROVAL FOR SETTLEMENT AS TO EXTERIOR DAMAGES OR IN THE ALTERNATIVE MOTION FOR DISMISSAL PURSUANT TO RULE 41(a)(2) SOUTH CAROLINA RULES OF CIVIL PROCEDURE (Motion signed October 12, 2012)

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ JOHN C. HAYES, III.

Circuit Court Judge

2049

Judge Code

1/23/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 23, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **January 23, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

ORDER GRANTING STONECREST
VILLAS OF TEGA CAY OWNERS'
ASSOCIATION, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND
APPROVAL FOR SETTLEMENT AS TO
EXTERIOR DAMAGES OR IN THE
ALTERNATIVE MOTION FOR
DISMISSAL PURSUANT TO RULE 41(a)(2)
SOUTH CAROLINA RULES OF CIVIL
PROCEDURE (Motion signed October 12,
2012)

FILED-RECEIVED
2013 JAN 23 PM 3:56
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The Stoncrest Villas of Tega Cay Condominium Owners' (The COA) filed a motion for summary judgment or in the alternative an Order of Dismissal pursuant to Rule 41(a)(2) South Carolina Rules of Civil Procedure (SCRCP)¹ asking the Court to dismiss all parties' claims for damages to common-elements as a result of the COA having settled those claims with various defendants.² The Court issues this Order not in

¹ Plaintiffs argue this motion is solely one under Rule 41(a)(2) SCRCP. This argument overlooks the substance of said motion.

² The settlement did not include a release of claims for damages associated with certain subsurface soil conditions. Specifically, the COA requested a ruling that the settlement extinguishes all claims related to the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay except for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

Je H

reliance on either rule but on the inherent power of the Court to manage litigation and approve settlements when court approval is sought. In reality, the parties hereto do not need court approval as they are all entities capable of contracting in their own right. The Court is issuing this Order and approving same as the parties have requested the Court to review the proposed settlement and, if approval is deemed appropriate, approve same. Due to the intricacies of this litigation, the Court finds the seeking of court approval for the settlement warranted and a proper matter for the Court's consideration and, as set forth herein below, its approval. The Court heard oral argument on this matter on December 19, 2012. Brett Dressler was present for the COA. Cameron Halford was present for the Plaintiffs. The Court finds that all parties were properly noticed and the matter was properly before the Court for resolution.

The COA filed an affidavit of Paulette Iadanza and a copy of the parties' settlement agreement in support of its motion. In response, the plaintiffs filed a deposition excerpt of Marshall Clarke, and relied upon the affidavits of Ms. Iadanza and a previously filed affidavit of Louis Moscovitz.

After considering the pleadings, the evidence and the arguments of counsel, the Court GRANTS the COA's motion for summary judgment and hereby dismisses all claims for damages to the common-elements, as defined in paragraph 3.1 of the Master Declaration of Covenants, Conditions and Restrictions for Stonecrest dated March 23, 2006. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development

caused by any geotechnical, fill compaction or subsurface deficiencies or defects. References to the mediating argument, hereto attached is craved for specificity of the claims included and not included in this settlement.

As has been noted by the Plaintiffs' Memorandum and oral arguments, the standing issue continues to vex the Court and the parties to this litigation. The Court has earlier ruled that Plaintiffs and Stonecrest Villas of Tega Cay Owners' Association, Inc. (COA) have standing to pursue claims regarding the alleged deficiencies in the common elements of Stonecrest Villas of Tega Cay.

The right (standing) to sue for a claim logically leads to the conclusion that the claimant can settle their claim. Admittedly, this may, and here does, create a tug of war between claimants who both have a legitimate interest in the proper resolution of the jointly held³ claim or claims. At this stage of the proceedings, Plaintiffs appear to want to use this standing imbroglio as a shield claiming since they have standing to pursue these mutual claims the COA cannot settle any part of the claim with the alleged liable parties.

Were this the reverse, Plaintiffs seeking approval of a settlement, the Court would be surprised if Plaintiffs did not wield their standing as a sword. Plaintiffs would most probably assert, just as observed above, standing to sue begets standing to settle. If this latter were not true then the instant case would not be subject to settlement unless both Plaintiffs and the COA agreed to a settlement. If both could not

³ The Court is not sure this is a legally technical phrase to use to describe the instant situation, but it is the best it could do.

agree to a settlement, this would place the parties at loggerhead and the case could only be concluded a trial.

In their brief, Plaintiffs note that the Court's Catch 22 analogy, in effect, gives neither the Plaintiffs nor the COA superior rights. This is true. The corollary to this position is that neither Plaintiffs nor the COA stand in an inferior position as to their asserted rights. This, as noted above, includes the right to sue and the corollary right to settle such claims as are within their province.

Plaintiffs raise several grounds they claim preclude approval of the proposed settlement. Plaintiffs claim the COA has "failed to do equity." The undersigned has been unable to understand Plaintiffs' position as to the equity argument. This is sort of an Iran and North Korea, cannot settle disputes among themselves as they are both evil.⁴

Plaintiffs claim the COA is "not first in order of time." This argument is basically "we got to the courthouse first." This argument presupposes that one must litigate to settle a claim. This is of course not a supportable argument. A party with a claim may settle any claim they may have against another party without bringing suit, during the pendency of a suit, and while not a regular occurrence, post suit.

Plaintiffs' third argument is that the COA cannot settle their claims as the COA owns no legal title in the Stonecrest Villas of Tega Cay's common areas. While this is true, Plaintiffs clearly recognize the COA has an obligation to maintain the common areas and, in fact, Plaintiffs have sued the COA for alleged failure to maintain the

⁴ President George W. Bush, State of the Union address, January 29, 2002.

common areas. Implicit in Plaintiffs' position is that while the COA owns none of the common areas, it is legally obligated to and the only entity that can, maintain said common areas.

That the COA has standing to sue and, of course as earlier stated, the right to settle has been visited by the Court ad nauseam. Once again the Court cites as support for this proposition Queen's Grant Villas Horizontal Property Regimes I-V vs. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365, (S.Ct. 1985). Queen's Grant goes farther than establishing the property regime's right to pursue claims related to the common elements but also holds the regime itself may be liable to the homeowners for its failure to seek recovery in instances involving allegations of alleged construction defects in the common areas. Failure of the COA to accept a viable and well thought out settlement would subject the COA to a suit by the non-plaintiff homeowners for such failure.

Finally, to not allow the body charged with remediating problems in the common elements based on the objection of well less than half of the condominium owners' results in the few holding the remaining homeowners hostage to the few's decision. The few who cannot affect any repair to the common elements the maintenance of which is charged to the COA.

Finally, the Court has looked at the relief Plaintiffs seek in their Amended Complaint. They seek a "judgment" (paragraph 2, prayer for relief); actual and punitive damages (paragraph 3, prayer for relief); incidental and special damages (paragraph 4, prayer for relief; treble damages, attorney fees and costs (paragraph 5 and

6, prayer for relief); and general "legal or equitable" relief and a permanent injunction (paragraph 7, prayer for relief).⁵

Recovery under their First Cause of Action would be personal to Plaintiffs; recovery under their Second Cause of Action would be personal to Plaintiffs; as plead recovery under the Third Cause of Action would be personal to Plaintiffs; recovery under their Fourth Cause of Action would be personal to Plaintiffs; recovery under their Fifth Cause of Action would be personal to Plaintiffs; recovery under their Sixth Cause of Action would be personal to Plaintiffs; recovery under their Eighth Cause of Action would be personal to Plaintiffs; recovery under their Ninth Cause of Action would be personal to Plaintiffs; recovery under their Tenth Cause of Action would be personal to Plaintiffs; recovery under their Eleventh Cause of Action would be personal to Plaintiffs; recovery under their Twelfth Cause of Action would be personal to Plaintiffs; recovery under their Thirteenth Cause of Action would be personal to Plaintiffs; recovery under their Fourteenth Cause of Action would be personal to Plaintiffs; and recovery under their Fifteenth Cause of Action would be personal to Plaintiffs.⁶

Plaintiffs Seventh Cause of Action seeks an accounting. If Plaintiffs prevail on this cause of action, it could inure to the benefit of all SCVTC property owners.

A fair reading of Plaintiffs' Complaint establishes that in no instance, other than in the cause of action for accounting, do Plaintiffs seek any general relief which would

⁵ Plaintiffs do not set forth a cause of action which specifies why they are entitled to injunctive relief and exactly what injunctive relief they seek. (See South Carolina Public Service Authority v. Carolina Power and Light, 244 SC 466, 137 S.E.2d 507 (S.Ct. 1964))

⁶ Paragraph 10 of the Fifteenth Cause of Action does reference "others" but in paragraph 11 Plaintiffs allege that they alone are entitled to an award of damages.

inure to the benefit of SCVTC generally or be available to the COA or other individual homeowners to remediate the alleged defects to the common areas.

The Court finds the following support of this order:

1. The Court takes judicial notice that the "Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime," was recorded on February 12, 2007 in Book 08852 at Page 149 of the York County Registry (hereinafter "Master Deed").
2. Article I, Section 1.6 of the Master Deed defines "Common Elements" to mean and refer to "all portions of the Condominium other than the Units, as depicted on the Plans and as more particularly described in Section 5.1 of the Master Deed." Section 5.1 of the Master Deed states:

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All Improvements located on the Land outside of the Buildings, including without limitation, landscaped areas, surfaced parking areas, paved roads, sidewalks curbs and gutters.
- (c) All portions of the Buildings located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units and all other structural elements of the Building.
- (e) Any public connections and meters, vaults and manholes for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

(g) The yards, shrubs, exterior lights, signs, mailboxes and storm drainage systems.

3. The primary construction defects contributing to water penetration of the condominium buildings at issue in this lawsuit include the stone façade, flashing, water run-off from the roofs, and poor surface water management. The hardiplank siding has also been implicated as a source of water penetration.
4. The stone façade, flashing, roofs, hardiplank, and ground outside of the buildings all constitute common elements under the Master Deed.
5. The Board of Directors for the COA consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same.
6. The Board, either directly or through its counsel, consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors.
7. Based upon the information received from these sources, the Board is reasonably confident that all reasonable and necessary repairs to prevent water intrusion can be made for \$2.6 million.
8. The bids the Board received from the contractors ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates.
9. The Board of Directors believes that a budget of \$2.6 million would include replacement of all stone, replacement of some or all of the hardiplank, reflashing, sealing the windows in-place, gutter modifications, surface water management

improvements, and a contingency for the replacement of any damaged sheathing or studs.

10. The Board also considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts.
11. The Board of Directors considered this estimate to be too high for the reasons detailed in Iadanza's affidavit.
12. The Board is also concerned about the likelihood of actually recovering money from the various defendants (third and fourth party included) given its ability to capture insurance coverage and the difficulty/expense of capturing such coverage.
13. The Board of Directors also considered the cost of proceeding with the litigation as opposed to settling the claims now.
14. The Court finds the Board's reasoning and its conclusion to settle this matter for \$2.6 million as opposed to pursuing further litigation to be an exercise of sound business judgment under the circumstances.
15. Having previously determined the plaintiffs and the COA have standing to pursue a claim for the cost to repair damages to the common-elements as a result of construction defects, the Court further holds that the COA also has the power to settle the claims.⁷

⁷ As observed herein above, Plaintiffs seek personal relief and not relief calculating to remediate problems with the common elements. This Order cannot and does not affect Plaintiffs' rights to continue to pursue the personal claims they assert in their Amended Complaint.

16. The COA has, in fact, settled the claims for damages to the common-elements with the exception noted previously and subject to this Court's approval.

17. The Court hereby approves the settlement agreement tendered to and filed with the Court on December 19, 2012.

18. The Court notes that Plaintiffs have objected to the settlement but holds that they are not in a position to challenge the settlement. As noted herein above, the Plaintiffs, in their Amended Complaint, seek damages for themselves for damage to their units, based on a variety of legal theories.

Accordingly, the Court GRANTS the COA's motion for summary judgment as there are no genuine issues of material fact regarding the COA's right to settle the COA's desire to settle and the Defendants' commitment to settle. The Court hereby dismisses all claims raised by all parties in this lawsuit for damages to the common-elements, including the cost to repair the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue or defend against any asserted damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

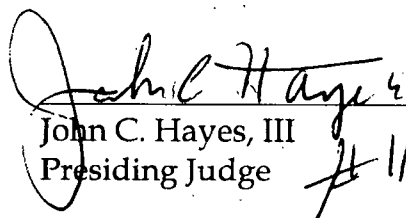
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The Court approves the proposed settlement set forth in the Mediation Agreement entered into by the settling parties attached hereto and incorporated herein by reference filed December 19, 2012.

This Order does not affect the individual claims Plaintiffs have set forth in their Complaint for direct damage to themselves or their individual units.

IT IS SO ORDERED.

January 23rd 2013
York, South Carolina


John C. Hayes, III
Presiding Judge #11

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

vs.

Brock L. Fankhauser, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-46-2326

ORDER

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C.C.P. & GS
YORK COUNTY, SC

The Court entered an Order on January 23, 2013, approving the Stonecrest Villas of Tega Cay Home Owners, Inc. (COA's) settlement of common-element exterior damage claims and dismissing all related claims for those elements of damages. On February 4, 2012, Plaintiffs filed a Motion for Relief from Judgment under Rule 60 and 59(e). The COA filed a response thereto.

Relief under Rule 60 is not appropriate. Rule 60 allows for relief from a final judgment when the moving party can show 1) mistake, inadvertence, excusable neglect, 2) newly discovered evidence, 3) fraud, 4) the judgment is void or 5) the judgment has been satisfied. Plaintiffs have not articulated any basis under Rule 60 to demonstrate they are entitled to relief. Plaintiffs do not argue for relief under any of the Rule 60 subsections nor have they even attempted to demonstrate how their arguments qualify for relief under Rule 60. Accordingly, Plaintiffs Rule 60 motion should be denied.

As to relief under Rule 59, a party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. Poch

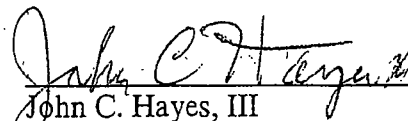
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v. Bayshore Concrete Products/South Carolina, Inc., 386 S.C. 13, 686 S.E.2d 689 (S.C. App. 2009).

Plaintiffs primarily question whether the Court's Order eliminates their claims as it relates to "common-elements pertinent to Plaintiffs' homes." The answer is the Court's Order does eliminate the Plaintiffs' ability to claim damages for the repair of the common-elements, regardless of whether the common-elements are "pertinent" to their respective units. The whole point of the settlement is to eliminate the possibility that Plaintiffs, or any other Association members for that matter, could seek to hold the Defendants responsible for the cost to repair the common-elements. The Plaintiffs are still free to pursue whatever damages they believe they have sustained to their unit or to themselves personally, but the Order precludes them from recovering the costs to repair any common-elements. Plaintiffs seem to present to the Court a hybrid consisting of what they seem to deem common elements exclusive to them. That is, Plaintiffs' position seems to be that there are common elements, limited common elements and personal common elements. The Court finds no support for this position.

Finally, as to the equity arguments Plaintiffs assert, the Court's Order addresses and disposes of those arguments. The Plaintiffs raise nothing new in their motion to amend the judgment. For these reasons, the Court denies Plaintiffs' Motion for Relief under Rule 60 SCRPC and Plaintiffs Motion to Alter or Amend. Order of January 23, 2013.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

February 22nd, 2013
York, South Carolina

#2

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juononio Pinckney, *et al.*,

Plaintiffs,

v.

Epeon Communities, Inc.,
Epeon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property
Group, Inc. and Stonecrest Villas of Tega
Cay Home Owners Association, Inc.,

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

Architectural Alliance, Ltd., Exterior
Expressions of North Carolina, Inc.,
Al-Mega Construction, Inc., Procar, Inc.,
The Southeastern Group, Inc., Lucas Lawn
and Landscape, Inc., and Jose Simenez,
Individually and d/b/a M&L Roofing Co.,
I.I.C. and/or MB Roofing Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.,

Third-Party Plaintiff.

v.

Stonecrest Villas of Tega Cay, I.I.C.,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C. A. No. 2010-CP-46-2326

ORDER

Re: Defendants Brock L. Fankhauser,
Fankhauser Property Group, Inc., and
Stonecrest Villas of Tega Cay, I.I.C.'s
Motion for Summary Judgment

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CLERK OF COURT
YORK COUNTY, SC

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described as vicarious liability. These arguments are based on the subject Franchising Agreement, Piercing of corporate veils and the theory of amalgamation. The Court has earlier ruled on the Franchise Agreement issue. Plaintiffs have not alleged elements which would support a theory of piercing of any corporate veil.

The theory of amalgamation is recognized by the courts of this state. Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725 S.C.2d 112 (S. Ct. 2012). The undersigned has found no case which requires the theory (not a cause of action) to be plead. Magnolia and the cases cited therein seem to establish the theory of amalgamation is a theory underpinned by facts supporting the theory. The cases do not indicate the theory must be pled. Here, Plaintiffs have alleged sufficient facts regarding their theory of amalgamation to support the Court's reliance on the theory in addressing the motions herein.

The moving Defendants are entitled to summary judgment as to the Plaintiffs' Second Cause of Action for (Slander of Title) because the Plaintiffs cannot show the publication with malice of a false statement that was derogatory to the Plaintiffs' title causing special damages to the Plaintiffs as a result of diminished value of the property in the eyes of third parties. "The term 'slander of title' is defined as a false and malicious statement, oral or written, made in disparagement of a person's title to real or personal property, causing him injury." Pond Place Partners, Inc. v. Poole, 567 S.E.2d 881, 890 (S.C. Ct. App. 2002) (citing 50 Am.Jur.2d *Libel & Slander* §-548 (1995)). "Generally, an action under slander of title may only be maintained by one who possesses an estate or interest in the affected property." *Id.* "[T]o maintain an action for slander of title in South Carolina, the plaintiff must establish: (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." *Id.*

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(citing Huff v. Jennings, 459 S.E.2d 886 (S.C. Ct. App. 1995)).

In this case, the Plaintiffs allege slander of title by virtue of a mortgage dated February 15, 2010, recorded in book 11272, pages 129-139 with the York County Clerk of Court. The Court has been made aware that the York County Assessor's office has placed a tax assessment value on these properties at a value less than the amounts that these Plaintiffs paid for the purchase of the property. However, this valuation for tax purposes is unrelated to the mortgage at issue. There is no evidence that the referenced mortgage encumbered the Plaintiffs' property. The mortgaged property consisted of Building 8 only. Stonecrest owned the mortgaged property at the time it was mortgaged, which was prior to submission of the property to the Horizontal Property Regime by virtue of amendment to the master deed (i.e. the master deed did not restrict the ability of the owner to mortgage), and the mortgage predated the certificates of occupancy and sale of any units in Building 8. None of these Plaintiffs purchased property or reside in Building 8. Additionally, the Plaintiffs have not shown how the mortgage, even if it encumbered their property, was filed with malice or was false. Further, the Plaintiffs have put forth no evidence that the filing of the mortgage at issue caused them any special damages or resulted in any diminished value of the property in the eyes of any third party. Finally, the mortgage has been satisfied as evidenced by the lost mortgage satisfaction filed with the Clerk of Court on January 26, 2011 in book 11827, pages 211-212. Therefore, Defendants are entitled to summary judgment.

The Defendants are entitled to summary judgment as to Plaintiffs' Fifth Cause of Action for (breach of contract accompanied by a fraudulent act). "Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act." Armstrong v. Collins, 621 S.E.2d 368, 377 (S.C. Ct. App. 2005). "To prove this cause of action, a plaintiff must show: (1) a

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breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Id.*

In this case, the Plaintiffs' allegations repeatedly allege acts that arose prior to the Plaintiffs' respective purchases of their units and do not allege fraudulent acts accompanying any breach of contract. Prior to purchase, there existed no contract to breach. While assumingly inconsistent with the denial of the motion for summary judgment on the breach of contract cause of action herein, the breach of contract cause of action contains some allegations of breach that occurred after the Plaintiffs purchased their units, i.e., Paragraphs 4 (c), (g), (h), (i), (j), (k), (l), and (m).

The Defendants are entitled to summary judgment as to Plaintiffs' Twelfth Cause of Action (breach of warranty of fitness for a particular purpose). The implied warranty of fitness for a particular purpose arises under the Uniform Commercial Code and applies to contracts for the sale of goods, S.C. Code § 36-2-315 (1976): Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose. Soaper v. Hope Indus., Inc., 424 S.E.2d 493, 494 (S.C. 1992). Article II of the Uniform Commercial Code only applies to transactions involving the sale of "goods." In re Breast Plant Prod. Liability, 503 S.E.2d 445, 452 (S.C. 1998). The implied warranty of fitness for a particular purpose does not apply to the Plaintiffs' purchase of their condominium units and, therefore, Defendants are entitled to summary judgment.

Defendants' motions for summary judgment as to the Plaintiffs' First (Rescission), Third (Breach of Fiduciary Duty), Fourth (Breach of Contract), Sixth (Fraud and Misrepresentation),

Eighth (Conversion), Ninth (Civil Conspiracy), Tenth (Breach of Express Warranty), Eleventh (Breach of Implied Warranty of Merchantability), Thirteenth (Construction Defect), Fourteenth (Breach of Express Warranty) and Fifteenth (SCUTPA) causes of action are denied, as the Court finds genuine issues of material fact exists.

As to the Rescission cause of action, Defendants argue the LLC financial status and assets of the LLC make Rescission impracticable. *"The general rule is that for a breach of contract to warrant rescission, the breach must be so fundamental and substantial as to defeat the purpose of the contract."* Ellie, Inc. v. Miccichi, 594 S.E.2d 485, 494 (S.C. Ct. App. 2004) (citing Gibbs v. G.K.H., Inc., 427 S.E.2d 701, 702, (S.C. Ct. App. 1993)). The Court finds that the LLC's financial status is not relevant to the issue of Rescission, although should Plaintiffs prevail on this cause of action it may be a practicable problem and, at some point, Plaintiffs have to elect remedies.

As to the Plaintiffs' Third Cause of Action entitled Breach of Fiduciary Duty, the Court has addressed the issue (albeit not addressed specifically to the moving Defendants under this motion) by reference to the "Catch 22" Order in case number 2008-CP-46-2158- (Pulliam v. MUI), which reflects that this is a novel issue not yet ripe for adjudication. Defendants' motion is therefore denied.

Plaintiffs' Fourth Cause of Action is for Breach of Contract. The Court notes that it has previously ruled that Plaintiffs are not intended third party beneficiaries of the franchise agreement between the Epeon Defendants and FPG. However, paragraph four (4) alleges contractual duties that raise genuine issues of material fact sufficient for this cause of action to survive Defendants' motion for summary judgment viewing the entire cause of action in a light most favorable to Plaintiffs.

The Court finds genuine issues of material fact as to the Plaintiffs' Sixth Cause of Action for Fraud and Misrepresentation, and Defendants motion is denied as to this cause of action.

Counsel for Plaintiffs and Defendants have stipulated as to the withdrawal of the Plaintiffs' Seventh Cause of Action for Equitable Accounting subsequent to the association's board producing financial records and affidavits regarding financial transfers to a "master" association. The cause of action was verified as withdrawn by email with counsel after the December 19, 2012 hearing.

The Court finds genuine issues of material fact as to the Ninth (Conversion) and Tenth (Civil Conspiracy) causes viewing the entire causes in a light most favorable to Plaintiffs. *"Conspiracy is the conspiring or combining together to do an unlawful act to the detriment of another or doing of a lawful act in an unlawful way to the detriment of another"*. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 292 (1981) Other South Carolina courts have defined conspiracy as follows: *"A civil conspiracy ...consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the Plaintiff, (3) which causes him special damage"*. Lee v. Chesterfield Gen. Hospital, Inc., 289 S.C. 6, 10 (Cl. App. 1986).

Were the Plaintiffs to prevail on Conversion, the Court has noted that any recovery of monies transferred to a master association would nonetheless inure to the benefit of the COA party. *"[B]ut in civil actions the conspiracy is not the gravamen of the charge, but may be both pleaded and proved as aggravating the wrong of which Plaintiff complains, the gravamen of the tort being the damage resulting to Plaintiff from an overt act done pursuant to the common design"*. Todd, supra at 284. Plaintiffs have pleaded sufficient special damages to survive Defendants' motion and the Court finds genuine issues of fact here exist.

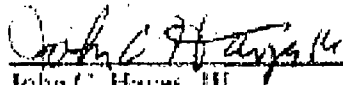
Defendant's motions as to the Plaintiffs' Eleventh Cause of Action is denied. The

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Plaintiffs' Eleventh cause is captioned as "Breach of Implied Warranty of Merchantability" and jumbles the named cause of action with allegations that construction of a home is to be performed in a "workmanlike" manner per paragraph four (4) of the allegations. The Court finds genuine issues of material fact here exists viewing the Plaintiffs' Eleventh, Thirteenth, Fourteenth and Fifteenth Causes of action in a light most favorable to the Plaintiffs.

Wherefore, Defendants are entitled to Summary Judgment as to Plaintiffs Juan Antonio Pinckney and David Musgrave, and Plaintiffs' Second, Fifth and Twelfth Causes of Action. Defendants' Motion for Summary Judgment as to Plaintiffs' First, Third, Fourth, Sixth, Eighth, Ninth, Tenth, Eleventh, Thirteenth, Fourteenth, and Fifteenth Causes of Action is denied.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #8

March 6th, 2013
York, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juanantonio Plackney Addie Smith	Josephine Scurra James Barone	Brook L. Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc M Mega Construction Inc Southwestern Group Inc Just Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Troy Lawn And Landscape Inc
Deborah Karen Valerie Gonzales Sandra Moore	Immel Gonzales Jor Monroe		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT:** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT:** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b) SCRPC ☐ Rule 41(a) SCRPC (Vol. Nonsuit)
- ☐ ☐ Rule 12(b) SCRPC (Settlement) ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(f) SCRPC ☐ Bankruptcy
- ☐ ☐ Pending arbitration, subject to right to restore to confirm, vacate or modify arbitration award. ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order (forward order to follow)

☐ Statement of Judgment by the Court

ORDER

(Re: Defendants Brook L. Frankhauser, Frankhauser Property Group, Inc. And Stonecrest Villas of Tega Cay, LLC's Motion for Summary Judgment)

ORDER INFORMATION

Additional Information for Use Clerk

This order ☐ ends ☐ does not end the case

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (Last name(s) below)	Judgment Against (Last name(s) below)	Judgment Amount to be Enrolled (Last amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be compound with as interest or additional taxable costs not available at the time the form and this order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

/s/ John C. Hayes, III

2049

5/9/2013

CPFDK34M
SCCA SCRPC Series 4C (Revised 1/2011)

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on March 8, 2013, and a copy mailed or placed in the appropriate attorney's box on March 8, 2013, to magister of record or to parties (when appearing pro se) as follows:

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Stephanie Holmes Burton
Beeti Drexler
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juonionio Pinckney Addie Smith	Joséphine Sciacca James Barone	Brock L Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore	Ismael Gonzales Joe Moore		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow)☐ Statement of Judgment by the Court:

ORDER GRANTING STONECREST VILLAS OF TEGA CAY OWNERS' ASSOCIATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND APPROVAL FOR SETTLEMENT AS TO EXTERIOR DAMAGES OR IN THE ALTERNATIVE MOTION FOR DISMISSAL PURSUANT TO RULE 41(a)(2) SOUTH CAROLINA RULES OF CIVIL PROCEDURE (Motion signed October 12, 2012)

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ JOHN C. HAYES, III.

Circuit Court Judge

2049

Judge Code

1/23/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 23, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **January 23, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

ORDER GRANTING STONECREST
VILLAS OF TEGA CAY OWNERS'
ASSOCIATION, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND
APPROVAL FOR SETTLEMENT AS TO
EXTERIOR DAMAGES OR IN THE
ALTERNATIVE MOTION FOR
DISMISSAL PURSUANT TO RULE 41(a)(2)
SOUTH CAROLINA RULES OF CIVIL
PROCEDURE (Motion signed October 12,
2012)

FILED-RECEIVED
2013 JAN 23 PM 3:56
DAVID HAMILTON
S.C.C.P. & GS
YORK COUNTY, SC

The Stoncrest Villas of Tega Cay Condominium Owners' (The COA) filed a motion for summary judgment or in the alternative an Order of Dismissal pursuant to Rule 41(a)(2) South Carolina Rules of Civil Procedure (SCRCP)¹ asking the Court to dismiss all parties' claims for damages to common-elements as a result of the COA having settled those claims with various defendants.² The Court issues this Order not in

¹ Plaintiffs argue this motion is solely one under Rule 41(a)(2) SCRCP. This argument overlooks the substance of said motion.

² The settlement did not include a release of claims for damages associated with certain subsurface soil conditions. Specifically, the COA requested a ruling that the settlement extinguishes all claims related to the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay except for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

Jeffrey

reliance on either rule but on the inherent power of the Court to manage litigation and approve settlements when court approval is sought. In reality, the parties hereto do not need court approval as they are all entities capable of contracting in their own right. The Court is issuing this Order and approving same as the parties have requested the Court to review the proposed settlement and, if approval is deemed appropriate, approve same. Due to the intricacies of this litigation, the Court finds the seeking of court approval for the settlement warranted and a proper matter for the Court's consideration and, as set forth herein below, its approval. The Court heard oral argument on this matter on December 19, 2012. Brett Dressler was present for the COA. Cameron Halford was present for the Plaintiffs. The Court finds that all parties were properly noticed and the matter was properly before the Court for resolution.

The COA filed an affidavit of Paulette Iadanza and a copy of the parties' settlement agreement in support of its motion. In response, the plaintiffs filed a deposition excerpt of Marshall Clarke, and relied upon the affidavits of Ms. Iadanza and a previously filed affidavit of Louis Moscovitz.

After considering the pleadings, the evidence and the arguments of counsel, the Court GRANTS the COA's motion for summary judgment and hereby dismisses all claims for damages to the common-elements, as defined in paragraph 3.1 of the Master Declaration of Covenants, Conditions and Restrictions for Stonecrest dated March 23, 2006. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development

caused by any geotechnical, fill compaction or subsurface deficiencies or defects. References to the mediating argument, hereto attached is craved for specificity of the claims included and not included in this settlement.

As has been noted by the Plaintiffs' Memorandum and oral arguments, the standing issue continues to vex the Court and the parties to this litigation. The Court has earlier ruled that Plaintiffs and Stonecrest Villas of Tega Cay Owners' Association, Inc. (COA) have standing to pursue claims regarding the alleged deficiencies in the common elements of Stonecrest Villas of Tega Cay.

The right (standing) to sue for a claim logically leads to the conclusion that the claimant can settle their claim. Admittedly, this may, and here does, create a tug of war between claimants who both have a legitimate interest in the proper resolution of the jointly held³ claim or claims. At this stage of the proceedings, Plaintiffs appear to want to use this standing imbroglio as a shield claiming since they have standing to pursue these mutual claims the COA cannot settle any part of the claim with the alleged liable parties.

Were this the reverse, Plaintiffs seeking approval of a settlement, the Court would be surprised if Plaintiffs did not wield their standing as a sword. Plaintiffs would most probably assert, just as observed above, standing to sue begets standing to settle. If this latter were not true then the instant case would not be subject to settlement unless both Plaintiffs and the COA agreed to a settlement. If both could not

³ The Court is not sure this is a legally technical phrase to use to describe the instant situation, but it is the best it could do.

agree to a settlement, this would place the parties at loggerhead and the case could only be concluded a trial.

In their brief, Plaintiffs note that the Court's Catch 22 analogy, in effect, gives neither the Plaintiffs nor the COA superior rights. This is true. The corollary to this position is that neither Plaintiffs nor the COA stand in an inferior position as to their asserted rights. This, as noted above, includes the right to sue and the corollary right to settle such claims as are within their province.

Plaintiffs raise several grounds they claim preclude approval of the proposed settlement. Plaintiffs claim the COA has "failed to do equity." The undersigned has been unable to understand Plaintiffs' position as to the equity argument. This is sort of an Iran and North Korea, cannot settle disputes among themselves as they are both evil.⁴

Plaintiffs claim the COA is "not first in order of time." This argument is basically "we got to the courthouse first." This argument presupposes that one must litigate to settle a claim. This is of course not a supportable argument. A party with a claim may settle any claim they may have against another party without bringing suit, during the pendency of a suit, and while not a regular occurrence, post suit.

Plaintiffs' third argument is that the COA cannot settle their claims as the COA owns no legal title in the Stonecrest Villas of Tega Cay's common areas. While this is true, Plaintiffs clearly recognize the COA has an obligation to maintain the common areas and, in fact, Plaintiffs have sued the COA for alleged failure to maintain the

⁴ President George W. Bush, State of the Union address, January 29, 2002.

common areas. Implicit in Plaintiffs' position is that while the COA owns none of the common areas, it is legally obligated to and the only entity that can, maintain said common areas.

That the COA has standing to sue and, of course as earlier stated, the right to settle has been visited by the Court ad nauseam. Once again the Court cites as support for this proposition Queen's Grant Villas Horizontal Property Regimes I-V vs. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365, (S.Ct. 1985). Queen's Grant goes farther than establishing the property regime's right to pursue claims related to the common elements but also holds the regime itself may be liable to the homeowners for its failure to seek recovery in instances involving allegations of alleged construction defects in the common areas. Failure of the COA to accept a viable and well thought out settlement would subject the COA to a suit by the non-plaintiff homeowners for such failure.

Finally, to not allow the body charged with remediating problems in the common elements based on the objection of well less than half of the condominium owners' results in the few holding the remaining homeowners hostage to the few's decision. The few who cannot affect any repair to the common elements the maintenance of which is charged to the COA.

Finally, the Court has looked at the relief Plaintiffs seek in their Amended Complaint. They seek a "judgment" (paragraph 2, prayer for relief); actual and punitive damages (paragraph 3, prayer for relief); incidental and special damages (paragraph 4, prayer for relief; treble damages, attorney fees and costs (paragraph 5 and

6, prayer for relief); and general "legal or equitable" relief and a permanent injunction (paragraph 7, prayer for relief).⁵

Recovery under their First Cause of Action would be personal to Plaintiffs; recovery under their Second Cause of Action would be personal to Plaintiffs; as plead recovery under the Third Cause of Action would be personal to Plaintiffs; recovery under their Fourth Cause of Action would be personal to Plaintiffs; recovery under their Fifth Cause of Action would be personal to Plaintiffs; recovery under their Sixth Cause of Action would be personal to Plaintiffs; recovery under their Eighth Cause of Action would be personal to Plaintiffs; recovery under their Ninth Cause of Action would be personal to Plaintiffs; recovery under their Tenth Cause of Action would be personal to Plaintiffs; recovery under their Eleventh Cause of Action would be personal to Plaintiffs; recovery under their Twelfth Cause of Action would be personal to Plaintiffs; recovery under their Thirteenth Cause of Action would be personal to Plaintiffs; recovery under their Fourteenth Cause of Action would be personal to Plaintiffs; and recovery under their Fifteenth Cause of Action would be personal to Plaintiffs.⁶

Plaintiffs Seventh Cause of Action seeks an accounting. If Plaintiffs prevail on this cause of action, it could inure to the benefit of all SCVTC property owners.

A fair reading of Plaintiffs' Complaint establishes that in no instance, other than in the cause of action for accounting, do Plaintiffs seek any general relief which would

⁵ Plaintiffs do not set forth a cause of action which specifies why they are entitled to injunctive relief and exactly what injunctive relief they seek. (See South Carolina Public Service Authority v. Carolina Power and Light, 244 SC 466, 137 S.E.2d 507 (S.Ct. 1964))

⁶ Paragraph 10 of the Fifteenth Cause of Action does reference "others" but in paragraph 11 Plaintiffs allege that they alone are entitled to an award of damages.

inure to the benefit of SCVTC generally or be available to the COA or other individual homeowners to remediate the alleged defects to the common areas.

The Court finds the following support of this order:

1. The Court takes judicial notice that the "Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime," was recorded on February 12, 2007 in Book 08852 at Page 149 of the York County Registry (hereinafter "Master Deed").
2. Article I, Section 1.6 of the Master Deed defines "Common Elements" to mean and refer to "all portions of the Condominium other than the Units, as depicted on the Plans and as more particularly described in Section 5.1 of the Master Deed." Section 5.1 of the Master Deed states:

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All Improvements located on the Land outside of the Buildings, including without limitation, landscaped areas, surfaced parking areas, paved roads, sidewalks curbs and gutters.
- (c) All portions of the Buildings located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units and all other structural elements of the Building.
- (e) Any public connections and meters, vaults and manholes for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

- (g) The yards, shrubs, exterior lights, signs, mailboxes and storm drainage systems.
3. The primary construction defects contributing to water penetration of the condominium buildings at issue in this lawsuit include the stone façade, flashing, water run-off from the roofs, and poor surface water management. The hardiplank siding has also been implicated as a source of water penetration.
 4. The stone façade, flashing, roofs, hardiplank, and ground outside of the buildings all constitute common elements under the Master Deed.
 5. The Board of Directors for the COA consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same.
 6. The Board, either directly or through its counsel, consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors.
 7. Based upon the information received from these sources, the Board is reasonably confident that all reasonable and necessary repairs to prevent water intrusion can be made for \$2.6 million.
 8. The bids the Board received from the contractors ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates.
 9. The Board of Directors believes that a budget of \$2.6 million would include replacement of all stone, replacement of some or all of the hardiplank, reflashing, sealing the windows in-place, gutter modifications, surface water management

improvements, and a contingency for the replacement of any damaged sheathing or studs.

10. The Board also considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts.
11. The Board of Directors considered this estimate to be too high for the reasons detailed in Iadanza's affidavit.
12. The Board is also concerned about the likelihood of actually recovering money from the various defendants (third and fourth party included) given its ability to capture insurance coverage and the difficulty/expense of capturing such coverage.
13. The Board of Directors also considered the cost of proceeding with the litigation as opposed to settling the claims now.
14. The Court finds the Board's reasoning and its conclusion to settle this matter for \$2.6 million as opposed to pursuing further litigation to be an exercise of sound business judgment under the circumstances.
15. Having previously determined the plaintiffs and the COA have standing to pursue a claim for the cost to repair damages to the common-elements as a result of construction defects, the Court further holds that the COA also has the power to settle the claims.⁷

⁷ As observed herein above, Plaintiffs seek personal relief and not relief calculating to remediate problems with the common elements. This Order cannot and does not affect Plaintiffs' rights to continue to pursue the personal claims they assert in their Amended Complaint.

16. The COA has, in fact, settled the claims for damages to the common-elements with the exception noted previously and subject to this Court's approval.
17. The Court hereby approves the settlement agreement tendered to and filed with the Court on December 19, 2012.
18. The Court notes that Plaintiffs have objected to the settlement but holds that they are not in a position to challenge the settlement. As noted herein above, the Plaintiffs, in their Amended Complaint, seek damages for themselves for damage to their units, based on a variety of legal theories.

Accordingly, the Court GRANTS the COA's motion for summary judgment as there are no genuine issues of material fact regarding the COA's right to settle the COA's desire to settle and the Defendants' commitment to settle. The Court hereby dismisses all claims raised by all parties in this lawsuit for damages to the common-elements, including the cost to repair the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue or defend against any asserted damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

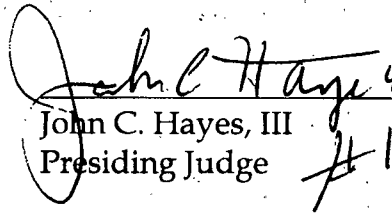
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The Court approves the proposed settlement set forth in the Mediation Agreement entered into by the settling parties attached hereto and incorporated herein by reference filed December 19, 2012.

This Order does not affect the individual claims Plaintiffs have set forth in their Complaint for direct damage to themselves or their individual units.

IT IS SO ORDERED.

January 23rd 2013
York, South Carolina


John C. Hayes, III
Presiding Judge #11

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juontonio Pinckney	Jospephine Sciacca	Stonecrest Villas of Tega Cay Home Owners Association Inc	Jose Jimenez
Addie Smith	James Barone	M & L Roofing Co LLC	MB Roofing Company
Deborah Barone	Ismael Gonzales	Brock L Fankhauser	Fankhauser Property Group Inc
Valerie Gonzales	Joe Moore	Marco Zertuche	David Carbajal
Sandra Moore		Victorina Cortez	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow)

☐ Statement of Judgment by the Court:

Order Granting Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.'s Motion For Summary Judgment as to Plaintiff's Claims

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/John C. Hayes, III
Circuit Court Judge

2049

Judge Code

4/05/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on April 10, 2013, and a copy mailed first class or placed in the appropriate attorney's box on April 10, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

See Attached Sheet

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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Epcon Communities, Inc.; Epcon
Communities Franchising, Inc.; Brock L.
Fankhauser; Fankhauser Property Group,
Inc.; Stonecrest Villas of Tega Cay, LLC;
and Stonecrest Villas of Tega Cay Home
Owners Association, Inc.,

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

Exterior Expressions of NC., Inc.; Al-
Mega Construction, Inc.; Procar, Inc.; The
Southeastern Group, Inc.; and Jose
Simenez, Individually and d/b/a M&L
Roofing Co., LLC and/or MB Roofing
Company,

Third-Party Defendants,

Stonecrest Villas of Tega Cay Home
Owners Association, Inc.,

Third-Party Plaintiff,

v.

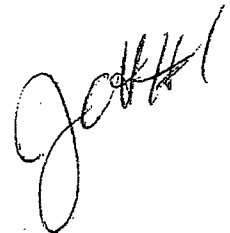
Stonecrest Villas of Tega Cay, LLC

Third-Party Defendant,

Civil Action No. 2010-CP-46-02326

FILED-RECEIVED
2013 APR 10 PM 3:31
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

**ORDER GRANTING
DEFENDANT STONECREST
VILLAS OF TEGAY CAY
CONDOMINIUM OWNERS
ASSOCIATION, INC.'S MOTION
FOR SUMMARY JUDGMENT
AS TO PLAINTIFFS' CLAIMS**



Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

This matter came before me for a hearing on a Motion for Summary Judgment as to Plaintiffs' Claims (the "Motion") filed by Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. ("Stonecrest COA"). Appearing at the hearing were Curtis W. Dowling and Matthew G. Gerrald on behalf of Stonecrest COA and J. Cameron Halford on behalf of the Plaintiffs.

PREAMBLE

The undersigned issued an Order in this matter dated January 23, 2013. The Plaintiffs timely filed a Motion to Reconsider said Order, which was denied. The Plaintiffs timely filed a Notice of Intent to Appeal the initial and subsequent Order. The January 23, 2013 Order approved a settlement by and among Stonecrest COA and various Defendants and Third- and Fourth-Party Defendants.

At the time the Plaintiffs filed their Notice of Intent to Appeal, the undersigned had instructed counsel for Stonecrest COA to draw an Order granting the Motion, which was heard on March 19, 2013. The undersigned has elicited input from counsel for the Plaintiffs and counsel for Stonecrest COA as to the Court's jurisdiction to rule on the Motion in light of the Notice of Intent to Appeal. The undersigned has asked for counsel for Stonecrest COA to prepare a proposed Order granting the Motion. The proposed

galt 2

Order has been received but was not signed prior to the filing of the Plaintiffs' Notice of Intent to Appeal. Counsel for Stonecrest COA asserts the Court can enter an Order ruling on the Motion, while counsel for the Plaintiffs claims "the summary judgment issue is stayed by the Notice of Intent to Appeal."

There are two issues the Court must consider as to the issuance, at this time, of an Order addressing the Motion: Rule 205, SCACR, and the applicability of Rule 241, SCACR, Stay and Supersedeas in Civil Actions.

Rule 205 divests the Circuit Court of jurisdiction as to all matters "over the appeal," but not "matters not affected by the appeal" once a Notice of Intent to Appeal is filed. Rule 241 provides a stay as to matters on appeal but, as does Rule 205, excludes from the stay "matters not affected by the appeal." Stonecrest COA suggests that the case of Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), supports its position that the stay provided for in Rule 241 does not apply in the instant case. I find Metts of no help as it deals with a purely collateral matter, the appeal of an order of contempt, rather than an appeal of an order addressing a substantive issue.

~~The business judgment rule is implicated by the matter on appeal and in the~~ instant order. However, I find the issue addressed in the instant Order is not a matter which will be affected by the matter on appeal.

As noted elsewhere in the Order, the Plaintiffs primarily seek personal monetary relief, not recovery on behalf of the owners of all of the Stonecrest Villas condominiums. The Plaintiffs do not seek recovery of funds to affect repairs to the common elements. The issue on appeal is settlement of claims for damages to the common elements. The

order on appeal specifically provides that the Plaintiffs' claims for their "direct damage to themselves or their individual units" are unaffected by said Order.

While the business judgment rule is implicated in both the Order on appeal and the instant Order, at issue are two distinct business judgments. The Order on appeal deals with Stonecrest COA's settlement of pending litigation. The instant Order addresses alleged conduct by the Stonecrest COA board from its creation until institution of the instant lawsuit. The latter issue is not affected by the appeal of the former.

The issue of amalgamation, to the extent it is an issue regarding an individual and a non-profit homeowners' association, is not an issue in the Order on appeal. The Order on appeal addresses conduct by Stonecrest COA at a point in time after Brock Fankhauser transitioned off the Stonecrest COA board. The Motion, as noted above, is an issue distinct from that regarding the settlement.

I therefore find that the Court retains jurisdiction over the Motion and that the Motion is not stayed by the Plaintiffs' Notice of Intent to Appeal. Furthermore, after carefully reviewing the record, the briefs submitted by the parties, and the applicable law, and after considering the arguments of counsel, I hereby GRANT the Motion.

FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiffs are unit owners in Stonecrest Villas of Tega Cay, a condominium community in York County. They brought this action against Stonecrest COA and several other parties seeking legal and equitable relief for alleged damages and defects resulting primarily from water intrusion. The Amended Complaint filed September 16, 2011, which is the Plaintiffs' current active pleading, asserts twelve causes of action against Stonecrest COA: breach of fiduciary duty, breach of contract, breach of contract

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accompanied by fraudulent acts, fraud and misrepresentation, equitable action for accounting,¹ conversion, civil conspiracy, breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, breach of express warranties, and unfair trade practices act violation. For the reasons set forth below, Stonecrest COA is entitled to judgment as a matter of law on each of these causes of action.

STANDARD OF REVIEW

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings" but "must present specific facts showing a genuine issue for trial." Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 558-59, 671 S.E.2d 79, 85 (Ct. App. 2008) (citations and quotations omitted). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005).

¹ Pursuant to an agreement between counsel, this cause of action has been withdrawn.

FINDINGS AND CONCLUSIONS

I. STONECREST COA'S CONDUCT WAS REASONABLE AND IS PROTECTED BY THE BUSINESS JUDGMENT RULE.

Though the Plaintiffs have taken the kitchen sink approach and asserted twelve causes of action against Stonecrest COA, their theory of liability boils down to this: Stonecrest COA has violated its obligations under the Master Deed and its bylaws to maintain and repair the community's common elements. These allegations are based on the following sections of the aforementioned documents:

- The Master Deed's Statement of Purpose, which states, in part: "Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the Common Areas and facilities on the Property[.]"
- Section 5.4(a) of the Master Deed, which states, in part: "The Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements[.]"
- Section 13.1 of the Master Deed, which states, in part: "In the event of damage to or destruction of any Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building[.]"²
- Section 2.1 of Stonecrest COA's bylaws, which states: "Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements."
- Sections 5.13(a)-(d) and (k) of Stonecrest COA's bylaws, which state, in part: "The powers and duties to be exercised by the Executive Board shall include, but shall not be limited to, the following:

² This provision applies only in the event of a "fire or other casualty." Fire is not an issue in this case. Neither is any other "casualty," which is defined as an "accident." See Black's Law Dictionary at 209 (7th ed. 1999) and The American Heritage College Dictionary at 225 (4th ed. 2010). Therefore, this provision is inapplicable in this case.

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- (a) Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;
- (b) Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;
- (c) Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;
- (d) Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements; . . .
- (k) Making of repairs, additions, and improvements to or alterations or restoration of the Condominium in accordance with the other provisions of these Bylaws and the Master Deed, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding[.]³

I find that Stonecrest COA has not violated any of these obligations. Rather, it is clear from the record that Stonecrest COA acted as quickly and efficiently as possible to pursue and obtain a monetary recovery from the parties it believed were actually responsible for the state of the common elements in order to finance the necessary repairs.

All parties agree that control of Stonecrest COA was transitioned to the community owners on July 1, 2010, and the Plaintiffs and Stonecrest COA agree the common elements were not in good repair as of that date. In order to pay for repairs to the common elements, Stonecrest COA had only two options: (1) impose a large special assessment in at least the tens of thousands of dollars on each and every community

³ See note 2, *supra*.

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owner; or (2) pursue a recovery from the general contractor and developer pursuant to the holding of Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corporation, 349 S.C. 251, 562 S.E.2d 633 (2002), that “developers are held responsible for the condition of the common areas at the time these areas are deeded to the POA.” Id. at 259-60, 562 S.E.2d at 638.

Given the circumstances—few in the community desired a special assessment to fund repairs they believed were the responsibility of the community’s general contractor and developer—Stonecrest COA elected to pursue a recovery against the parties believed to be responsible, and it did so swiftly. On August 6, 2010, just 36 days after the transition to owner control, Stonecrest COA filed its Answer, Cross-Claim and Third-Party Complaint in this action, in which it responded to the Plaintiffs’ initial Complaint (which had been filed on June 2, 2010) and asserted cross-claims and third-party claims against the community’s general contractor, Fankhauser Property Group, Inc., and developer, Stonecrest Villas of Tega Cay, LLC, as well as the principal of those two entities, Brock L. Fankhauser (collectively, the “Fankhauser Defendants”). Stonecrest COA’s claims were based on the condition of the common elements at the time of transition and were asserted well within the statute of limitations.⁴

Stonecrest COA ultimately entered into a settlement agreement with the Fankhauser Defendants and various third- and fourth-party defendants for a total recovery of \$2.6 million to fund repairs to the common elements. This court approved

⁴ This court previously found: “The record is clear that Brock Fankhauser’s menagerie of entities knew of water intrusion problems as early as the late spring or summer of 2008.” Order Denying Third-Party Plaintiff Fankhauser Property Group Inc.’s and Stonecrest Villas of Tega Cay LLC’s Motion to Amend Third-Party Complaint at p.6. Accordingly, the earliest the statute of limitations could have run was the late spring or summer of 2011.

the settlement, finding it to be reasonable, and held that Stonecrest COA exercised sound business judgment when it agreed to the settlement. Specifically, this court found:

5. The Board of Directors for [Stonecrest] COA consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same.
6. The Board, either directly or through its counsel, consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors.
7. Based upon the information received from these sources, the Board is reasonably confident that all reasonable and necessary repairs to prevent water intrusion can be made for \$2.6 million.
8. The bids the Board received from the contractors ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates.
9. The Board of Directors believes that a budget of \$2.6 million would include the replacement of all stone, replacement of some or all of the hardiplank, reflashings, sealing the windows in-place, gutter modifications, surface water management improvements, and a contingency for the replacement of any damaged sheathing or studs.
10. The Board also considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts.
11. The Board of Directors considered this estimate to be too high for the reasons detailed in Iadanza's affidavit.
12. The Board is also concerned about the likelihood of actually recovering money from the various defendants (third and fourth party included) given its ability to capture insurance coverage and the difficulty/expense of capturing such coverage.
13. The Board of Directors also considered the cost of proceeding with the litigation as opposed to settling the claims now.
14. **The Court finds the Board's reasoning and it is [sic] conclusion to settle this matter for \$2.6 million as opposed to pursuing further litigation to be an exercise of sound business judgment under the circumstances.**

Order Granting Stonecrest Villas of Tega Cay Owners' Association, Inc.'s Motion for Partial Summary Judgment and Approval for Settlement as to Exterior Damages or in the Alternative Motion for Dismissal Pursuant to Rule 41(a)(2) South Carolina Rules of Civil Procedure (Motion signed October 12, 2012) (entered January 23, 2013) (emphasis added).

"Under the business judgment rule, a court **will not review** the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith." Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000) (emphasis added) (citations and quotations omitted). See also Dockside Ass'n, Inc. v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) ("[T]he business judgment rule **precludes judicial review** of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct.") (emphasis added). Critically, "the burden of proving good faith is not on the governing board; **the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions.**" Detyens, 294 S.C. at 87, 362 S.E.2d at 874 (emphasis added). Accordingly, this court's default position must be to defer to the decisions of a corporate board unless the challenging parties can produce evidence of bad faith.

In this case, the Plaintiffs have not produced any evidence of bad faith on the part of Stonecrest COA.⁵ Thus, the decision by Stonecrest COA to pursue and, ultimately,

⁵ At the hearing on the Motion, Plaintiffs' counsel argued that Stonecrest COA should be held responsible for the pre-transition conduct of one of its former officers, Brock Fankhauser, pursuant to S.C. Code § 33-31-842(c). However, Section 33-31-842 does not contemplate corporate liability for the alleged improper acts of officers. See, e.g., S.C. Code § 33-31-842(e) (establishing a statute of limitations for actions "against an officer"). Accordingly, I find that Stonecrest COA may not be held liable for the *ultra vires* acts of Mr. Fankhauser, if any. Moreover, even if there were potential corporate liability under

recover a multi-million dollar, court-approved settlement in lieu of imposing a huge special assessment on its members—an unquestionably reasonable exercise of corporate discretion—is protected by the business judgment rule and entitled to judicial deference. See, e.g., Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (holding that that a decision by the directors of a homeowners' association not to raise assessments for the purpose of repairing common elements was protected by the business judgment rule). See also Master Deed § 11.3 ("Failure of the Executive Board to exercise its authority under this section [to impose discretionary assessments] shall not be grounds for any action against the Association or the Executive Board[.]"). Accordingly, Stonecrest COA is entitled to judgment as a matter of law on all causes of action in the Amended Complaint.

II. THE PLAINTIFFS HAVE NOT PROPERLY PLED AND CANNOT ESTABLISH THE ELEMENTS OF THEIR CAUSES OF ACTION AS AGAINST STONECREST COA.

Though the business judgment rule entitles Stonecrest COA to summary judgment on all causes of action in the Amended Complaint, I further find that the Plaintiffs have not properly pled and cannot establish, with record evidence, one or more elements of each of the causes of action they have asserted against Stonecrest COA.⁶

A. Breach of Fiduciary Duty.

"To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the

Section 33-31-842, the Plaintiffs have not alleged a violation of that section, which they must do in order to obtain any recovery to which they might be entitled.

⁶ Because the Plaintiffs are suing as individuals rather than as a class, each individual Plaintiff must personally establish every element of every cause of cause of action asserted in the Amended Complaint.

defendant." RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA.

Throughout this case, the Plaintiffs have asserted that Stonecrest COA owes them a fiduciary duty to repair the community's common elements on demand. But a fiduciary relationship is unique and exists only "when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Ellis v. Davidson, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004). Moreover, the defendant in a breach of fiduciary duty case must have "actually accepted or induced the confidence placed in him" because "a fiduciary relationship cannot be established by the unilateral action of one party." Steele v. Victory Sav. Bank, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988). In this case, the Amended Complaint's breach of fiduciary duty cause of action does not allege the Plaintiffs placed *any* trust in Stonecrest COA, much less *special* trust, nor does it allege that Stonecrest COA accepted or induced any confidence the Plaintiffs may have placed in it. Moreover, the record in this case, which is extensive, is wholly devoid of any evidence that the Plaintiffs placed special trust in Stonecrest COA or that Stonecrest COA accepted or induced any such trust.

Even if the Amended Complaint properly alleged the existence of a fiduciary relationship and the record contained evidence of such a relationship, the Plaintiffs still could not satisfy their burden of proof because no South Carolina court has ever found that a homeowners' association owes a fiduciary duty to its members.⁷ In fact, in O'Shea

⁷ The only fiduciary duty even potentially recognized in the homeowners' association context is a duty to assess. In Goddard, the court implied the existence of a duty to assess to make repairs to maintain

v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992), the South Carolina Supreme Court wrote: "We have never imposed the high standard of fiduciary duty on planned community organizations[.]" Id. at 15, 416 S.E.2d at 632. The court held that a community board similar to the board of directors of Stonecrest COA had a duty simply "to exercise judgment reasonably and in good faith." Id. Thus, I find Stonecrest COA does not stand in a fiduciary relationship with the Plaintiffs.⁸ Moreover, like the Goddard court and pursuant to the business judgment rule, I find that even if Stonecrest COA owed a fiduciary duty to the Plaintiffs, it plainly did not violate that duty by declining to impose a large special assessment on its members and instead electing to pursue settlement of its claims against various other parties to this case. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

B. Breach of Contract.

In a breach of contract action, "the burden [is] upon the [plaintiff] to prove the contract, its breach, and the damages caused by such breach." Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA.

common areas but found that, in light of the owners' desire to keep assessments low, the decision by the association's directors not to raise assessments was protected by the business judgment rule, 310 S.C. at 414, 426 S.E.2d at 832. In this case, the Plaintiffs have not pled a failure to assess.

⁸ Stonecrest COA previously sought partial summary judgment on this cause of action, but this court declined to address at that time the question of whether Stonecrest COA stands in a fiduciary relationship with its members on the grounds it desired a full and complete record. See Order Re: Stonecrest Villas of Tega Cay Condominium Owners' Motion for Partial Summary Judgment and Plaintiffs Motion for Summary Judgment (Fiduciary Duty Issue) (entered August 27, 2012). The discovery period has since concluded and the record has been fully developed. This issue, which is solely for the court to decide, is now ripe for resolution. See, e.g., Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003) ("[T]he question of whether [a fiduciary duty] should be imposed between two classes of people is a question for the court."). As set forth above, I find that O'Shea lays the issue to rest and establishes, in essence, that Stonecrest COA's duty extends no farther than the duty set forth in S.C. Code § 33-31-842.

The only contract referenced in the breach of contract cause of action is the Franchise Agreement between Epcon Communities Franchising, Inc. and Fankhauser Property Group, Inc. Amended Complaint at p.12, ¶ 1. The Plaintiffs allege they are intended third-party beneficiaries of that agreement. Id. at p.12, ¶ 2. This court has already rejected the latter contention, but even accepting it as true, the fact remains that Stonecrest COA was not a party to the franchise agreement and cannot be held liable for its alleged breach.

To the extent the Plaintiffs claim that either the community's Master Deed or Stonecrest COA's bylaws constitute a "contract" between them and Stonecrest COA, I first note that the Amended Complaint does not so allege. Secondly, neither the Master Deed nor the bylaws are "contracts" in the legal sense. "The necessary elements of a contract are an offer, acceptance, and valuable consideration." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Neither document contains an "offer"⁹ by Stonecrest COA which was accepted by the Plaintiffs (or vice versa). Rather, the Master Deed simply "creat[ed] and establish[ed] the horizontal property regime," S.C. Code § 27-31-100, while the bylaws are merely a governing document setting forth how Stonecrest COA is to be regulated and managed. S.C. Code § 33-31-206. Moreover, because both documents are statutorily mandated, and because they imposed obligations on Stonecrest COA before any of the Plaintiffs purchased their units, they are not supported by valuable consideration. See, e.g., McLeod v. Sandy Island Corp., 265 S.C. 1, 11, 216 S.E.2d 746, 750 (1975) ("The authorities are clear that an agreement to do that which one is already legally bound to do is not sufficient consideration to support a

⁹ "A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree." Id. (citations and quotations omitted).

contract.”). Thirdly, to the extent either document can be considered a “contract,” neither can be the basis for a breach of contract cause of action against Stonecrest COA because neither document is signed by or on behalf of Stonecrest COA. See S.C. Code § 32-3-10.

Even if the Master Deed or the bylaws could be the basis for a breach of contract claim by the Plaintiffs against Stonecrest COA, there is no record evidence that Stonecrest COA has violated those documents. As set forth in Section I, *supra*, Stonecrest COA did the only thing it reasonably could do in the circumstances: pursue and obtain a monetary recovery from the Fankhauser Defendants. Its decision to do so is protected by the business judgment rule. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

C. Breach of Contract Accompanied by Fraudulent Acts.

“In order to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish: (1) a breach of contract; (2) that the breach was accomplished with a fraudulent intention, and (3) that the breach was accompanied by a fraudulent act.” Minter v. GOCT, Inc., 322 S.C. 525, 529-30, 473 S.E.2d 67, 70 (Ct. App. 1996). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA.

“Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act.” Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005). Accordingly, because there was no contract between the Plaintiffs and Stonecrest COA, this cause of action fails at the outset for the reasons set forth in Section II(B), *supra*.

Even if a contract existed between the Plaintiffs and Stonecrest COA, the Plaintiffs stand no chance of prevailing on this cause of action because they have not alleged and cannot establish the requisite fraudulent intent on the part of Stonecrest COA or a fraudulent act accompanying the alleged breach. Critically, the alleged fraudulent act must be "separate and distinct from the act(s) constituting the breach," Smith v. Canal Ins. Co., 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980), and must relate "to the breaching of the contract and not merely to its making." Ball v. Canadian Am. Exp. Co., 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994). Yet the Amended Complaint merely recites a number of alleged acts—most of which did not involve Stonecrest COA—that occurred prior to the Plaintiffs' purchase of their units. This court has already recognized as much in granting summary judgment to the Fankhauser Defendants on this cause of action. See Order Re: Defendants Brock L. Fankhauser, Fankhauser Property Group, Inc., and Stonecrest Villas of Tega Cay, LLC's Motion for Summary Judgment (entered March 8, 2013) (the "Fankhauser SJ Order") at p.5 ("In this case, the Plaintiffs' allegations repeatedly allege acts that arose prior to the Plaintiffs' respective purchases of their units and do not allege fraudulent acts accompanying any breach of contract."). Moreover, as in Minter, there is "no evidence of an independent fraudulent act which accompanied the [alleged] breach." 322 S.C. at 530, 473 S.E.2d at 70. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

D. Fraud.

To prove fraud, a plaintiff must show: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity;

(7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." Robertson v. First Union Nat'l Bank, 350 S.C. 339, 347-48, 565 S.E.2d 309, 313-14 (Ct. App. 2002) (citations and quotations omitted). All nine elements must be established by "clear, cogent and convincing evidence[.]" Id. at 348, 565 S.E.2d at 314 (citations and quotations omitted). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA, much less by "clear, cogent, and convincing evidence."

The first defect in the Plaintiffs' fraud cause of action is that the elements are not pled with the particularity required by Rule 9(b), SCRCP. That rule provides, in pertinent part: "In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." However, the Amended Complaint does not specifically allege any fraudulent representations allegedly made by Stonecrest COA. Rule 9(b) clearly contemplates specific, particular allegations regarding what was said (or not said) and by whom. The Plaintiffs' failure to specify the particular misrepresentations made by Stonecrest COA which allegedly rise to the level of fraud subjects this cause of action to dismissal.

The second defect with this cause of action is that there is no evidence in the record, much less "clear and convincing evidence," that Stonecrest COA made a material representation to the Plaintiffs with knowledge of the representation's falsity. "To be actionable, the representation must relate to a present or pre-existing fact and be false when made. Representations based on statements as to future events or unfulfilled promises are not usually actionable." Sauner, 354 S.C. at 408, 581 S.E.2d at 167. Yet the Plaintiffs cannot point to any statement (or nondisclosure) made by Stonecrest COA that

Stonecrest COA knew was false at the time it was made. Stonecrest COA was not the seller of the Plaintiffs' units and thus had no duty of disclosure. To the extent the Plaintiffs assert Stonecrest COA has fraudulently failed to maintain the common elements, they have conflated breach of contract with fraud. "[M]ere breach of contract does not constitute fraud." Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

The only possible misrepresentation theory the Plaintiffs could even potentially raise—which they have not done to this point—is that Stonecrest COA “promised” to maintain the common elements even though at the time of making the “promise” it had no intention of keeping it. But there is no record evidence, to say nothing of “clear and convincing evidence,” that would support such a charge. Moreover, such a charge would be belied by the fact that Stonecrest COA in fact sued for and recovered funds with which to repair the common elements. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

E. Conversion.

“Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights. To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property.” Regions Bank v. Schmauch, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003) (citations and quotations omitted). “To prevail in an action for conversion, the plaintiff must prove either title or right to possession of the property at the time of the alleged conversion.” Richardson’s Rests., Inc. v. Nat’l Bank of S.C., 304 S.C. 289, 294,

403 S.E.2d 669, 672 (Ct. App. 1991). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA.

This cause of action is apparently based on alleged "overpayments" by Stonecrest COA to a so-called "master association." However, these overpayments have not been established as fact. The record reflects that a Stonecrest COA board member ran some calculations that have led Stonecrest COA to conclude that it was previously over-invoiced by the master association and that, as a result, Stonecrest COA has been withholding payments to the master association pending a resolution of the issue. The dispute may eventually be settled via litigation, but any recovery will belong to Stonecrest COA, not the Plaintiffs. See Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 704 (Ct. App. 1988) (holding that where misconduct results in a loss to a corporation rather than any particular stockholder, the cause of action belongs to the corporation). See also Fankhauser SJ Order at p.7 ("[A]ny recovery of monies transferred to a master association would nonetheless inure to the benefit of the COA party."). Moreover, conversion cannot arise where there is only a disputed claim and not an unquestionable and immediate right to payment. Owens v. Zippy Mart of S.C., Inc., 268 S.C. 383, 386, 234 S.E.2d 217, 218 (1977).

This cause of action suffers from further deficiencies. First, there is no record evidence that Stonecrest COA took property to which the Plaintiffs had either title or right and converted it to its own use. Second, in order to recover, each individual Plaintiff must establish a specific, identifiable fund that Stonecrest COA is obligated to deliver to him or her. See, e.g., Richardson's Rests., 304 S.C. at 294, 403 S.E.2d at 672 ("There can be no conversion of money unless there is an obligation on the defendant to

deliver a specific, identifiable fund to the plaintiff.”). No Plaintiff has done so. Third, because all funds obtained by Stonecrest COA from the Plaintiffs were pursuant to Stonecrest COA’s authority to levy and collect assessments from the community owners, this cause of action must fail because “conversion is a wrongful act” which “cannot arise from the exercise of a legal right.” Castell v. Stephenson Fin. Co., 244 S.C. 45, 51, 135 S.E.2d 311, 313 (1964). Fourth, because Stonecrest COA lawfully collected assessments from the Plaintiffs, a demand by the Plaintiffs for return of specified funds and a refusal by Stonecrest COA were required to transform Stonecrest COA’s possession of the funds into a potentially wrongful act. See, e.g., Roberts v. James, 158 S.E. 689, 691 (S.C. 1931) (“[P]ossession must first be transformed into a wrongful one by a refusal to surrender the property. Hence, demand and refusal are necessary for the maintenance of trover in all cases in which the defendant was rightfully in possession.”). The Plaintiffs have never made such a demand. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

F. Civil Conspiracy.

“The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages.” Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). “The ‘essential consideration’ in civil conspiracy is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” Id. at 567, 633 S.E.2d at 511 (citations and quotations omitted). “In order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint

assent of the minds of two or more parties to the prosecution of the unlawful enterprise.”

Id. (citations and quotations omitted). The Plaintiffs have not properly pled and cannot establish these elements as against Stonecrest COA.

“In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint[.]” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009). “[T]he failure to properly plead such acts will merit the dismissal of the claim.” Id. at 116, 682 S.E.2d at 875. However, as set forth below, the Plaintiffs’ civil conspiracy claim does little more than reallege the acts complained of in the other causes of action.

- Paragraph 1 of the civil conspiracy claim contains boilerplate language incorporating prior allegations.
- The allegation in paragraph 2 of the civil conspiracy claim that Brock Fankhauser engaged in unauthorized private loans is also found at p.7, ¶ 19; p.8, ¶ 22(k); p.9, ¶ 6; p.11, ¶ 9; p.14, ¶ 4(k); p.21, ¶¶ 25 and 30; p.22, ¶ 2; p.23, ¶ 8; p.32, ¶ 13(c); and p.35, ¶ 8(c) and (e).
- The allegation in paragraph 3 of the civil conspiracy claim that the Defendants depleted Stonecrest COA’s reserves is also found at p.11, ¶ 13; p. 22, ¶ 4; and p.23, ¶ 6.
- The allegation in paragraph 4 of the civil conspiracy claim that the Defendants utilized assessments for improper purposes is also found at p.11, ¶ 12; p.21, ¶ 25; p.22, ¶¶ 2 and 4; p.23, ¶ 4; p.32, ¶ 13(c); and p.35, ¶ 8(e).
- The allegation in paragraph 5 of the civil conspiracy claim that Stonecrest COA failed to make repairs is also found at p.8, ¶ 22(g); p.11, ¶¶ 14-15; p.13, ¶ 4(c); p.14, ¶ 4(i); p.16, ¶ 10; p.17, ¶ 22; p.21, ¶ 24; p.23, ¶ 5; p.28, ¶ 6; and p.32, ¶ 12.
- The allegation in paragraph 6 of the civil conspiracy claim that the Defendants have mismanaged reserves and assessments is also found at p.8, ¶ 22(i); p.12, ¶ 21; p.22, ¶ 31; and p.23, ¶ 6.

- The allegation in paragraph 7 of the civil conspiracy claim that Brock Fankhauser repaired certain homes but not others is also found at p.10, ¶6; p.11, ¶¶ 16-17; p.12, ¶ 19; p.14, ¶ 4(h) and (j); p.16, ¶ 12; p.17, ¶ 22; and p.33, ¶ 13(h).
- Paragraphs 8-11 are conclusory statements of the elements of a cause of action for civil conspiracy.

Because the civil conspiracy cause of action merely reasserts the allegations asserted in other causes of action and labels them "conspiracy," the Plaintiffs, like the plaintiff in Kuznik, are "not entitled to maintain [their] conspiracy cause of action." 342 S.C. at 611, 538 S.E.2d at 31. "Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong." Id. at 610, 538 S.E.2d at 31 (quoting Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981)). See also Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 358 S.C. 460, 476, 596 S.E.2d 51, 59 (2004) ("A plaintiff cannot recover damages for a particular act or wrong and likewise recover on a conspiracy to do the act or wrong.").

The Amended Complaint also does not properly allege—and there is no record evidence establishing—special damages resulting from the alleged conspiracy. "A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff thereby causing him *special damage*." Future Group, II v. Nationsbank, 324 S.C. 89, 100, 478 S.E.2d 45, 50 (1996) (emphasis added). Damages resulting from civil conspiracy are called "special" because they must result from the combination/conspiracy above and beyond the damages which result from the underlying acts. See, e.g., Pye, 369 S.C. at 568, 633 S.E.2d at 511 ("Because the quiddity of a civil conspiracy claim is the

John F. 2

damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.”). See also Hackworth, 385 S.C. at 117, 682 S.E.2d at 875 (“If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.”). Though paragraph 9 of the civil conspiracy claim contains the conclusory allegation that the “Plaintiffs have incurred special damages,” it does not specify what those damages are or how they resulted from the alleged conspiracy as opposed to the alleged underlying acts. Moreover, there is no evidence in the record establishing that the Plaintiffs suffered damages specifically as a result of the alleged conspiracy.

The civil conspiracy claim fails for still two more reasons. First, there is no evidence in the record that Stonecrest COA combined with anyone else “for the purpose of injuring” the Plaintiffs, and thus the Plaintiffs cannot establish that Stonecrest COA intended to cause them harm. Second, “a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities.” McMillan v. Oconee Mem’l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886-87 (2006). To the extent the alleged conspiracy was between Brock Fankhauser and Stonecrest COA during the pre-transition period in which Mr. Fankhauser was an officer of Stonecrest COA, no conspiracy could have existed because Mr. Fankhauser was Stonecrest COA’s agent. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

G. Breach of Express Warranty.¹⁰

In order to recover for breach of an express warranty, a plaintiff must prove three elements: (1) the existence of the warranty; (2) a breach of the warranty by the failure of the goods to conform to the warranted description; and (3) damages proximately caused by the breach. First State Sav. & Loan v. Phelps, 299 S.C. 441, 448, 385 S.E.2d 821, 825 (1989). The Plaintiffs cannot establish the existence of an express warranty given by Stonecrest COA.

S.C. Code § 36-2-313 sets forth how express warranties are created. It states: "Express warranties by the seller are created as follows" S.C. Code § 36-2-313(1). Stonecrest COA cannot possibly have given an express warranty under this section because it was not the "seller" of the Plaintiffs' units. The term "seller" means "a person who sells or contracts to sell goods." S.C. Code. § 36-2-103(1)(d). Stonecrest COA did not sell or contract to sell "goods"¹¹ to the Plaintiffs and there is no record evidence to the contrary. The only party in this case which could even potentially have given an express warranty is the developer, Stonecrest Villas of Tega Cay, LLC. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

¹⁰ This section covers both the tenth and fourteenth causes of action asserted in the Amended Complaint.

¹¹ The term "goods" is defined as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Title 36, Chapter 8) and things in action. 'Goods' also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (§ 36-2-107)." S.C. Code § 36-2-105(1). This definition does not apply to real property, and thus Article 2 of the Uniform Commercial Code is inapplicable in this case regardless of who the seller was. See also Fankhauser SJ Order at p.5 (finding that the UCC only applies to the sale of "goods," which does not include the Plaintiffs' condominium units).

H. Breach of Implied Warranty of Merchantability.

S.C. Code § 36-2-314(1) sets forth how an implied warranty of merchantability is given. It states: "[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." The Plaintiffs cannot establish the existence of such a warranty given by Stonecrest COA.

As discussed in Section II(G), *supra*, Stonecrest COA is not and was not a "seller" of "goods," and thus it could not possibly have given an implied warranty of merchantability. That fact in and of itself entitles Stonecrest COA to summary judgment, but Section 36-2-314(1) contains the additional requirement that, for this warranty to be implied, the "seller" must also be a "merchant." A "merchant" is "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill." S.C. Code § 36-2-104. Stonecrest COA clearly does not fall under this definition either. There is no record evidence to the contrary, and Stonecrest COA is entitled to judgment as a matter of law.

To the extent the cause of action for breach of the implied warranty of merchantability may be read to assert a breach of the implied warranty of workmanlike service, such a cause of action is likewise inapplicable to Stonecrest COA. An implied warranty of workmanlike service provides that "in constructing a home, a builder warrants that the home is fit for its intended use as a dwelling, that the home was constructed in a workmanlike manner, and that the home is free of latent defects." Fields

v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 561, 658 S.E.2d 80, 88-89 (2008).

Stonecrest COA is an owners' association, not a "builder" and it did not "construct" the Plaintiffs' units. It did not give—indeed, it could not have given—a warranty of workmanlike service and thus cannot be held liable for a breach of such a warranty.

I. Breach of Implied Warranty of Fitness for a Particular Purpose.

S.C. Code § 36-2-315 governs implied warranties of fitness for a particular purpose. It states: "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section (§ 36-2-316) an implied warranty that the goods shall be fit for such purpose." Once again, the Plaintiffs cannot establish the existence of such a warranty given by Stonecrest COA because Stonecrest COA is not and was not a "seller" of "goods" and could not possibly have given such a warranty. Stonecrest COA is, therefore, entitled to judgment as a matter of law.

J. Unfair Trade Practices Act Violation.

In order to prevail in an action for violation of the SCUTPA, a plaintiff must prove three elements: "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." RFT Mgmt., 399 S.C. at 337, 732 S.E.2d at 174 (citations and quotations omitted). The Plaintiffs cannot establish these elements as against Stonecrest COA.

The first element is derived from S.C. Code § 39-5-20, which provides: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." However, there is no record evidence that Stonecrest COA engaged in "trade or commerce" with the Plaintiffs, much less that it employed unfair or deceptive practices in the conduct thereof. "Trade or commerce is defined as 'the advertising, offering for sale, sale or distribution of any services and any property . . . and any other . . . thing of value[.]'" Foggie v. CSX Transp., Inc., 315 S.C. 17, 24, 431 S.E.2d 587, 591 (1993) (quoting S.C. Code § 39-5-10(b)). The Plaintiffs have not established—and cannot establish—that Stonecrest COA advertised, offered to sell, sold, or distributed any services, property, or other thing of value to them. The reason is simple: Stonecrest COA merely serves as a community administrator pursuant to governing documents which were put in place before the Plaintiffs ever purchased their units. See, e.g., Ward v. Glover, 2006 WL 3707893, at *8 (Me. Super. Ct. 2006) (interpreting the identical definition of "trade or commerce" in Maine's UCC and holding that a condominium association did not provide "products or services" but rather that it was a "non-profit organization that runs a condominium"). Accordingly, it cannot be held liable to the Plaintiffs under the SCUTPA.

Moreover, the Plaintiffs cannot establish that any alleged "unlawful trade practice" committed by Stonecrest COA had an "adverse impact on the public interest." "To be actionable under the Unfair Trade Practices Act, an unfair or deceptive act or practice must have an impact upon the public interest. The act is not available to redress a private wrong where the public interest is unaffected." Columbia E. Assocs. v. Bi-Lo, Inc., 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989). Though the Amended

Complaint does contain the conclusory assertion that the Defendants' alleged actions affect the public interest because they are "capable of repetition," it contains no factual allegations supporting that assertion and the record contains no evidence supporting it. An adverse effect on the public must be established with specific facts showing that "members of the public were adversely affected by the unfair conduct or that they were likely to be[.]" Jefferies v. Phillips, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) (citations and quotations omitted). Otherwise, "all we are left with is a speculative claim of adverse public impact and that will not suffice for a recovery under the [SC]UTPA." Id. (citations and quotations omitted). But the Amended Complaint's SCUTPA cause of action is nothing more than a rehashing of the allegations of its other causes of action with a SCUTPA label applied. This cannot support a recovery under SCUTPA. See, e.g., Columbia E. Assocs., 299 S.C. at 522, 386 S.E.2d at 263 ("[A] deliberate or intentional breach of a valid contract, without more, does not constitute a violation of the Unfair Trade Practices Act.").

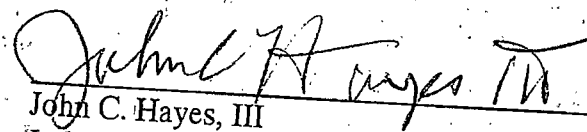
Stonecrest COA is a private, non-profit entity in which only community owners are members. Nothing it does affects the public at large. Its alleged conduct, even if repeated, could not possibly affect anyone other than its own members. Indeed, if Stonecrest COA were never to repair the common elements, it is probable that no one outside the community would even notice. Clearly, the allegations against Stonecrest COA are of private, intracorporate wrongs which do not affect the public interest. See, e.g., Jefferies, 316 S.C. at 527, 451 S.E.2d at 23 ("[C]onduct which only affects the parties to the transaction provides no basis for a [SC]UTPA claim."). Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

jc #28

THEREFORE, the Court finding no genuine issue of material fact that would entitle Plaintiffs to relief, Stonecrest Villas of Tega Cay Condominiums Owners Association, Inc. is entitled to judgment as a matter of law, and

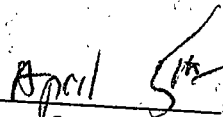
THEREFORE, the Defendant, Stonecrest Villas of Tega Cay Condominiums Owners Association, Inc. is granted summary judgment as to all of Plaintiffs' causes of action directed to it.

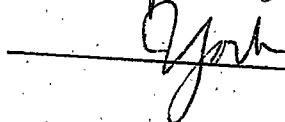
IT IS SO ORDERED!



John C. Hayes, III
Judge, Sixteenth Judicial Circuit

#2

, 2013

, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602326

Juontonio Pinckney	Jospephine Sciacca	Stonecrest Villas of Tega Cay Home Owners Association Inc	Jose Jimenez
Addie Smith	James Barone	M & L Roofing Co LLC	MB Roofing Company
Deborah Barone	Ismael Gonzales	Brock L Fankhauser	Fankhauser Property Group Inc
Valerie Gonzales	Joe Moore	Marco Zertuche	David Carbajal
Sandra Moore		Victorina Cortez	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: The Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
-------------------------	---

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

Order of Substitution As to Pinckney And Musgrave

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/John C. Hayes, III
Circuit Court Judge

2049
Judge Code

3/21/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on April 10, 2013, and a copy mailed first class or placed in the appropriate attorney's box on April 10, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

See Attached Sheet

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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301 S. McDowell Street, Suite 410
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Consolidated Case No. 2010-CP-46-2326

Juontonio Pinckney, et al.)

vs.)

Epcon Communities, Inc., Epcon)
Communities Franchising, Inc.,)
Brock L. Fankhauser, Fankhauser)
Property Group, Inc., Stonecrest)
Villas of Tega Cay, L.L.C., and)
Stonecrest Villas of Tega Cay)
Owners' Association, Inc.,)

Defendants.)

ORDER OF SUBSTITUTION
AS TO PINCKNEY AND MUSGRAVE
PLAINTIFFS

FILED-RECEIVED
2013 APR 10 PM 3:27
DAVID C. HILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the court for oral argument on March 20, 2013. Cameron Halford appeared for the Plaintiff parties. Graham Powell appeared for the defendants Fankhauser Property Group, Inc., Stonecrest, LLC and Brock L. Fankhauser. Curtis Dowling and Matthew Gerrald appeared for Stonecrest Villas of Tega Cay Owners' Association, Inc. ("COA"). At hearing, the COA produced the tax map parcel cards and tax records showing Barbara Musgrave as title owner of unit 748 Stonecrest Villas. Plaintiffs produced title conveyances by Juontonio Pinckney related to unit 809 and contracts bearing David Musgrave's signature related to unit 748. The Musgrave contract reflected that title at the time of closing was to be taken in the name of Barbara Musgrave. Exhibit A.

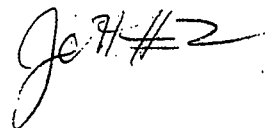
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On March 4, 2013 ~~is~~ court entered an order granting summary judgment to Defendants BLF, FPG and Stonecrest, LLC and dismissing from all causes of action Plaintiffs Juontonio Pinckney and David Musgrave individually based on neither holding title to any property at Stonecrest. Plaintiffs timely filed a motion to reconsider, alter, or

amend which was heard sua sponte by the court and by agreement of counsel on March 20, 2013.

By its motion, Plaintiffs sought reversal of the court's dismissal of the two above listed Plaintiff parties, or in the alternative substitution of the real parties in interest. Defendants objected to the relief sought. The COA objected only to the standing of David Musgrave, as challenged by the COA's motion for summary judgment also heard on March 20, 2013.

Based on the arguments of counsel and the documents presented, the court grants the Plaintiffs' motion over Defendants' objections as to both Plaintiff parties. It is noted that Defendants took the oral examination of Barbara Musgrave and Loren Musgrave on June 15, 2012. Further, the court has examined deeds attached hereto as Exhibit B (Musgrave) and Exhibit C (Pinckney) reflecting the title interests related to units 748 and 809. Based on the attached exhibits, the court finds and concludes that there is capacity and standing as to the individual claims of Pinckney and Musgrave in this lawsuit. SCRCF 17(a). Further, the court finds that substitution would work no prejudice as to the Defendant parties who have deposed both Juontonio Pinckney and Barbara Musgrave at earlier stages of this litigation.

IT IS THEREFORE ORDERED that Juontonio Pinckney is substituted as Juontonio Pinckney, Trustee of The Pinckney Living Trust, which holds title to unit 809 Stonecrest Villas and Barbara Musgrave is substituted for David Musgrave, as the spouse and title owner of unit 748.



IT IS FURTHER ORDERED that Defendants shall have until April 17, 2013 to engage in any discovery related to the standing or substitution of these parties as reflected in this court order.

AND IT IS SO ORDERED this 21st day of March, 2013.

John C. Hayes, III
John C. Hayes, III
Presiding Judge #3



BUYER: Barbara J. Musgrave

BUILDING/UNIT 17B ADDRESS: 748 Ledgestone Court, Tega Cay, SC 29708

PURCHASE PRICE \$ 218,000

DEPOSIT AMOUNT \$ 5,000

CHECK #: 10100

EXHIBIT A OPTIONS \$ 19,565

This Agreement made this 15th day of December, 2006, by and between Stonecrest Villas of Tega Cay, LLC, a South Carolina limited liability company (hereinafter SELLER), and jointly and severally by those designated above as buyer(s) (hereinafter BUYER, whether one or more), who agree as follows:

1. **Purchase of Condominium Unit.** SELLER agrees to sell to BUYER, and BUYER agrees to purchase the proposed horizontal property regime condominium unit(s) (the "Unit," whether one or more) designated above in the proposed Stonecrest Villas of Tega Cay Condominium ("the Condominium") together with that Unit's undivided interest in the common areas and facilities ("the Common Elements") situated in Tega Cay, York County, South Carolina. The Condominium is presently planned to contain a total of ninety (90) Units. The Condominium is more particularly described in the Master Deed.

2. **Purchase Price, Deposit and Terms.** The purchase price of the Unit, including the Exhibit A Options Price are designated above. BUYER's have herewith deposited with SELLER an amount equal to Five Thousand and No/100 Dollars (\$5,000). At closing, the total deposit amount shall be applied upon the purchase price, and BUYER shall pay the balance of the purchase price. Any amount of BUYER's total deposit amount paid to SELLER:

- (a) shall be held by SELLER and: (i) applied upon the purchase price at closing; or (ii) returned to BUYER if SELLER fails or refuses to perform SELLER's part of this Agreement or any contingency contained herein is not met or waived; or (iii) paid to SELLER as but such payment shall not limit the amount of damages otherwise recoverable by SELLER as the result of BUYER'S breach.
- (b) The Exhibit A Options Price designated above corresponds with the price of the options selected by BUYERS as shown on the attached Exhibit A as of the date of this Agreement. The Exhibit A form includes two parts, "Phase I" and "Phase II." Each of Exhibit A Phase I and Exhibit A Phase II shall be completed by BUYERS simultaneously with this Agreement. However, if the



WITHIN THREE (3) DAYS FOLLOWING THE EXECUTION OF THIS AGREEMENT AND RECEIPT OF MASTER DEED, BUYER HAS THE ABSOLUTE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY.

PURCHASER ACKNOWLEDGES THAT, PURSUANT TO THIS CONTRACT, THE DEVELOPER ("SELLER") MAY WITHDRAW AND THEN USE FOR CONSTRUCTION AND DEVELOPMENT OF THE CONDOMINIUM PROPERTY ANY DEPOSIT OR DOWN PAYMENT THAT THE PURCHASER MAKES PRIOR TO CLOSING.

SELLER:

Stonecrest Villas of Tega Cay, LLC,
a SO limited liability company

By: Louise Hunter 12/15/06
Authorized Sales Agent Date

By: _____
Brock L. Fankhauser, Member Date

BUYER:

[Signature] 12.15.06
Buyer Date
Barbara Musgrave 12/18/06
Buyer Date

This Agreement is not binding upon SELLER unless signed by a Member/ Manager of SELLER.

BUYER'S CONTACT INFORMATION

Name(s) to appear on the deed:

607 Uplands Camp Road
(Street Address)

Barbara J. Musgrave

Kettering OH 45419
(City) (State) (Zip)

Home Phone: Private: (937) 293-2928

Work Phone: (937) 252-3643 x13

Cell Phone: _____

Email: pdavid@sbcglobal.net

P. DAVID MUSGRAVE 12-01		66-7013/2021 5126X097	10100
1417 E SECOND ST. LAWYTON, UT 84043		DATE 12.15.06	
Storecrest Villa		on	
PAID TO THE ORDER OF Tega C. Ay		\$ 5000	
FIVE THOUSAND & 00/100		DOLLARS 00/100	
Wright Patt.			
MEMO Deposit			
121 22794081		5380039910100	

000341545
RECORDED 03/06/2007 10:40:16AM
Bk:08883 Pg:00003 Pages:3
Fee:10.00 State:621.40
Prepared by: Brock L. Fankhauser, Esq.
Purser & Associates, LLC
2760 East W.T. Harris Blvd. Suite 200
Charlotte, NC 28213

Excise Stamps: \$907.00

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TITLE TO REAL ESTATE/GENERAL
WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Stonecrest Villas of Tega Cay, LLC, in consideration of the sum of Two-Hundred and Thirty-Eight Thousand, Seven Hundred and Fifteen Dollars and 00/100 (\$238,715,000.00) to it in hand paid at and before the sealing of these presents by Brock L. Fankhauser, Member/Manager of Stonecrest Villas of Tega Cay, LLC, whose address is 300 East John Street, #126, Matthews, NC 28105, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Barbara J. Musgrave (Married), whose address is 607 Uplands Camp Road, Kettering, OH 45419, her heirs/successors and assigns the following described property to wit:

RECORDED
YORK COUNTY

See Exhibit A attached hereto and incorporated herein by reference. TAX ASSESSOR'S OFFICE

DATE 3-6-07
TAX MAP NO. 644-7-1-24
INITIALS TS / 9/17

The within described property is conveyed subject to existing easements and to restrictive covenants, if any, appearing in the chain of title or apparent upon a reasonable inspection of the premises, which said restrictions, if any, are not intended to be reimposed hereby.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Barbara J. Musgrave (Married), her heirs/successors and assigns forever.

And the said Stonecrest Villas of Tega Cay, LLC does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said Barbara J. Musgrave (Married), her heirs/successors and assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Stonecrest Villas of Tega Cay, LLC has caused these presents to be executed in its name by Brock L. Fankhauser, its Member, this 5th day of March, in the year of our Lord two thousand seven (2007) and in the two hundred and twenty-ninth year of the

BK08883PG0003

Exhibit - B
Musgrave Deed

Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

STONECREST VILLAS OF TEGA CAY, LLC

By: Brock L. Fankhauser
Name: Brock L. Fankhauser
Title: Member

Witness: Hope Travers

Witness: Michelle England

STATE OF NORTH CAROLINA)
COUNTY OF MECKLENBURG)

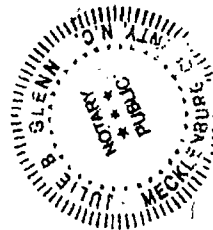
PERSONALLY APPEARED before me the undersigned witness, who, in oath, says that (s)he saw the within named STONECREST VILLAS OF TEGA CAY, LLC, by BROCK L. FANKHAUSER as MEMBER, sign the within Deed, and the said Corporation, by said officer, seal the said Deed, and, as its act and deed delivery the same, and that (s)he along with Hope Travers, witnessed the execution thereof.

Michelle England
Witness

SWORN to before me this 5TH
day of March, A.D. 2007

Julie B. Glenn
Notary Public for North Carolina
Commission Expires: 11/20/08

GRANTEE:



BK08883PG0004

EXHIBIT "A"

BEING all of Apartment/Unit 748, Building 17, of Stonecrest Villas of Tega Cay Horizontal Property Regime, a Condominium, according to the plans of said apartment by Michael J. Fitzpatrick, Registered Architect, State of South Carolina, dated 2/16/07, and recorded with the Master Deed. Said apartment/unit of Stonecrest Villas of Tega Cay Horizontal Property Regime is more fully described on a survey entitled "Stonecrest Villas of Tega Cay Condominium, Map 1, Phase 1", prepared by E. Daniel Wooten, PLS, dated January 4, 2007, and recorded in the Office of the Clerk of Court for York County in Plat Book D192, at Page 1.

Subject to all of the provisions of the Master Deed thereof dated February 12, 2007, and recorded in the Office of the Clerk of Court for York County in Deed Book 8852, at Page 149.

Together with an undivided interest in the common elements and all appurtenances thereto according to said Master Deed and the Grantees assume and agree to observe and perform their obligations under said Master Deed, including but not limited to the payment of assessments for the maintenance and operation of the dwelling and condominium. Subject to the provisions of the By-Laws of Stonecrest Villas of Tega Cay Horizontal Property Regime, and to all other reservations, restrictions, and rights of way of record, including those as set out on the aforesaid documents.

Derivation: Deed Book 8065, Page 192, Office of the Clerk of Court for York County.

(MUSGRAVEBARBARA0703.PFD/MUSGRAVEBARBARA0703/19)

BR08883PG0005

RECORDED

YORK COUNTY

CLERK'S OFFICE

6-9-10
644-7-1-64
INITIALS 131CMK

201000102363
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
06-09-2010 At 08:55 am.
DEED & CL 10.00
State Tax .00
County Tax .00
OR Vol 11436 Page 230 - 233

[Space Above This Line For Recording Data]

QUIT CLAIM DEED

**THE PREPARER OF THIS DOCUMENT NEITHER CERTIFIED TITLE TO NOR PARTICIPATED
IN THE CLOSING OF THE PROPERTY DESCRIBED HEREIN**

Excise Tax: \$0.00 EXEMPT

This Document Prepared By:

JEAN CROUGHAN GILLIS
Gillis Law Firm, P.A.
15105-D John J. Delaney Drive
#102
Charlotte, NC 28277
Tel: 704-469-3525

After Recording, Mail To:

JEAN CROUGHAN GILLIS
Gillis Law Firm, P.A.
15105-D John J. Delaney Drive
#102
Charlotte, NC 28277
Tel: 704-469-3525

Mail Tax Statements To:

Mr. JUONTONIO K. PINCKNEY
809 Ledgestone Court
Tega Cay, SC 29708

THIS QUIT CLAIM DEED made this 14th day of April, 2010 by and between
JUONTONIO K. PINCKNEY, a single man, whose post office address is 809 Ledgestone Court, Tega Cay, SC
29708 ("Grantor"),

and

JUONTONIO K. PINCKNEY, a single man, as Life Tenant, with full power and authority in him to occupy the property during his lifetime without any liability for waste, with full power and authority in him to sell, convey, mortgage, lease and otherwise dispose of the property described below in fee simple, with or without consideration, without joinder of the remaindermen, and to retain absolutely any and all proceeds derived therefrom; upon the death of the Life Tenant, the Remainder, if any, to the SUCCESSOR TRUSTEE(S) OF THE PINCKNEY LIVING TRUST DATED MARCH 16, 2010, and any amendments thereto, whose post office address is 809 Ledgestone Court, Tega Cay, SC 29708, (collectively, "Grantee"):

WITNESSETH: That the Grantor, for and in consideration of the sum of Five (\$5.00) Dollars, has bargained and sold and by these presents does bargain, sell, remise, release, and forever quitclaim unto said Grantee, and his heirs and/or successor and assigns premises in YORK County, South Carolina, and more particularly described as follows:

Exhibit - C
Pinckney Deed

BK 11436 P00230

SRGA Vol.2 p. 0434

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

More commonly known as 809 Ledgestone Court, Tega Cay, SC 29708.

Assessor's Parcel Number 644-07-01-064. Prior Recorded Doc. Ref.: Quit Claim Deed recorded
6-9-10 in Book 11436, Page 226.

SUBJECT TO: Restrictions, Conditions, Covenants, Rights, Rights of Way, and Easements now of record, if any.

TO HAVE AND TO HOLD, the above described premises with all the appurtenances thereto belonging, or in anywise appertaining, unto the Grantee, his heirs and/or successor and assigns forever (whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees) (singular shall include the plural and masculine shall include the feminine or the neuter).

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed the day and year first above written.

Walter Gillis
Witness #1 Signature

Walter Gillis
Witness #1 Printed Name

Juontonio K. Pinckney
JUONTONIO K. PINCKNEY

Jean C. Gillis
Witness #2 Signature

Jean C. Gillis
Witness #2 Printed Name

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I JEAN C. GILLIS, a Notary Public for Mecklenburg County, North Carolina, do hereby certify that JUONTONIO K. PINCKNEY personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this 14th day of April, 2010.

(Official Seal)

Jean C. Gillis
Jean C. Gillis, Notary Public
My commission expires: May 7, 2014

JEAN C. GILLIS
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
May 07, 2014

BK 11436 PG 231

Exhibit "A"

BEING all of Apartment/Unit 809, Building 23, of Stonecrest Villas of Tega Cay Horizontal Property Regime, a Condominium, according to the plans of said apartment by Michael J. Fitzpatrick, Registered Architect, State of South Carolina, dated 2/16/07, and recorded with the Master Deed. Said apartment/unit of Stonecrest Villas of Tega Cay Horizontal Property Regime is more fully described on a survey entitled "Stonecrest Villas of Tega Cay Condominium, Map 5, Phase 1", prepared by E. Daniel Wooten, PLS, dated February 21, 2008, and recorded in the Office of the Clerk of Court for York County in Plat Book D297, Page 2.

Subject to all of the provisions of the Master Deed thereof dated February 12, 2007, and recorded in the Office of the Clerk of Court for York County in Deed Book 8852, at Page 149, and supplemented in the First Amendment to the Master Deed dated June 25, 2007 and recorded in the Office of the Clerk of Court of York County in Deed Book 9215, Page 138, and supplemented in the Second Amendment to the Master Deed dated August 17, 2007 and recorded in the Office of the Clerk of Court of York County in Deed Book 9378, Page 1, and supplemented in the Third Amendment to the Master Deed dated October 23, 2007 in the Office of the Clerk of Court of York County in Deed Book 9584, Page 220, and supplemented in the Fourth Amendment to the Master Deed dated February 5, 2008 and recorded February 21, 2008 in the Office of the Clerk of Court of York County in Deed Book 9823, Page 175.

Together with an undivided interest in the common elements and all appurtenances thereto according to said Master Deed and the Grantees assume and agree to observe and perform their obligations under said Master Deed and First Amendment, including but not limited to the payment of assessments for the maintenance and operation of the dwelling and condominium. Subject to the provisions of the By-Laws of Stonecrest Villas of Tega Cay Horizontal Property Regime, and to all other reservations, restrictions, and rights of way of record, including those as set out on the aforesaid documents.

DERIVATION: Being a portion of that property conveyed by Deed from Stonecrest Enterprises, LLC to Stonecrest Villas of Tega Cay, LLC dated 5/18/06 and recorded 5/26/06 in Book 8065, Page 192, Office of the Clerk of Court of York County, South Carolina.

201000102562
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
06-09-2010 At 08:55 am.
DEED Q CL 10.00
State Tax .00
County Tax .00
DR Vol 11436 Page 226 - 229

RECORDED
YORK COUNTY
TAX RECORDER'S OFFICE

DATE 6/9/10
TAX MAP NO. 644-7-1-67
INITIALS TS/CMC

[Space Above This Line For Recording Data]

QUIT CLAIM DEED

**THE PREPARER OF THIS DOCUMENT NEITHER CERTIFIED TITLE TO NOR
PARTICIPATED IN THE CLOSING OF THE PROPERTY DESCRIBED HEREIN**

Excise Tax: \$0.00 EXEMPT

This Document Prepared By:
JEAN CROUGHAN GILLIS
Gillis Law Firm, P.A.
15105-D John J. Delaney Drive
#102
Charlotte, NC 28277
Tel: 704-469-3525

After Recording, Mail To:
JEAN CROUGHAN GILLIS
Gillis Law Firm, P.A.
15105-D John J. Delaney Drive
#102
Charlotte, NC 28277
Tel: 704-469-3525

Mail Tax Statements To:
Ms. CELLA D. PINCKNEY
809 Ledgestone Court
Tega Cay, SC 29708

THIS QUIT CLAIM DEED made this 14th day of April, 2010 by and between CELLA
D. PINCKNEY, whose post office address is 809 Ledgestone Court, Tega Cay, SC 29708 ("Grantor"),

and

JUONTONIO K. PINCKNEY, a single man, whose post office address is 809 Ledgestone Court, Tega
Cay, SC 29708, (collectively, "Grantee"):

WITNESSETH: That the Grantor, for and in consideration of the sum of Five (\$5.00) Dollars, has
bargained and sold and by these presents does bargain, sell, remise, release, and forever quitclaim unto
said Grantee, and his heirs and/or successor and assigns premises in YORK County, South Carolina, and
more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

BK 11436 P00226

S-ROA Vol.2 p. 0457

More commonly known as 809 Ledgestone Court, Tega Cay, SC 29708.

Assessor's Parcel Number 644-07-01-064. Prior Recorded Doc. Ref.: Title to Real Estate/General Warranty Deed recorded 2/28/08 in Book 09841, Page 0102.

SUBJECT TO: Restrictions, Conditions, Covenants, Rights, Rights of Way, and Easements now of record, if any.

TO HAVE AND TO HOLD, the above described premises with all the appurtenances thereto belonging, or in anywise appertaining, unto the Grantee, his heirs and/or successor and assigns forever (whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees) (singular shall include the plural and masculine shall include the feminine or the neuter) so that neither the Grantor nor Grantor's heirs, nor any person claiming under Grantor or them, shall at any time hereafter, by any way of means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed the day and year first above written.

LaSika Phillips
Witness #1 Signature

LaSika Phillips
Witness #1 Printed Name

CELLA D. PINCKNEY
CELLA D. PINCKNEY

Sharon Bartha
Witness #2 Signature

Sharon Bartha
Witness #2 Printed Name

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort

I, La Sandra G. Young, the undersigned Notary Public, do hereby certify that CELLA D. PINCKNEY personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this 14th day of April, 2010.

(Official Seal)

La Sandra G. Young
Notary Public
My commission expires: 1/24/2015

BK 11436 P00227

Exhibit "A"

BEING all of Apartment/Unit 809, Building 23, of Stonecrest Villas of Tega Cay Horizontal Property Regime, a Condominium, according to the plans of said apartment by Michael J. Fitzpatrick, Registered Architect, State of South Carolina, dated 2/16/07, and recorded with the Master Deed. Said apartment/unit of Stonecrest Villas of Tega Cay Horizontal Property Regime is more fully described on a survey entitled "Stonecrest Villas of Tega Cay Condominium, Map 5, Phase 1", prepared by E. Daniel Wooten, PLS, dated February 21, 2008, and recorded in the Office of the Clerk of Court for York County in Plat Book D297, Page 2.

Subject to all of the provisions of the Master Deed thereof dated February 12, 2007, and recorded in the Office of the Clerk of Court for York County in Deed Book 8852, at Page 149, and supplemented in the First Amendment to the Master Deed dated June 25, 2007 and recorded in the Office of the Clerk of Court of York County in Deed Book 9215, Page 138, and supplemented in the Second Amendment to the Master Deed dated August 17, 2007 and recorded in the Office of the Clerk of Court of York County in Deed Book 9378, Page 1, and supplemented in the Third Amendment to the Master Deed dated October 23, 2007 in the Office of the Clerk of Court of York County in Deed Book 9584, Page 220, and supplemented in the Fourth Amendment to the Master Deed dated February 5, 2008 and recorded February 21, 2008 in the Office of the Clerk of Court of York County in Deed Book 9823, Page 175.

Together with an undivided interest in the common elements and all appurtenances thereto according to said Master Deed and the Grantees assume and agree to observe and perform their obligations under said Master Deed and First Amendment, including but not limited to the payment of assessments for the maintenance and operation of the dwelling and condominium. Subject to the provisions of the By-Laws of Stonecrest Villas of Tega Cay Horizontal Property Regime, and to all other reservations, restrictions, and rights of way of record, including those as set out on the aforesaid documents.

DERIVATION: Being a portion of that property conveyed by Deed from Stonecrest Enterprises, LLC to Stonecrest Villas of Tega Cay, LLC dated 5/18/06 and recorded 5/26/06 in Book 8065, Page 192, Office of the Clerk of Court of York County, South Carolina.

000339912
RECORDED 02/26/2007 10:47:26AM
Bk:08852 Pg:00149 Pages:70
Fee:76.00 State:0.00
County:0.00 Exempt:_____
David Hamilton, Clerk of Court
York County, SC

CERTIFIED TO BE A TRUE COPY

**MASTER DEED
OF
STONECREST VILLAS OF TEGA CAY
HORIZONTAL PROPERTY REGIME
February 12, 2007**

Drawn by: Stonecrest Villas of Tega Cay, LLC

Please Return to:

Julie B. Glenn, Attorney at Law

2760 E.W.T. Harris Blvd. #200

Charlotte, NC 28213

STATE OF SOUTH CAROLINA

COUNTY OF YORK

MASTER DEED OF
STONECREST VILLAS OF TEGA CAY
HORIZONTAL PROPERTY REGIME

This Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime (this "Master Deed") is made this 12th day February, 2007, by STONECREST VILLAS OF TEGA CAY, LLC, a South Carolina limited liability company ("Declarant"), pursuant to the provisions of Title 27, Chapter 31, Article 1 of the South Carolina Code of Laws, the "Horizontal Property Act."

STATEMENT OF PURPOSE

Declarant is the fee simple owner of a parcel of real estate containing a total of approximately 23.5 acres, located in Tega Cay, York County, South Carolina, as more particularly described on Exhibit A attached hereto ("Land"). Declarant has constructed on the Land six (6) buildings ("Buildings"), containing four Condominium Units each, totaling twenty-four Condominium Units in whole. Declarant has also constructed common amenities on the Land such as sidewalks, driveways, landscaped areas and other improvements. In addition to the Buildings, Declarant plans subsequent phases of development, as needed, totaling sixty-six (66) Condominium Units ("Development Units"); and if such additional buildings are completed, each will be included within the defined term "Buildings". Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the Horizontal Property Act.

In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the Common Areas and facilities on the Property, of administering and enforcing the covenants and restrictions created in this Master Deed, and of levying, collecting and disbursing the assessments and charges created in this Master Deed, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of Condominium Units within the Property and to promote the recreation, health, safety and welfare of the Unit Owners. In order to accomplish the foregoing, Declarant is entering into this Master Deed.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into Condominium Units, and shall be deemed to run with the land to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their successors, heirs and assigns.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Master Deed:

Section 1.1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., filed with the Secretary of State of South Carolina, as amended from time to time. A copy of the initial Articles of Incorporation is attached to this Master Deed as Exhibit E and incorporated herein by this reference.

Section 1.2. "Apartment" shall mean and refer to the part of the property intended for any type of independent use in a building, as more particularly described in Article IV of this Master Deed, that is the subject of individual ownership by an Owner. "Apartment" is interchangeable with the term "Unit" as defined in Section 1.32.

Section 1.3. "Association" shall mean and refer to Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., a corporation organized and existing under the South Carolina Nonprofit Corporation Act of 1994 pursuant to and in accordance with this Master Deed, the Bylaws, and the Horizontal Property Act.

Section 1.4. "**Buildings**" shall mean and refer to the six (6) completed buildings containing four (4) Condominium Units each, and all Development Units upon completion of construction.

Section 1.5. "**Bylaws**" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit F, and all amendments to such bylaws which may from time to time be adopted.

Section 1.6. "**Common Elements**" shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Master Deed.

Section 1.7. "**Common Elements Interest**" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth in Exhibit B attached hereto. The Common Elements Interests shall be used to allocate, among all Units, the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings, and shall be used to determine the voting rights and each Unit's share of Common Expenses. In the event that the Declarant elects to exercise its Development Rights under Article VI of this Master Deed, or subdivide, recombine or reconfigure the Units, this Master Deed shall be revised by an Amendment to Master Deed as set forth under Article VI to provide for a new allocation of Common Elements Interests which shall substitute and replace Exhibit B attached hereto.

Section 1.8. "**Common Expenses**" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Master Deed, the Bylaws, and the Horizontal Property Act.

Section 1.9. "**Community-Wide Standard**" shall mean and refer to the standard of conduct, or other activity generally prevailing within the Condominium, which may be more specifically determined by the Executive Board.

Section 1.10. "**Condominium**" shall mean and refer to the Stonecrest Villas of Tega Cay Horizontal Property Regime, as established by the submission of the Property to the terms of the Horizontal Property Act by this Master Deed, and such other property as may hereafter be submitted to the provisions of the Horizontal Property Act by supplement or amendment to this Master Deed, together with all buildings and improvements thereon.

Section 1.11. "**Condominium Documents**" shall mean and refer to this Master Deed, the Articles of Incorporation, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.12. "**Declarant**" shall mean and refer to Stonecrest Villas of Tega Cay, LLC, a South Carolina limited liability company. Following recordation of a document transferring to another person or entity all or some of the Declarant Rights, pursuant to Section 7.2 of this Master Deed, the term "Declarant" also shall mean and refer to that transferee.

Section 1.13. "**Declarant Control Period**" shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including the Development Units and any such Units to be annexed by Amendments to Master Deed) to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; (iii) two (2) years after any Development Right provided in Article VI was last exercised; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.14. "**Development Rights**" shall mean and refer to the rights preserved by Declarant in Article VI of this Master Deed to construct new Units or subdivide existing Units in the Buildings, in accordance with the terms and conditions set forth in Article VI.

Section 1.15. "**Development Units**" shall mean and refer to any Units constructed pursuant to the Development Rights preserved by Declarant in Article VI of this Master Deed.

Section 1.16. "Director" shall mean and refer to any elected or appointed member of the Executive Board.

Section 1.17. "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Horizontal Property Act.

Section 1.18. "Horizontal Property Act" shall mean and refer to Title 27, Chapter 31, Article 1 et seq. of the South Carolina Code of Laws.

Section 1.19. "Land" shall mean and refer to the real property subject to this Master Deed, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.20. "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by this Master Deed, or the terms of South Carolina Code of Laws section 27-31-20(g), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Master Deed, and as depicted on the Plans.

Section 1.21. "Master Deed" shall mean and refer to this Master Deed, as it may be amended from time to time in the future.

Section 1.22. "Member" shall mean and refer to all members of the Association.

Section 1.23. "Mortgage" shall mean and refer to a mortgage, deed to secure debt, or deed of trust constituting a first lien on a Unit.

Section 1.24. "Mortgagee" shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVII.

Section 1.25. "Occupant" shall mean and refer to any person occupying all or any portion of a Unit for any period of time, regardless of whether such person is a tenant or the Owner of such Unit.

Section 1.26. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.27. "Plans" shall mean and refer to the surveys, plans and specifications of the Buildings and Property, prepared by a company of Declarant's choice, and recorded under the name of the Condominium in the Unit Ownership File under the File Number stamped on the first page of this Master Deed in the Clerk of Court's Office of York County, and any amendments or supplements to those Plans that may be attached to any Amendment to Master Deed required by Article VI of this Master Deed if Declarant exercises its Development Rights to create additional or subdivide Units. The Plans are attached as Exhibit C and hereby incorporated into this Master Deed.

Section 1.28. "Property" shall mean and refer to the Land, the Buildings and all other improvements and structures located on the Land, and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.29. "South Carolina Nonprofit Corporation Act" shall mean and refer to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code of Laws section 33-31-101 et seq.

Section 1.30. "Declarant Rights" shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VII of this Master Deed.

Section 1.31. **"Square Footage"** shall mean and refer to the square footage of each Unit as shown on the Plans.

Section 1.32. **"Unit"** shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Master Deed, that is the subject of individual ownership by an Owner. "Unit" is interchangeable with the term "Apartment" as defined in Section 1.3.

In addition, the definitions set forth in South Carolina Code of Laws Title 27, Chapter 31, Section 20 are incorporated in this Master Deed by reference, and the terms defined therein shall have the meanings set forth therein when used in this Master Deed or the Condominium Documents, unless those terms are expressly defined otherwise in this Master Deed, in which case this Master Deed shall control, or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II DESIGNATION OF CONDOMINIUM

Section 2.1. **Location and Designation.** The Land on which the Buildings and other improvements are located is located entirely in York County, South Carolina, contains approximately 23.5 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Land is subjected to the terms of the Horizontal Property Act by this Master Deed.

Section 2.2. **Name.** The name of the Condominium is Stonecrest Villas of Tega Cay Horizontal Property Regime.

ARTICLE III DESCRIPTION OF BUILDINGS

The Buildings are six (6) buildings, and those buildings constructed pursuant to the Development Rights, if any, with a ground or garage level only, each of which contains four (4) Units (except Building 12, which may have two (2) Units), and are more particularly described in the Plans, which show all particulars of the Buildings. The Plans contain a certification by Architectural Alliance, a South Carolina Licensed Architect, that the Plans contain all the information required by South Carolina Code of Laws Title 27, Chapter 31, Section 110.

ARTICLE IV DESCRIPTION OF UNITS/APARTMENTS

Section 4.1. **Units/Apartments.** The location of Units within the Buildings and their dimensions are shown on the Plans. There are four (4) Units in each building. The identifying numbers for such Units are set forth on Exhibit D and on the Plans. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Horizontal Property Act and the Condominium Documents. If Declarant exercises its Development Rights to construct, subdivide or recombine Units, the Amendment to Master Deed required by Section 6.3 of this Master Deed shall contain a new Exhibit B and revised set of Plans, which shall contain new identifying numbers for the Units thereby created.

Section 4.2. **Unit Boundaries.** The boundaries of each Unit are as follows:

(a) **Upper Boundary.** The horizontal plane of the lower face of the finished ceiling surface, extended to the intersection of the vertical demising boundaries. As depicted on the Plans, the ceilings in certain portions of the Unit may be at different elevations; in such cases, the upper boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit. In addition, in certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated, unfinished upper surfaces of the floor facing the interior of each Unit extending to the intersection of the vertical demising boundaries. As depicted on the Plans, the floor in certain portions of the Unit may be at different elevations; in such cases, the lower boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Demising Boundaries: The vertical planes which include the front, unfinished surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

All lath, flooring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. If any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

Section 4.3. General Description of Units. The Condominium consists of six (6) buildings with a ground or garage level only, as shown on the Plans attached hereto as Exhibit C. Buildings 1, 2, 3, 4, 17, and 18 contain four (4) units each. There are four types of Units, designated as "Abbey", "Canterbury", "Villa", and "Chateau", more particularly described as follows and as more particularly shown on the Plans:

(a) Type "Abbey"— Building 1, Unit 1-707, Building 2, Units 2-717 and 2-721, Building 3, Unit 3-731 and Building 18, Units 18-728 and 18-724, are type "Abbey" Units. These Units contain approximately 1,718 square feet in heated space and an attached 2-car garage which has approximately 440 square feet. Each such Unit consists of a four season sunroom/veranda, living room, dining room, kitchen, pantry, laundry room, master bedroom, master bath, second bedroom, second bath, closets and a garage, as more particularly shown on the Plans.

(b) Type "Canterbury"— Building 1, Units 1-705, 1-711 and 1-709, Building 2, Units 2-715 and 2-719, Building 3, Units 3-727, 3-725 and 3-729, and Building 18, Units 18-730 and 18-726, are type "Canterbury" Units. These Units contain approximately 1,861 square feet in heated space and an attached 2-car garage which has approximately 440 square feet. Each such Unit consists of a four season sunroom/veranda, living room, dining room, kitchen, pantry, laundry room, master bedroom, master bath, second bedroom, second bath, den/third bedroom, closets and a garage, as more particularly shown on the Plans.

(c) Type "Villa"— Building 17, Units 17-750 and 17-746, are type "Villa" Units. These Units contain approximately 1,325 square feet in heated space and an attached 2-car garage which has approximately 440 square feet. Each such Unit consists of a living room, dining room, kitchen, pantry, laundry room, master bedroom, master bath, second bedroom, second bath, closets and a garage, as more particularly shown on the Plans.

(d) Type "Chateau"— Building 17, Units 17-748 and 17-744, are type "Chateau" Units. These Units contain approximately 1,926 square feet in heated space and an attached 2-car garage which has approximately 440 square feet. Each such Unit consists of a living room, dining room, kitchen, pantry, laundry room, master bedroom, master bath, second bedroom, half bath, third bedroom on the second level, full bathroom on the second level, closets and a garage, as more particularly shown on the Plans.

Each Unit type and the location of each Unit is more fully shown on the Plat and Plans attached to this Master Deed as Exhibit C. Each Unit is designated for the purpose of any conveyance, lease or other instrument affecting the title thereof by a number designating the specific building which contains the particular Unit followed by a hyphen and a number designating the particular Unit in such building, e.g., Building 11, Unit 11-806 (Unit 806 of the building designated as Building 11 on the Plat and/or Plans).

ARTICLE V COMMON ELEMENTS

Section 5.1. Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All improvements located on the Land outside of the Buildings, including without limitation, landscaped areas, surfaced parking areas, paved roads, sidewalks, curbs and gutters.
- (c) All portions of the Buildings located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building.
- (e) Any public connections and meters, vaults, and manholes for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (g) The yards, shrubs, exterior lights, signs, mailboxes and storm drainage systems.
- (h) The clubhouse, swimming pool, deck and all associated equipment, furniture, accessories and appliances contained therein and/or used for servicing the same.

Section 5.2. Limited Common Elements.

- (a) The Limited Common Elements shall be composed of the following:
 - (i) Those portions of any chute, flue, duct, wire, meter, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.
 - (ii) Any shutters, awnings, window boxes, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.
 - (iii) Any stoops leading as access to a unit or patio designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.
 - (iv) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.
 - (v) Any driveway which provides access to a Unit(s) shall be Limited Common Elements allocated exclusively to that Unit(s).
 - (vi) Each Unit is assigned one (1) mailbox which will be located in a mailbox area of the Condominium and shall be Limited Common Elements allocated exclusively to the Unit that it serves.

(vii) Those areas indicated as Limited Common Elements on the Plans, which shall be allocated to the Unit to which such Limited Common Elements are servicing.

(b) Assignment and Reassignment. The Owners hereby delegate authorization to the Executive Board, without a membership vote, to assign and to reassign Limited Common Elements, as the Executive Board shall from time to time determine, in its sole discretion. Notwithstanding anything herein to the contrary, the Executive Board is not authorized to assign or reassign the Limited Common Elements without the consent of Declarant for so long as Declarant owns any portion of the Condominium.

Section 5.3. Undivided Interests of Owners in Common Elements. Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements interest for that Unit as set forth on Exhibit B attached hereto. The percentage of undivided interest of each Owner in the Common Elements is appurtenant to the Unit owned by the Owner and may not be separated from the Unit to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the Unit whether or not expressly mentioned or described in a conveyance or other instrument describing Unit. The Common Elements interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Master Deed. In particular, if Declarant exercises its Development Rights to create additional Units, the Common Elements interest for each Unit shall be adjusted in accordance with the equation set forth in Exhibit B, and the amendment to Master Deed required by Section 6.3 of this Master Deed shall contain a new allocation of Common Elements interest which shall be substituted for Exhibit B attached to this Master Deed. References in this Master Deed to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. Except as otherwise provided for herein, the allocation of use of Limited Common Elements to the Units as provided for in this Master Deed shall not be altered without the unanimous consent of the Owners whose Units are affected.

The Common Elements shall remain undivided, and no Owner or any other person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in the Horizontal Property Act.

Section 5.4. Maintenance of Common Elements.

(a) The Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner.

(b) The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Master Deed, the Bylaws, or the Horizontal Property Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated.

Section 5.5. WARRANTY. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ISSUANCE OF THE CERTIFICATE OF OCCUPANCY BY THE CITY OF TEGA CAY FOR EACH PHASE OF THE PROJECT, DECLARANT OR ITS CONTRACTOR WILL, AT NO COST TO THE ASSOCIATION OR ANY UNIT OWNER IN THE PARTICULAR PHASE, REPAIR OR REPLACE ANY PORTION OF THE COMMON ELEMENTS AND LIMITED COMMON ELEMENTS, EXCEPT FIXTURES, FURNITURE, ACCESSORIES, AND APPLIANCES COVERED BY A WARRANTY OF MANUFACTURERS AND DEALERS, WHICH ARE DEFECTIVE AS TO MATERIAL OR WORKMANSHIP. THE LIABILITY OF THE DECLARANT IS EXPRESSLY LIMITED TO SUCH REPAIRS OR REPLACEMENT AND THE DECLARANT MAKES NO OTHER WARRANTIES EXPRESSED OR IMPLIED, (INCLUDING BUT NOT LIMITED TO, NO WARRANTY OF HABITABILITY NOR FITNESS FOR PURPOSE) OTHER THAN THE EXPRESS WARRANTY OF TITLE CONTAINED HEREIN.

**ARTICLE VI
DEVELOPMENT RIGHTS**

Section 6.1. Creation of New Units and Common Elements: Addition of Additional Land. Declarant has included within the Condominium certain real property and improvements that comprise Phase I of the Stonecrest Villas of Tega Cay Horizontal Property Regime development. Phase I consists of six (6) buildings, with each building containing four (4) Units. The Buildings and Units in Phase I of the development are more particularly described as follows:

Building 1	Units 1-707; 1-705; 1-711; 1-709
Building 2	Units 2-717; 2-715; 2-721; 2-719
Building 3	Units 3-727; 3-725; 3-731; 3-729
Building 4	Units 4-876; 4-874; 4-880; 4-878
Building 17	Units 17-750; 17-748; 17-746; 17-744
Building 18	Units 18-730; 18-728; 18-726; 18-724

The Declarant also plans on developing additional Phases that will consist of the following Buildings and Units:

Building 5	Units 5-866; 5-864; 5-870; 5-868
Building 6	Units 6-856; 6-854; 6-860; 6-858
Building 7	Units 7-846; 7-844; 7-850; 7-848
Building 8	Units 8-834; 8-840; 8-838; 8-836
Building 9	Units 9-824; 9-830; 9-828; 9-826
Building 10	Units 10-814; 10-820; 10-818; 10-816
Building 11	Units 11-804; 11-810; 11-808; 11-806
Building 12	Units 12-794; 12-796
Building 13	Units 13-790; 13-788; 13-786; 13-784
Building 14	Units 14-780; 14-778; 14-776; 14-774
Building 15	Units 15-770; 15-768; 15-766; 15-764
Building 16	Units 16-760; 16-758; 16-756; 16-754
Building 19	Units 19-755; 19-761; 19-759; 19-757
Building 20	Units 20-829; 20-827; 20-825; 20-831
Building 21	Units 21-819; 21-817; 21-815; 21-821
Building 22	Units 22-765; 22-771; 22-769; 22-767
Building 23	Units 23-809; 23-807; 23-805; 23-811

The ownership of each Unit shall include an undivided share in and to the Common Elements as defined herein and as set forth in Exhibit B attached hereto and made a part hereof by reference. Voting rights and values shall also be determined by reference to the percentages set forth for each Unit as shown on Exhibit B.

(a) The Declarant reserves the right to annex and include additional property, improvements and Units and to amend this Master Deed by its sole action and in its sole discretion for the purposes of creating additional Phases II, III, IV and V of the Condominium. Phase II, if so annexed, will include property and improvements including four (4) buildings containing a total of sixteen (16) Units numbered Building 5, Units 5-866, 5-864, 5-870 and 5-868; Building 6, Units 6-856, 6-854, 6-860 and 6-858; Building 16, Units 16-760, 16-758, 16-756 and 16-754; Building 22, Units 22-765, 22-771, 22-769 and 22-767. Should the Declarant determine to so annex and include Phase II, it hereby covenants that the necessary annexation and amendment to the Master Deed and the election to proceed with Phase II shall be made not later than July 1, 2007, and the necessary annexation and amendment shall be filed with York County, South Carolina no later than that date. Phase III, if so annexed, will include property and improvements including four (4) buildings containing a total of sixteen (16) Units numbered Building 15, Units 15-770, 15-768, 15-766 and 15-764; Building 14, Units 14-780, 14-778, 14-776 and 14-774; Building 23, Units 23-809, 23-807, 23-805, and 23-811; Building 19, Units 19-755, 19-761, 19-759 and 19-757. Should the Declarant determine to so annex and include Phase III, it hereby covenants that the necessary annexation and amendment to the Master Deed and the election to proceed with Phase III shall be made not

later than December 1, 2007, and the necessary annexation and amendment shall be filed with York County, South Carolina no later than that date. Phase IV, if so annexed, will include property and improvements including five (5) buildings containing a total of sixteen (16) Units numbered Building 7, Units 7-846, 7-844, 7-850 and 7-848; Building 13, Units 13-790, 13-788, 13-786 and 13-784; Building 20, Units 20-829, 20-827, 20-825 and 20-831; Building 21, Units 21-819, 21-817, 21-815 and 21-821. Should the Declarant determine to so annex and include Phase IV, it hereby covenants that the necessary annexation and amendment to the Master Deed and the election to proceed with Phase IV shall be made not later than April 1, 2008, and the necessary annexation and amendment shall be filed with York County, South Carolina no later than that date. Phase V, if so annexed, will include property and improvements including five (5) buildings containing a total of eighteen (18) Units numbered Building 8, Units 8-834, 8-840, 8-838 and 8-836; Building 9, Units 9-824, 9-830, 9-828 and 9-826; Building 10, Units 10-814, 10-820, 10-818 and 10-816; Building 11, Units 11-804, 11-810, 11-808 and 11-806; Building 12, Units 12-794 and 12-796. Should the Declarant determine to so annex and include Phase V, it hereby covenants that the necessary annexation and amendment to the Master Deed and the election to proceed with Phase V shall be made not later than August 1, 2008, and the necessary annexation and amendment shall be filed with York County, South Carolina no later than that date. Furthermore, Declarant has included, as part of Exhibit B, a schedule of Common Elements Interests of the Owners of Units developed in Phase I, should Declarant elect, in its sole discretion, to proceed with all stages of development and build the maximum number of Units in each phase. Neither the above development description nor the schedule in Exhibit B showing potential Common Elements Interests is a guarantee or representation that any additional phases will contain all Canterbury Units, or that such phases will be constructed at all. Declarant explicitly reserves the right, in its sole discretion, to revise the types of Units constructed in Phases II, III, IV, and/or V. Any representation made in this Master Deed regarding any additional development does not apply if Phases II, III, IV or V are not annexed to the Condominium.

To add an additional phase pursuant to this Article, Declarant shall prepare, execute and record an amendment to this Master Deed that shall contain a plot plan showing the location of the building(s) and any other improvements, and a set of floor plans of the building(s) which shall show graphically the dimensions, area, and location of each Unit therein and the location of the Common Elements affording access to each Unit. The plans shall show graphically insofar as possible and describe in detail the Common Elements in the building(s).

(b) Additional phases, if included, will not increase the proportionate amount of the Common Expenses payable by the Unit Owners of the Condominium. Should additional phases be included, the Common Elements Interest of each Unit Owner in the Condominium shall be reduced and each of the Unit Owners shall own an undivided interest as indicated in the Exhibits attached hereto. Likewise voting rights and values shall also be calculated by reference to the equation set forth in Exhibit B.

(c) Ownership in the Common Elements, prorata share of Common Expenses due, voting rights and values, and the percentages attributable to each Unit in the event of maximum completion of Stonecrest Villas of Tega Cay Horizontal Property Regime are shown on Exhibit B.

Section 6.2. Declarant Subdivision. The Declarant shall have the right to subdivide or combine Units in any Buildings until such time as the Declarant has sold all Units in the Buildings, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording an Amendment to Master Deed in the manner provided in Section 6.3 below.

Section 6.3. Amendment to Master Deed. In order to exercise any Development Right reserved under this Article VI, Declarant shall execute and record an amendment to this Master Deed. Any Amendment to Master Deed executed and recorded by Declarant to exercise the Development Right of creating new Units or Common Elements (including Limited Common Elements) shall contain an amendment or supplement to the Plans identifying the new Units and Common Elements so created, as well as in an amendment to Exhibit B attached to this Master Deed, assigning and identifying numbers to each new Unit and reallocating the Common Elements Interests among all Units in accordance with the equation set forth in Exhibit B of this Master Deed. Any such Amendment to Master Deed also may contain such additions to the provisions of this Master Deed as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Master Deed, and

provided that such additions shall not apply to any Unit created prior to recordation of the Amendment to Master Deed or to the Owner or Mortgagee of any such Unit.

ARTICLE VII DECLARANT RIGHTS

Section 7.1. Declarant Rights. Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights:

- (a) The right to complete any improvements shown on the Plans.
- (b) The right to maintain sales offices, model units and signs advertising the Condominium.
- (c) The right to use easements through the Common Elements for the purpose of completing construction.
- (d) The right to appoint or remove officers of the Association or Directors of the Executive Board during the Declarant Control Period.
- (e) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents; expressly including, without limitation, the Development Rights set forth in Section 6.1 above.
- (f) Notwithstanding any provisions in this Master Deed, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, any amendments thereto, and related documents, for so long as Declarant owns any portion of the Condominium, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to the Property described on Exhibit A to this Master Deed, including, but without limitation, the right of access, ingress or egress for vehicular and pedestrian traffic over, under, on or in the Condominium; the right to tie into any portion of the Condominium with streets, driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), install, lay, replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Condominium; the right to carry on sales and promotional activities in the Condominium; and the right to construct and operate business offices, signs, construction trailers, model Units, and sales offices. Declarant and any such builder or developer may use Units or offices owned or leased by Declarant or such builder or developer as model Units and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.
- (g) The right to enter into on behalf of the Association, but without the further approval or consent of the Association, one or more cross easement agreements (collectively and individually, the "Cross Easement Agreement") with the owners of property adjacent to, or in the vicinity of, the Land (the "Adjacent Property"), which Cross Easement Agreement shall provide for (i) the creation of mutual non-exclusive easements for the Unit Owners, the owner of Adjacent Property (including any unit owners and association, if applicable) and their respective employees, agents, licensees and invitees, for the non-exclusive use of the parking areas, driveways, and walkways located on the Land (excluding any Limited Common Elements allocated to any Units within the Condominium) and the Adjacent Property and (ii) the division of the responsibility for the costs associated with the repair, maintenance and insurance for the easement areas created by such Cross Easement Agreement on the Adjacent Property and the Land.

Section 7.2. Transfer of Declarant Rights. Declarant may transfer any Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Clerk of Court's Office for York County. The instrument shall not be effective unless it is executed by the transferor and the transferee.

ARTICLE VIII RESTRICTIONS ON USE

Section 8.1. Use. All Units shall be used for residential purposes only. Each Owner of a Unit shall be responsible for ensuring that the Owner's family, invitees, guests, tenants and Occupants comply with all provisions of the Condominium Documents, and the rules, regulations, policies, and guidelines of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, invitees, guests, tenants, or Occupants, as a result of such person's violation of the Condominium Documents, the Association may take action under this Master Deed against the Owner as if the Owner committed the violation in conjunction with the Owner's family, invitees, guests, tenants or Occupants. Use restrictions regarding the use of Units and the Common Elements are as follows and also as may be adopted by the Executive Board from time to time in accordance with the terms hereof and as specified in the By-Laws:

All Units shall be used solely for residential purposes and for ancillary home office uses. A home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Condominium; (c) the activity does not involve regular or unreasonable visitation of the Unit by clients, customers, suppliers, or other invitees, or door-to-door solicitation of residents of the Condominium; (d) the activity does not increase traffic or include frequent deliveries within the Condominium other than deliveries by couriers, express mail carriers, parcel delivery services and other such delivery services; (e) the activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Executive Board; and (f) the activity does not result in a materially greater use of Common Elements or Association services.

No other business, trade, or similar activity shall be conducted from a Unit without the prior written consent of the Executive Board. The terms "business", and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Condominium or any Unit therein, or its use of any Units which it owns within the Condominium.

Section 8.2. Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or cause embarrassment, discomfort, or, in the sole opinion of the Executive Board, a nuisance to the other Owners, or endanger the health and safety of any Owner, or would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property. Notwithstanding anything to the contrary herein, no Owner or occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the sole discretion of the Executive Board, interfere with the rights, comfort, or convenience of the other Owners or Occupants.

Section 8.3. Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Sidewalks, yards, driveways, and parking areas shall not be obstructed in any way, or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which detracts from the appearance of the Property.

Section 8.4. Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in closed plastic bags and placed in the trash receptacles provided by the property manager. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except as provided herein.

Section 8.5. Parking. The Executive Board may promulgate rules and regulations and/or policies and guidelines restricting parking on the Condominium, including restricting the number of vehicles which any Owner or Occupant may bring onto the Condominium and designating or assigning parking spaces or areas.

Any vehicle parked on any portion of the Condominium in violation of this Section 8.5, or in violation of the Association's rules and regulations and/or policies and guidelines, for more than twenty-four (24) consecutive hours may be towed at the vehicle owner's expense.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit, is obstructing traffic, is parked other than in a parking space, is parked in a space which has been assigned as a Limited Common Element exclusively serving another Unit, or otherwise creates a hazardous condition, the vehicle may be towed immediately. If a vehicle is towed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Executive Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

No boat, personal watercraft, motor home, travel trailer, utility trailer, boat trailer, personal watercraft trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property.

Section 8.6. No Timeshares. No interest in any Unit may be subjected to a Vacation Time Sharing Plan, Vacation Time Sharing Ownership Plan, or Vacation Time Sharing Lease Plan, as those terms are defined by South Carolina Code of Laws section 27-32-10.

Section 8.7. Pets. No Owner or Occupant of a Unit may keep more than one (1) dog or cat at any given time without prior approval from the Declarant or the Executive Board. An Owner or Occupant may keep in his or her Unit a number of smaller, generally recognized household pets, such as fish or hamsters, subject to such rules and regulations as may be adopted by the Executive Board. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors or kept unattended outdoors, including on any patio areas. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements. The owner of the pet or person responsible for the pet must remove any feces left upon the Common Elements by pets. No other animals, livestock, or poultry of any kind shall be kept or maintained on the Property.

Section 8.8. Firearms and Fireworks. The discharge of firearms or fireworks is prohibited in any area of the Condominium. The display of firearms or fireworks on the Common Elements is prohibited; provided however, that the display of lawful firearms on the Common Elements is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's or occupant's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 8.9. Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association.

Section 8.10. Architectural Control. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration to either the Unit or the Common Elements be made, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association.

Section 8.11. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved by the Executive Board.

Section 8.12. Signs. Except as may be required by legal proceedings, no signs, advertising posters, billboards, political signs, canopies or awnings, or any variation of the foregoing of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Executive Board or its designee. The Executive Board shall have the right to erect reasonable and appropriate signs on behalf of the Association and to enact reasonable rules and regulations governing the general placement of signs on the Condominium. Notwithstanding the restrictions contained in this section, the Declarant may approve and erect signs for the purpose of carrying on business related to the development, improvement and sale of Units in the Condominium, and such signs shall not be subject to approval or regulation by the Association or by the Executive Board.

Section 8.13. Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto (except parking spaces, if any, which shall remain a Common Expense). Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 8.14. Rules and Regulations. In addition to the use restrictions set forth in this Master Deed, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 8.15. Hazardous Substances. No Unit may be used for the treatment, storage, use or disposal of toxic or hazardous wastes or substances or any other substance that is prohibited, limited or regulated by any quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the Occupants and patrons of the Units or of the surrounding property. Each Owner shall indemnify and save every other Owner harmless from and against any claims, liabilities, penalties, fines, costs, expenses or damages resulting from any violation of the provisions of this Section.

Section 8.16. Satellite Dishes and Antennas. No exterior satellite dish in excess of one meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior written approval of the Executive Board, which may be withheld in its sole discretion. The location of any exterior television antenna, or satellite dish less than one meter in diameter, shall be subject to the reasonable prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Executive Board may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite dish, the Owner shall furnish to the Executive Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Executive Board. In particular, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Executive Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. The Association shall have the right to require that any part of the removal work, including the sealing of roof penetrations, be performed by the roofing contractor designated by the Executive Board, at the Owner's expense. Any Owner installing an antenna or satellite dish under this Section 8.16 shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability

resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the Buildings or other property damage caused by roof leaks.

Section 8.17. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Condominium, other than by Declarant, at any time, either temporarily or permanently, without the prior written approval of the Executive Board.

Section 8.18. Abandoned Personal Property. Abandoned or discarded personal property is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Elements or Limited Common Elements without the prior written permission of the Executive Board.

If the Executive Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Elements or Limited Common Elements in violation of this section, then the Executive Board may remove and either discard or store the personal property in a location which the Executive Board may determine.

Prior to taking any such action, the Executive Board shall place a notice on the personal property and/or on the front door of the Unit of the owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

If two (2) days after such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Executive Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this subsection may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Executive Board in a location which the Executive Board may determine; provided, however, the Executive Board shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Executive Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 8.19. Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Executive Board may fine any Owner or Occupant and/or may cause the water service to the violators Unit to be discontinued for violation of this subsection, in addition to any other remedies of the Association. Any fine imposed pursuant to this subsection shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

Section 8.20. Unightly or Unkept Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

ARTICLE IX THE ASSOCIATION

Section 9.1. Organization of Association. A nonprofit South Carolina corporation known and designated as Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, this Master Deed, and the South Carolina Horizontal Property Act. A true copy of the Bylaws of the Association is attached hereto as Exhibit F. Every Owner shall be required to be and shall automatically be a Member of the Association by virtue of his ownership interest in a Unit.

Section 9.2. Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Master Deed, to levy and collect assessments in the manner provided in Article XI below and in Article VIII and Section 5.13 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with section 27-31-170 of the Horizontal Property Act, and shall be enforceable by the Association in accordance with section 27-31-210 of the Horizontal Property Act and Article VIII of the Bylaws.

Section 9.3. Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board Directors; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units to be constructed pursuant to the Development rights and/or to be annexed by Amendment to this Master Deed) to Owners other than Declarant, at least one Director and not less than twenty-five percent (25%) of the Directors of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the Units (including Units to be constructed pursuant to the Development rights and/or to be annexed by Amendment to this Master Deed) to Owners other than Declarant, not less than thirty-three percent (33%) of the Directors of the Executive Board shall be elected by Owners other than Declarant.

Section 9.4. Books and Records. The Association shall maintain current copies of (a) the Condominium Documents, as they may be amended from time to time; (b) any rules and regulations adopted under Section 8.12 of the Bylaws from time to time; and (c) all financial records of the Association, as required by section 27-31-180 of the Horizontal Property Act. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

ARTICLE X EASEMENTS AND PROPERTY RIGHTS

Section 10.1. Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property.

Section 10.2. Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of any Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such

Building shall stand. If any Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Buildings shall stand.

Section 10.3. Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; fiber optic lines; and other wires over, under, along and on any portion of the Common Elements (other than the Limited Common Elements, except parking spaces, upon which such easements may be granted); and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, and for a period of two (2) years after Declarant exercises its Development Right to add Buildings to the Condominium in accordance with Section 6.1 above, Declarant shall have an easement over the Common Elements (other than the Limited Common Elements) as may be reasonably necessary to complete the construction of the Buildings and the other Improvements within the Property.

Section 10.4. Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the respective Owner(s), and such right of entry shall be immediate.

Section 10.5. Subdivision: Partitioning.

(a) **Subdivision of Units.** The Declarant has reserved a Development Right, as described in Section 6.2, to subdivide or combine Units in Buildings until such time as all Units in the applicable Buildings have been conveyed by Declarant to third party purchasers. An Owner may subdivide his or her Unit only with the prior written consent of the Association acting through the Executive Board and, for so long as the Declarant owns a Unit, the prior written consent of Declarant.

(b) **Partitioning.** The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein, shall, without limitation or exception, be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 10.6. Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Master Deed and to the provisions of the South Carolina Horizontal Property Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of at least eighty percent (80%) of all Owners, including at least eighty percent (80%) of all Owners other than Declarant, and at least eighty percent (80%) of all Mortgagee Votes (as defined in Section 17.2 hereof). Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Master Deed and that the right to file a mechanic's lien or other similar lien by reason of

labor performed or material furnished is subordinated to this Master Deed and to the lien of assessments for Common Expenses provided for in Section 9.2 of this Master Deed. Nothing in this Section 10.6 shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 10.7. Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

Section 10.8. Party Walls.

(a) Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion.

(c) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 10.9. Leasing. "Leasing" for purposes of this Master Deed is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Leasing of Units shall be governed by the following provisions:

(a) Units may be leased only in their entirety; no fraction or portion may be leased without prior written approval of the Executive Board. All leases must be for an initial term of not less than one (1) year. All leases shall be in writing and in form approved by the Executive Board prior to the effective date of the lease. The Executive Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Executive Board. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Executive Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Master Deed, By-Laws, and the rules and regulations adopted pursuant thereto.

(b) Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein state, and each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(i) The lessee shall comply with all provisions of the Master Deed, By-Laws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Unit to comply with the Master Deed, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Master Deed, By-Laws, and rules and regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Master Deed, By-Laws, and rules and regulations for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee. If the fine is not paid by the lessee within the time period set by the Executive Board, the Executive Board may assess the fine against the Owner and the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any violation of the Master Deed, By-Laws, and rules and regulations adopted pursuant thereto by the lessee, any

Occupant, or person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with South Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Executive Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Master Deed, By-Laws, and rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorneys' fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(ii) Except where the Owner also occupies the Unit, the Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements of the Condominium, including, but not limited to, the use of any and all recreational facilities.

(iii) When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessments or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Executive Board, lessee shall pay to the Association all unpaid annual, special, and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Executive Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under this Master Deed as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he would otherwise be responsible.

(iv) This paragraph shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

The Executive Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Master Deed and By-Laws, in order to enforce the provisions of this section.

Section 10.10. Sale of Units. A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Executive Board of such intention within seven (7) days after execution of the transfer or sales documents. The Unit Owner shall furnish to the Executive Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Executive Board may reasonably require. This Section shall not be construed to create a right of first refusal in the Association or any third party.

Within seven (7) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Executive Board of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Executive Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

ARTICLE XI ASSESSMENTS

Section 11.1. Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units will not be separately assessed until the calendar year following the recordation of this Master Deed with respect to York County ad valorem property taxes, and any such taxes for this calendar year of recordation shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share at closing).

Section 11.2. Common Expenses. Except as otherwise provided in this Master Deed or in the Bylaws, each Owner shall contribute a percentage share of the Common Expenses equal to such Owner's allocated interest in the Common Elements, in accordance with the definition of Common Elements set forth in this Master Deed, the Bylaws and the provisions of the South Carolina Horizontal Property Act. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to a party other than Declarant. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least monthly.

Section 11.3. Discretionary Assessments. The Executive Board shall have the power to assess specifically pursuant to this section as in its discretion it deems appropriate. Failure of the Executive Board to exercise its authority under this section shall not be grounds for any action against the Association or the Executive Board and shall not constitute a waiver of the right to exercise authority under this section in the future with respect to any expenses, including an expense for which the Executive Board has not previously exercised its authority under this section.

Section 11.4. Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in shares equal to such Owner's allocated interest in the Common Elements; provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Master Deed imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 12.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in shares equal to each Owner's allocated interest in the Common Elements.

ARTICLE XII INSURANCE

Section 12.1. Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Buildings (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Buildings at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of \$10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of South Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, an agreed value endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 12.2. Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent or independent Manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty

(30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

Section 12.3. Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 12.4. Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

Section 12.5. Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense.

Section 12.6. Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(i) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

(ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(i) If it is determined, as provided in Article XIII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(a) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(b) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(c) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements interests.

(ii) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

Section 12.7. Insurance Obtained by Owners. Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase and shall provide, upon renewal, evidence of such renewal. In the event that any such Unit Owner fails to obtain insurance as required by this subsection, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost hereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Article IX hereof.

ARTICLE XIII DUTY TO REPAIR OR RECONSTRUCT

Section 13.1. Reconstruction and Repair. In the event of damage to or destruction of any Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building unless (1) the Condominium is terminated in accordance with the provisions of Article XVI below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the damage or destruction comprises the whole or more than two-thirds (2/3) of the Property. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the damaged or destroyed Building, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 12.6(d)(2) of this Master Deed. Any payment for repair and restoration in excess of the insurance proceeds shall be paid by all the Unit Owners directly affected by the damage, in proportion to their Common Elements interests, and if any one of such Unit Owner's shall refuse to make such payment, the Association may proceed with the reconstruction at the expense of all Unit Owner's benefited thereby, and thereafter assess such refusing Unit Owner's portion of such payment against such Unit Owner's Unit. Any reconstruction or repair shall be in accordance with the Plans. If any Unit is not rebuilt, that Unit's allocated Common Elements interests shall be automatically reallocated upon the vote as if the Unit had been condemned under XVIII of this Master Deed.

Section 13.2. Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Master Deed. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIV UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and Occupants of the Units shall be subject to and shall comply with the provisions of this Master Deed, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Master Deed, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or Occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

**ARTICLE XV
AMENDMENT TO AND SUPPLEMENT OF MASTER DEED**

Except as is otherwise specifically authorized herein, this Master Deed may be amended only by the vote of not less than sixty-seven percent (67%) of the Owners of Units, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the other provisions of this Master Deed, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, changes the use to which any Unit is restricted, or modifies the terms of this Article XV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Master Deed shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Clerk of Court's Office of York County, South Carolina. Except as otherwise specifically authorized herein, no amendment to this Master Deed shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Master Deed shall be effective without the written consent of Declarant.

**ARTICLE XVI
TERMINATION**

The Condominium may be terminated and the Property removed from the provisions of the South Carolina Horizontal Property Act only by the vote not less than one hundred percent (100%) of the Owners of Units, and not less than one hundred percent (100%) of the Mortgagee Votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of section 27-31-130 of the Horizontal Property Act, and must be recorded in the Clerk of Court's Office for York County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in section 27-31-130 of the Horizontal Property Act.

**ARTICLE XVII
MORTGAGEE PROTECTION**

Section 17.1. General Provisions. This Article XVII establishes certain standards and covenants for the benefit of Mortgagees. This Article XVII is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this Article XVII, the provisions of this Article XVII shall control.

Section 17.2. Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees (e.g., "51% of Mortgagees") is required (the "Specified Percentage"), such Specified Percentage shall not be based on the specific number of Mortgagees, but rather shall be based on the votes allocated to the Units on which Mortgagees hold Mortgages (the "Mortgagee Votes"). The actual percentage of Mortgagees for determining whether a Specified Percentage has been met shall, therefore, be equal to the product of (a) 100, and (b) a fraction, the numerator of which is the sum of all Mortgagee Votes consenting or approving to the subject action, and denominator of which is the sum of all Mortgagee Votes.

Section 17.3. Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 17.4. Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 17.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

(a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of thirty (30) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Documents, whenever Mortgagee approval is required, shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 17.5. Consent and Notice Required. Notwithstanding any other provision of this Master Deed or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 17.5 shall be effective without notice to all Mortgagees, as required by Section 17.4, and the vote of at least sixty-seven percent (67%) of the Member votes in the Association (or any greater percentage required by the terms of the Condominium Documents), and not less than fifty-one percent (51%) of the Mortgagee Votes (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

(a) Voting rights.

(b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.

(d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.

(e) Except for the Development Rights of Declarant reserved under Article VI above and those rights reserved as Declarant Rights under Article VII above, reallocation of interests in the Common Elements or the Limited Common Elements.

(f) Except for the Development Rights of Declarant reserved under Article VI above and those rights reserved as Declarant Rights under Article VII above, redefinition of boundaries of Units.

(g) Convertibility of Units into Common Elements, or Common Elements into Units.

(h) Except for the Development Rights of Declarant reserved under Article VI above and those rights reserved as Declarant Rights under Article VII above, or the addition, annexation or withdrawal of property to or from the Condominium.

- (i) The requirements for insurance and fidelity bonds.
- (j) The imposition of any restrictions on the leasing of Units.
- (k) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.
- (l) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.
- (m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.
- (n) Any provision that expressly benefits the Mortgagees.

Section 17.6. Other Mortgagee Rights. Notwithstanding any other provision of this Master Deed or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 17.7. Enforcement. The provisions of this Article XVII are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVIII CONDEMNATION

If all or any part of the Property is taken in condemnation or by eminent domain, the award for such taking shall be distributed as follows:

(a) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Master Deed, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Master Deed reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Article shall thereafter be a Common Element.

(b) If part of the Common Elements is acquired by eminent domain, the portion of the award representing such taking shall be paid to the Association. Any portion of a condemnation award attributable to the acquisition of a Limited Common Element shall be apportioned by the Association among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

ARTICLE XIX MISCELLANEOUS PROVISIONS

Section 19.1. Invalid. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Master Deed, and in such event, all the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

Section 19.2. Waiver. No provisions contained in the Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 19.3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed or the intent of any provision hereof.

Section 19.4. Law Controlling. This Master Deed and the Condominium Documents shall be construed and controlled by and under the laws of the State of South Carolina.

Section 19.5. Liberal Construction. The provisions of this Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the South Carolina Horizontal Property Act. Throughout this Master Deed wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

Section 19.6. South Carolina Horizontal Property Act. To the extent that any of the terms or provisions of this Master Deed attempt to vary, modify or waive any provisions of the South Carolina Horizontal Property Act, such terms or provisions shall be so varied, modified or waived to the extent permitted by the South Carolina Horizontal Property Act, it being the intention of the parties hereto that the terms and provisions of this Master Deed shall govern over conflicting provisions in the South Carolina Horizontal Property Act, to the extent permitted by the South Carolina Horizontal Act.

ARTICLE XX ENFORCEMENT; ARBITRATION

Section 20.1. Actions by the Association. The Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 20.2. Actions by Owners. Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Executive Board, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 20.3. Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner may require that any unresolved matter between the Owners or before the Executive Board or before the Association be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in South Carolina Code of Laws section 15-48-10 et seq. as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

ARTICLE XXI CONSENT OF MORTGAGEES

The Land and the Buildings are currently encumbered by the lien of (i) that certain Mortgage and Security Agreement dated 5/25/2006, executed and delivered by Declarant to First Charter Bank, a North Carolina banking corporation, for \$6,135,000.00, and recorded in Book 8065 at Page 197 and Amended in Book 8778 at Page 35 of the Clerk of Court's Office of York County, South Carolina. A Consent of Mortgagee executed by First Charter Bank, a North Carolina banking corporation, and Stonecrest Villas of Tega Cay, a SC LLC, each consenting to the execution and recordation of this Master Deed, are attached to and made a part of this Master Deed.

ARTICLE XXII EXHIBITS

The following exhibits are attached to and are an integral part of this Master Deed:

- (a) Exhibit A – Legal Description of Land
- (b) Exhibit B– Schedule of Units and Common Elements Interests
- (c) Exhibit C– Plans

- (d) **Exhibit D-** Identifying Numbers of Each Unit
- (e) **Exhibit E-** Articles of Incorporation of the Association
- (f) **Exhibit F-** Bylaws of Association

IN WITNESS WHEREOF, Declarant has executed this Master Deed the day and year first above written.

Stonecrest Villas of Tega Cay, LLC, a South Carolina limited liability company (SEAL)

By: Brock L. Fankhauser
Sole Member

By: [Signature]
Name: BROCK FANKHAUSER
Title: MEMBER

Signed, sealed and delivered
In the presence of:

Witness

Witness

STATE OF

COUNTY OF

I, Mary H. Pryor, a Notary Public of aforesaid County and State, certify that Brock L. Fankhauser, either being personally known to me or proven by satisfactory evidence (said evidence being a driver's license) personally came before me this day and acknowledged that he is Sole Member of Stonecrest Villas of Tega Cay, LLC, a South Carolina limited liability company, and that he, being authorized to do so, executed the foregoing voluntarily on behalf of the limited liability company as Manager of Stonecrest Villas of Tega Cay, LLC.

Witness my hand and official seal this the 12 day of Feb 2007.

[Signature]
Notary Public

My commission expires: May 7, 2011

[NOTARY SEAL]

**EXHIBIT A
LEGAL DESCRIPTION**

Being in Fort Mill Township, York County, South Carolina and more particularly described as follows:

Beginning at a new iron rod located in the margin of a proposed 60 foot future right-of-way as shown in Plat C95-Page 1 of the York County South Carolina Public Registry said new iron rod being located the following two courses and distances from an existing angle iron located in the property of Stonecrest Enterprises, LLC (Deed Book 5724, Page 55) (Plat Book 20, Page 24); (1) S67-50-57W 103.50 feet; and (2) S83-18-09W a total of 189.54 feet; thence with the common boundary line of Serenity Point, Inc.(now or formerly); thence S83-18-09W 1297.71 feet to a new iron rod; thence N07-32-01W 212.76 feet to a new iron rod; thence N04-13-43E 166.93 feet to a new iron rod; thence N11-28-33E 218.91 feet to a new iron rod; thence N49-38-01E 217.48 feet to a new iron rod; thence N15-37-58E 232.36 feet to a new iron rod; thence N42-57-01E 115.61 feet to a new iron rod; thence N42-22-03E 56.32 feet to a new iron rod; thence N41-53-13E 31.17 feet to a new iron rod; thence N43-27-01E 50.73 feet to a new iron rod; thence N83-00-02E 203.05 feet to a new iron rod; thence S74-07-20E 23.60 feet to a new iron rod; thence N80-30-46E 42.19 feet to a new iron rod; thence S64-40-02E 91.51 feet to a new iron rod; thence S36-15-12E 36.19 feet to a new iron rod; thence S02-12-28W 153.34 feet to a new iron rod; thence S41-39-27E 635.57 feet to a new iron rod; thence S19-22-47W 22.86 feet to a new iron rod; thence S58-20-11E 183.14 feet to a new iron rod, said rod being located in a margin of a proposed right-of-way; thence with the margin of said proposed right-of-way with the arc of a circular curve to the left having a radius of 544.10 feet an arc length of 217.35 feet a chord bearing of S20-13-30W a chord length of 215.91 feet to a new iron rod and the point and place of beginning; said tract containing approximately 23.5696 acres as shown on a survey prepared for: Fankhauser Property Group, Inc. Job No. 65935 prepared by R.B. Pharr & Associates, P.A., dated September 8, 2005 and last revised September 28, 2005.

EXHIBIT B
SCHEDULE OF UNITS AND COMMON ELEMENTS INTEREST

The initial Percentage Interest in the Common Elements appurtenant to each Unit in Phase I is set forth below. The stated value for each of the said Unit types constructed in any phase of the Condominium is as follows:

<u>Unit Type</u>	<u>Stated Value</u>
Villa	\$180,000
Chateau	\$190,000
Abbey	\$190,000
Canterbury	\$210,000

Phase II, III, IV, and V may consist of not more than sixty-six (66) Units in the aggregate and may be submitted as a whole or at one time or in one or more portions at different times, all of which is more fully set forth in the applicable provisions of this Master Deed.

The Percentage Interest appurtenant to each Unit of the Condominium shall be established in accordance with the following formula:

$$P=V/A$$

P=Percentage Interest of Unit

V=Stated Value of Unit

A=Aggregate Stated Value of all Units in the Condominium

The initial Percentage Interests for Phase I, which shall control ownership of common elements, liability for common expenses and voting rights, shall be as follows:

Unit	Type	Statutory Imputed Value	Percentage Interest
18-730	Canterbury	\$210,000	4.37500
18-728	Abbey	\$190,000	3.95833
18-726	Canterbury	\$210,000	4.37500
18-724	Abbey	\$190,000	3.95833
17-750	Villa	\$180,000	3.75000
17-748	Chateau	\$190,000	3.95833
17-746	Villa	\$180,000	3.75000
17-744	Chateau	\$190,000	3.95833
1-707	Abbey	\$190,000	3.95833
1-705	Canterbury	\$210,000	4.37500
1-711	Canterbury	\$210,000	4.37500
1-709	Canterbury	\$210,000	4.37500
2-717	Abbey	\$190,000	3.95833
2-715	Canterbury	\$210,000	4.37500
2-721	Abbey	\$190,000	3.95833
2-719	Canterbury	\$210,000	4.37500
3-727	Canterbury	\$210,000	4.37500
3-725	Canterbury	\$210,000	4.37500
3-731	Abbey	\$190,000	3.95833
3-729	Canterbury	\$210,000	4.37500
4-876	Canterbury	\$210,000	4.37500
4-874	Abbey	\$190,000	3.95833
4-880	Canterbury	\$210,000	4.37500
4-878	Canterbury	\$210,000	4.37500
		\$4,800,000	

In the event the Declarant elects to add the maximum number of Units in each Phase, with all such additional units being of the type and stated value as stated in the Master Deed, and if Declarant elects to develop all Phases, the aggregate stated value would be \$17,980,000. In such instance, the maximum Percentage Interest which shall be assigned to the Unit Owners of Phase I Units after completion of each development stage shall be as follows:

Unit	Type	Statutory Imputed Value	Percent after Phase II	Percent after Phase III	Percent after Phase IV	Percent after Phase V
18-730	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
18-728	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
18-726	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
18-724	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
17-750	Villa	\$180,000	2.26700	1.62455	1.26050	0.99889
17-748	Chateau	\$190,000	2.39295	1.71480	1.33053	1.05438
17-746	Villa	\$180,000	2.26700	1.62455	1.26050	0.99889
17-744	Chateau	\$190,000	2.39295	1.71480	1.33053	1.05438
1-707	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
1-705	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
1-711	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
1-709	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
2-717	Abbey	\$210,000	2.39295	1.71480	1.33053	1.05438
2-715	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
2-721	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
2-719	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
3-727	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
3-725	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
3-731	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
3-729	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
4-876	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
4-874	Abbey	\$190,000	2.39295	1.71480	1.33053	1.05438
4-880	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
4-878	Canterbury	\$210,000	2.64484	1.89531	1.47059	1.16537
		<u>\$4,800,000</u>				

NOTE: The Percentage Interest assigned to any Unit shall never be greater than that Percentage Interest initially assigned to that Unit under the above calculation method and formula.

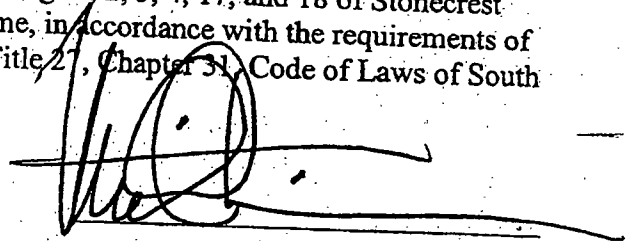
EXHIBIT C
PLANS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

ARCHITECT'S CERTIFICATION

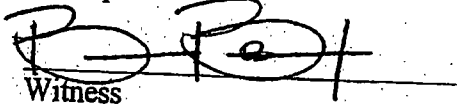
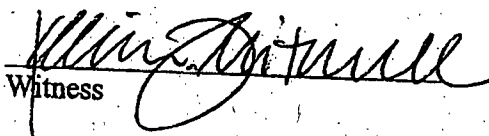
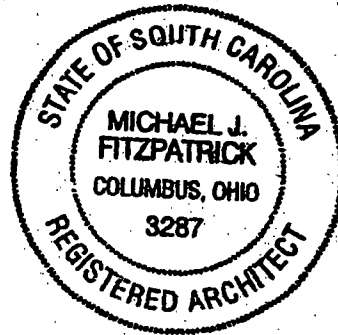
I certify to the best of my knowledge, information and belief, Exhibit C (Floor Plans and Elevations) adequately and accurately depict the dimensions, layout, area and location, within normal construction tolerances, of Buildings 1, 2, 3, 4, 17, and 18 of Stonecrest Villas of Tega Cay Horizontal Property Regime, in accordance with the requirements of The South Carolina Horizontal Property Act Title 27, Chapter 31, Code of Laws of South Carolina, 1976.

Dated: 2/16/2007



Registered Architect
State of South Carolina
License # #3287

Signed, sealed and delivered
In the presence of

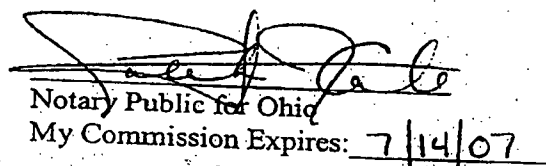

Witness
Witness

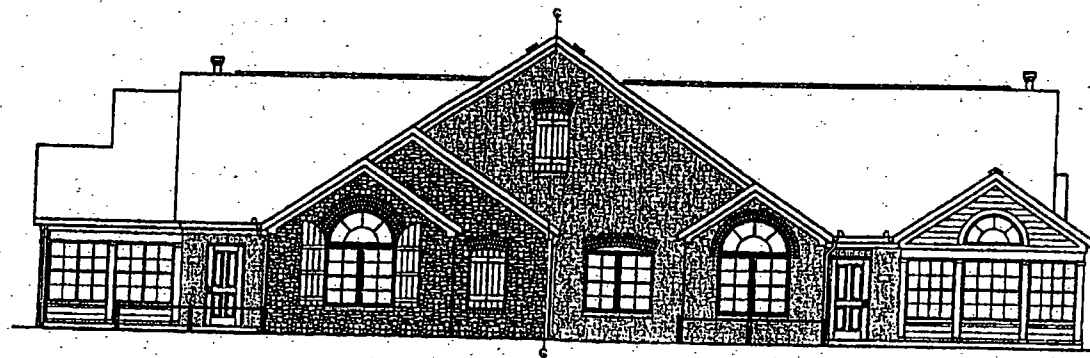
STATE OF OHIO)
COUNTY OF FRANKLIN)

ACKNOWLEDGMENT

I, SARAH A. KALE, a Notary Public of the aforesaid County and State, do hereby certify that MICHAEL J. FITZPATRICK, either being personally known to me or proven by satisfactory evidence (said evidence being a driver's license), personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument.

Witness my hand and seal this 16TH day of FEBRUARY, 2007.

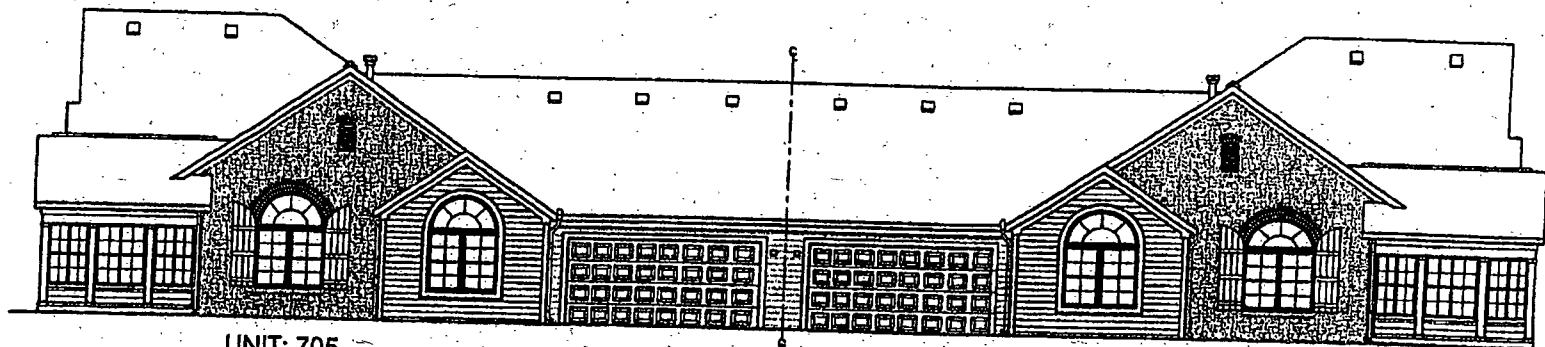

Notary Public for Ohio
My Commission Expires: 7/14/07



UNIT: 707
ABBEY

END ELEVATION

UNIT: 705
CANTERBURY



UNIT: 705
CANTERBURY

SIDE ELEVATION

UNIT: 711
CANTERBURY



EXTERIOR ELEVATIONS
 1 of 2

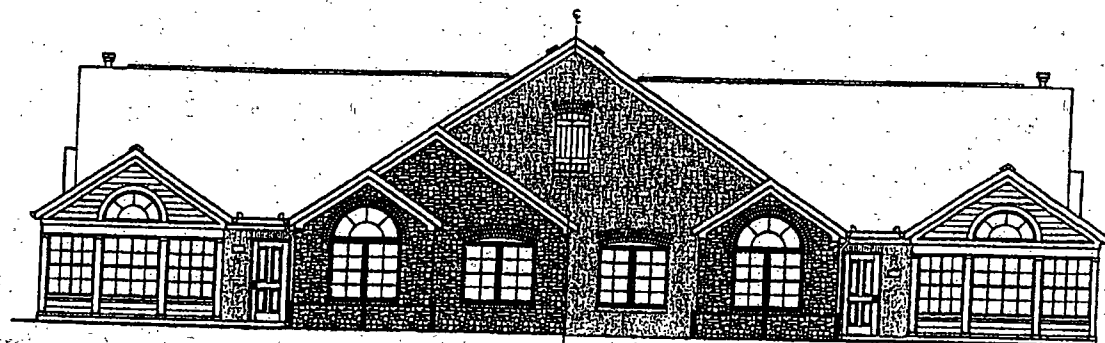
FANKHAUSER PROPERTY GROUP
 300 East John St., Suite 126
 Matthews, NC 28105
 Ph: (704) 822-4524

MICHAEL J. FITZPATRICK,
 ARCHITECT
 115 NORTH FIFTH ST.
 COLUMBUS, OHIO 43215
 614.469.7500

BUILDING # 1

UNITS # 705, 707, 709, 711

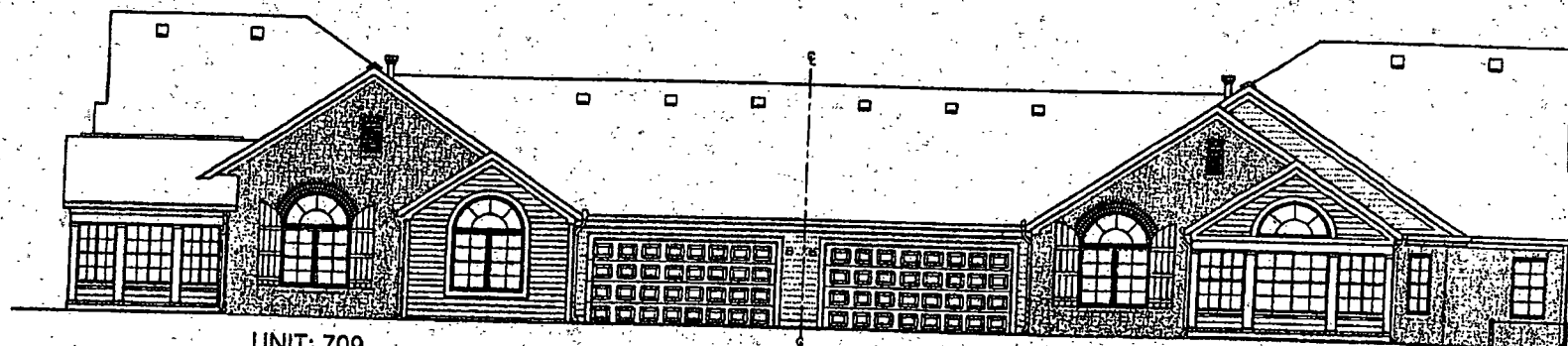
Stonecrest Villas of Tega Cay
 Tega Cay, York County, South Carolina



UNIT: 711
CANTERBURY

END ELEVATION

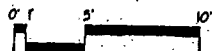
UNIT: 709
CANTERBURY



UNIT: 709
CANTERBURY

SIDE ELEVATION

UNIT: 707
ABBAY



EXTERIOR ELEVATIONS
2 of 2

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Matthews, NC 28105
Ph: (704) 622-4624

MICHAEL J. FITZPATRICK,
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102 NORTH FIFTH ST.
COLUMBUS, OHIO 43215

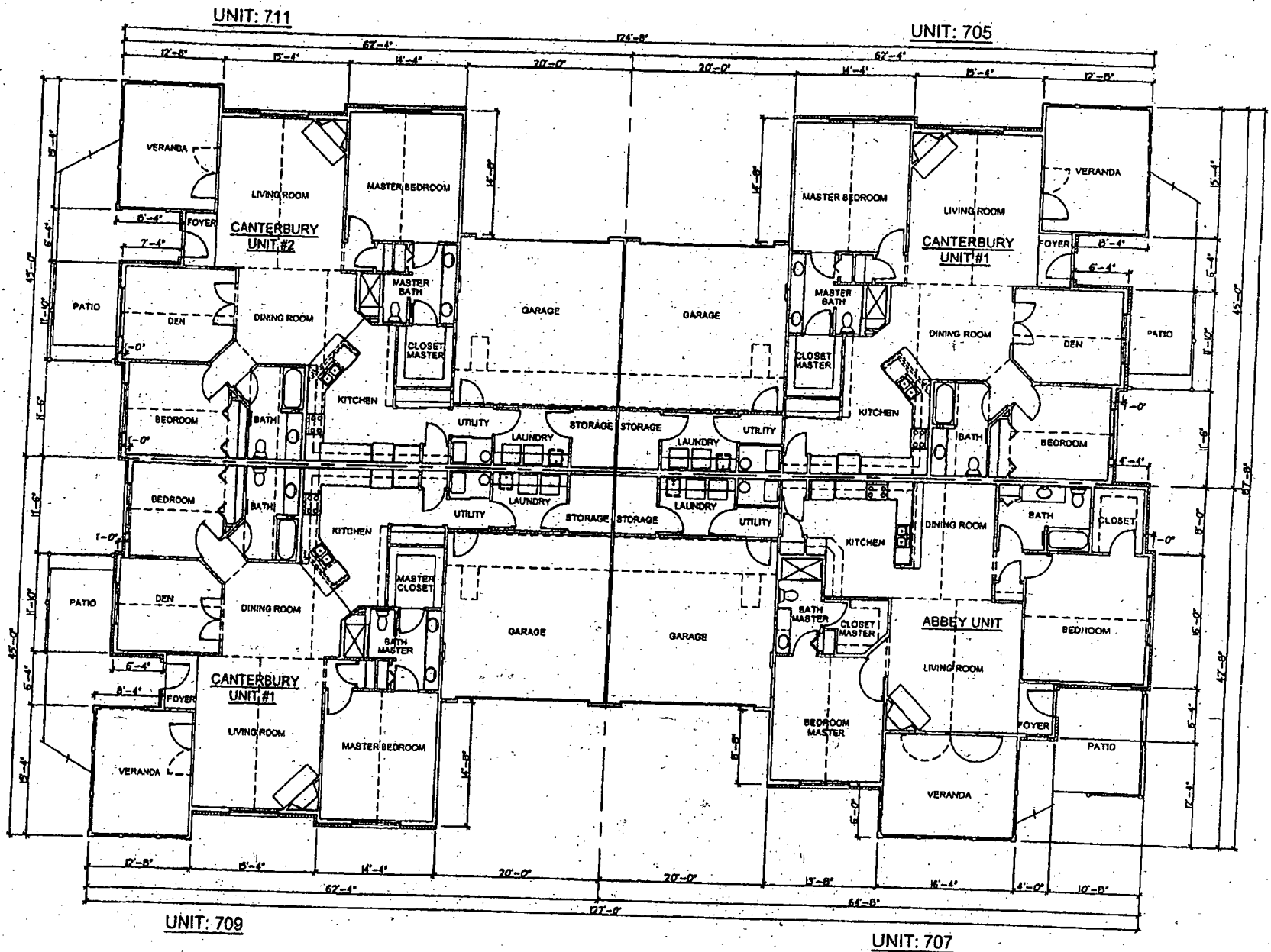
BUILDING # 1

UNITS # 705, 707, 709, 711

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

100

<u>DATA:</u>	
ABBEY UNIT:	
LIVING SPACE:	1818 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT #1 WHEN	
ADJACENT TO ABBEY UNIT:	
LIVING SPACE:	1672 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2270 SQ. FT.
CANTERBURY UNIT #2 WHEN	
ADJACENT TO CANTERBURY UNIT #1:	
LIVING SPACE:	1695 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2293 SQ. FT.



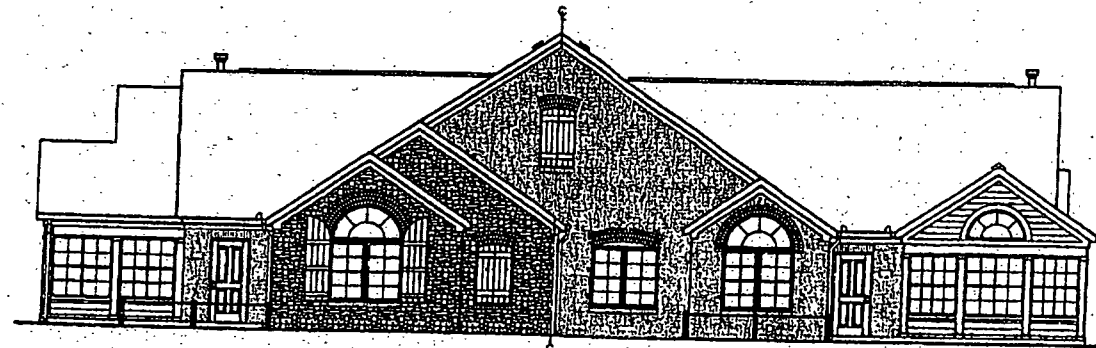
FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Mathews, NC 28105
Ph: (704) 622-4324

**MICHAEL J. FITZPATRICK,
ARCHITECT**
166 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.489.7500

BUILDING # 1

UNITS # 705, 707, 709, 711

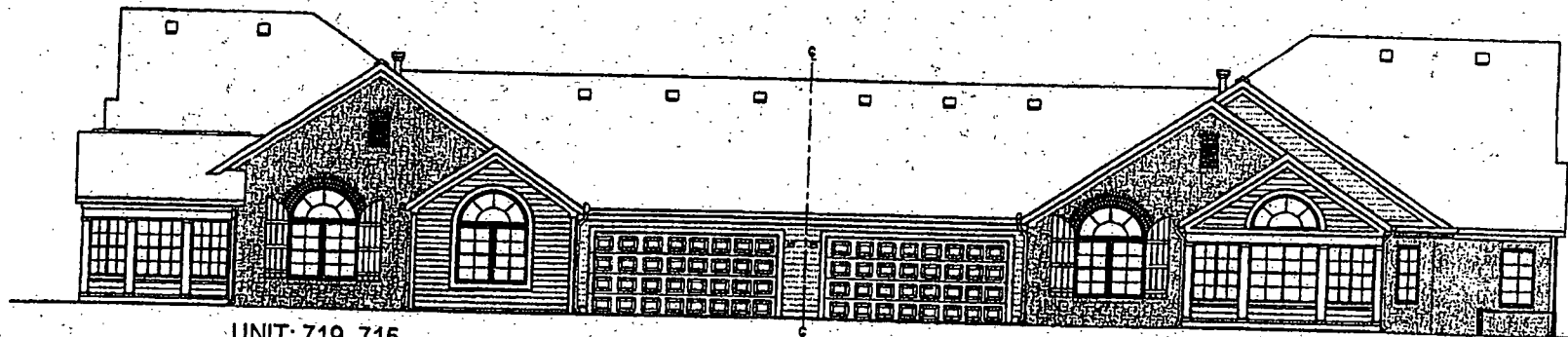
Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina



UNIT: 717, 721
ABBAY

END ELEVATION

UNIT: 715, 719
CANTERBURY



UNIT: 719, 715
CANTERBURY

SIDE ELEVATION

UNIT: 717, 721
ABBAY



EXTERIOR ELEVATIONS

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Methuen, MA 01844
PH: (781) 622-4524

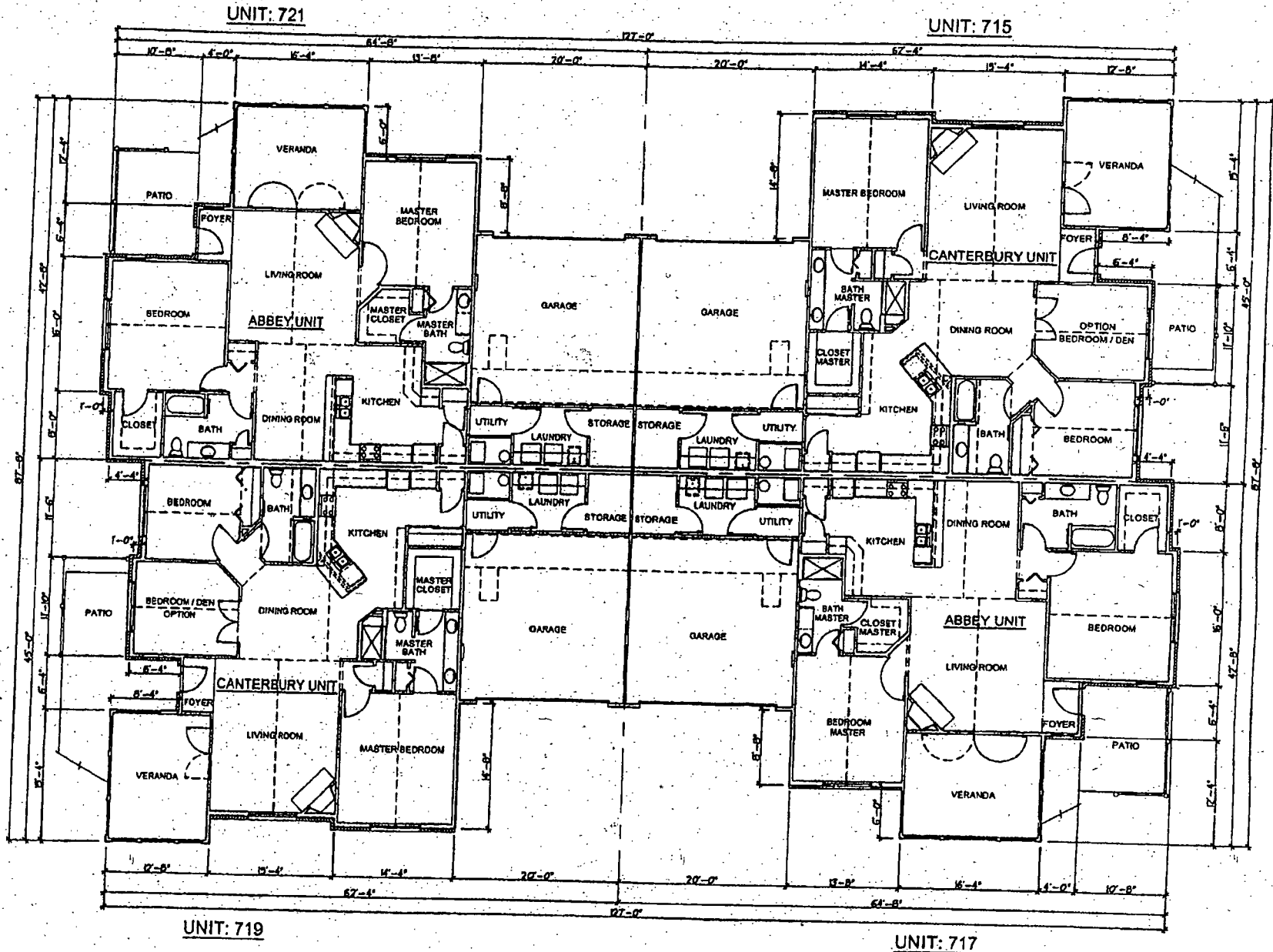
MICHAEL J. FITZPATRICK,
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.466.7500

BUILDING # 2

UNITS # 715, 717, 719, 721

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

DATA:	
ABBEY UNIT:	
LIVING SPACE:	1518 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT:	
LIVING SPACE:	1672 SQ. FT.
VERANDA:	188 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2270 SQ. FT.



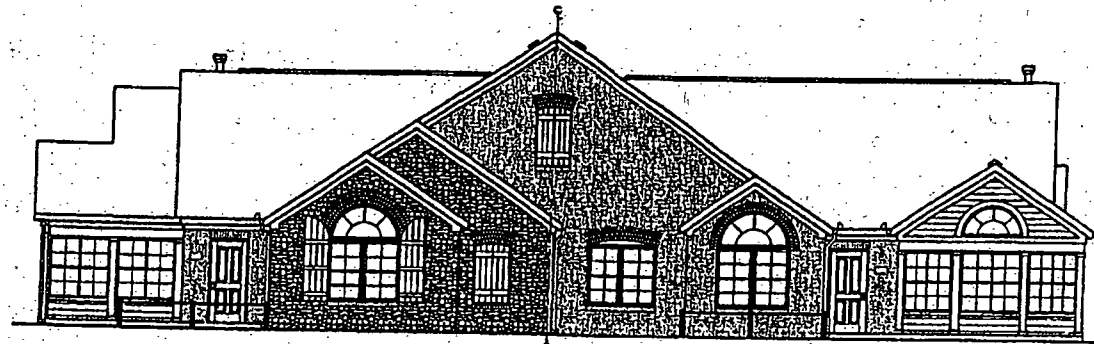
FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Mallinburg, NC 28108
Ph: (704) 822-4824

MICHAEL J. FITZPATRICK,
ARCHITECT
188 NORTH NINTH ST.
COLUMBUS, OHIO 43211
614.488.7500

BUILDING # 2

UNITS # 715, 717, 719, 721

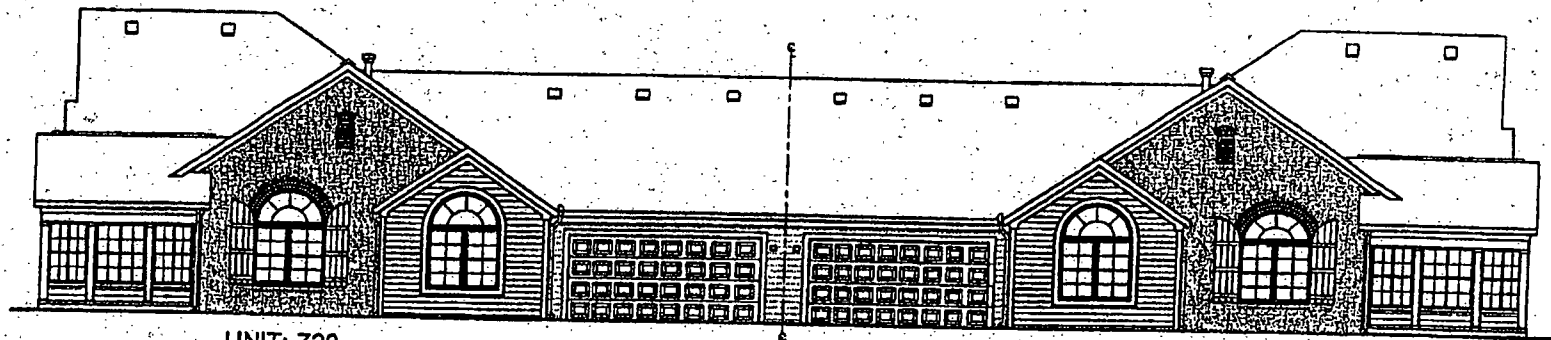
Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina



UNIT: 731
ABBEY

END ELEVATION

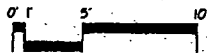
UNIT: 729
CANTERBURY



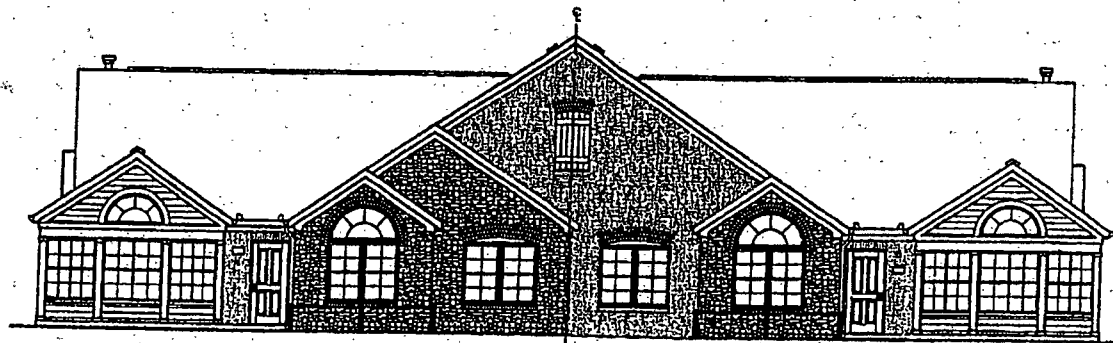
UNIT: 729
CANTERBURY

SIDE ELEVATION

UNIT: 727
CANTERBURY



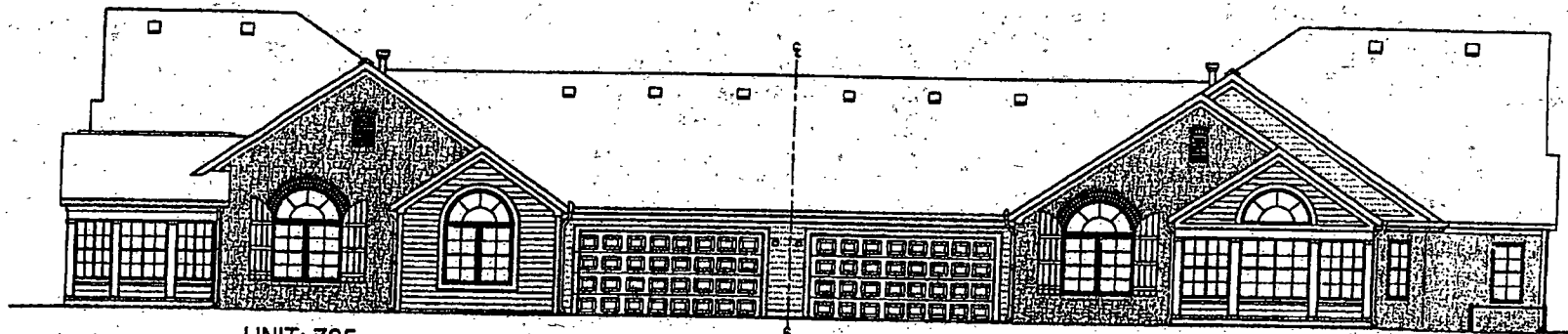
EXTERIOR ELEVATIONS
1 of 2



UNIT: 727
CANTERBURY

END ELEVATION

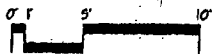
UNIT: 725
CANTERBURY



UNIT: 725
CANTERBURY

SIDE ELEVATION

UNIT: 731
ABBAY



EXTERIOR ELEVATIONS
2 of 2

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 126
Matthews, NC 28105
Ph: (704) 822-4524

MICHAEL J. FITZPATRICK,
ARCHITECT
145 NORTH FIFTH ST.
COLUMBUS, OHIO 43219

BUILDING # 3

UNITS # 725, 727, 729, 731

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

DATA:

ABBEY UNIT:

LIVING SPACE: 1518 SQ. FT.
 VERANDA: 200 SQ. FT.
 GARAGE: 408 SQ. FT.
 TOTAL: 2127 SQ. FT.

CANTERBURY UNIT #1 WHEN
ADJACENT TO ABBEY UNIT:

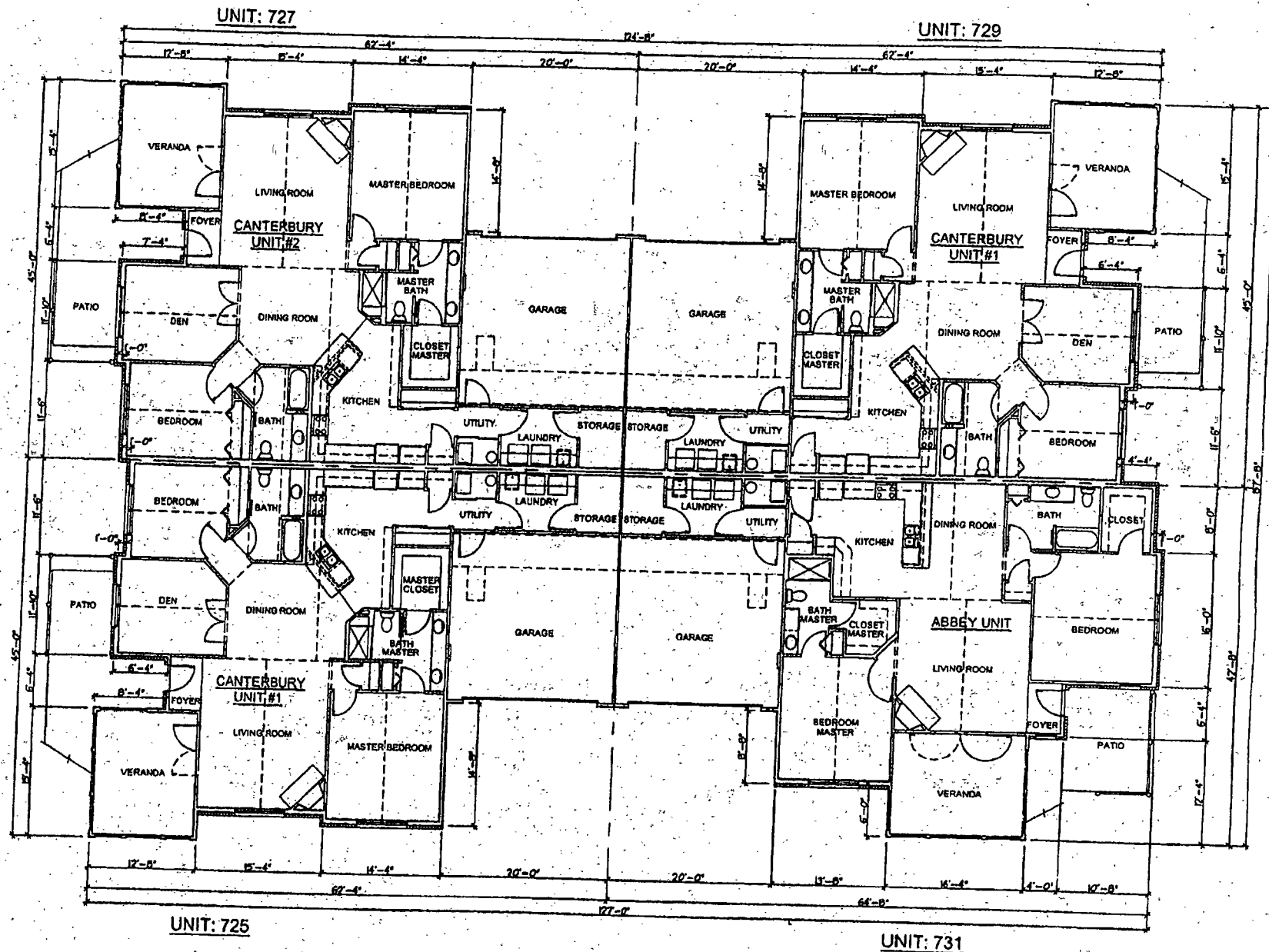
LIVING SPACE: 1572 SQ. FT.
 VERANDA: 189 SQ. FT.
 GARAGE: 408 SQ. FT.
 TOTAL: 2270 SQ. FT.

CANTERBURY UNIT #2 WHEN
ADJACENT TO CANTERBURY UNIT #1:

LIVING SPACE: 1693 SQ. FT.
 VERANDA: 189 SQ. FT.
 GARAGE: 408 SQ. FT.
 TOTAL: 2293 SQ. FT.



FLOOR PLAN



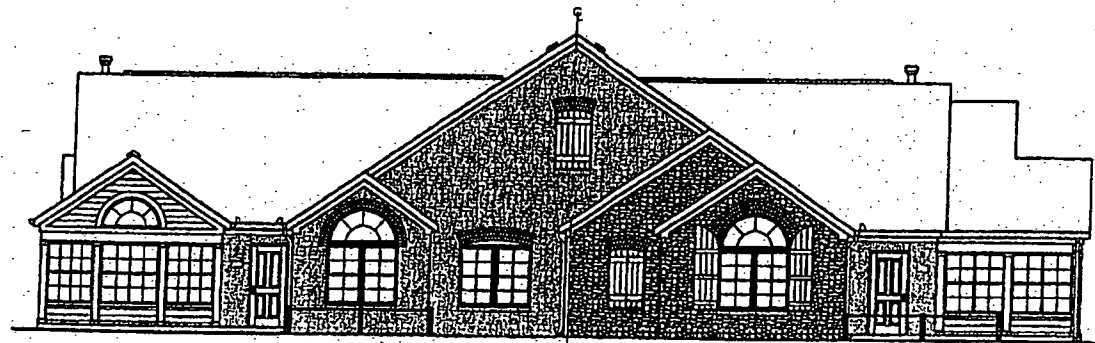
FANKHAUSER PROPERTY GROUP
 300 East John St., Suite 128
 Matthews, NC 28105
 Ph: (704) 622-4624

MICHAEL J. FITZPATRICK,
 ARCHITECT
 155 NORTH PLYM ST.
 COLUMBUS, OHIO 43218
 614.469.7800

BUILDING # 3

UNITS # 725, 727, 729, 731

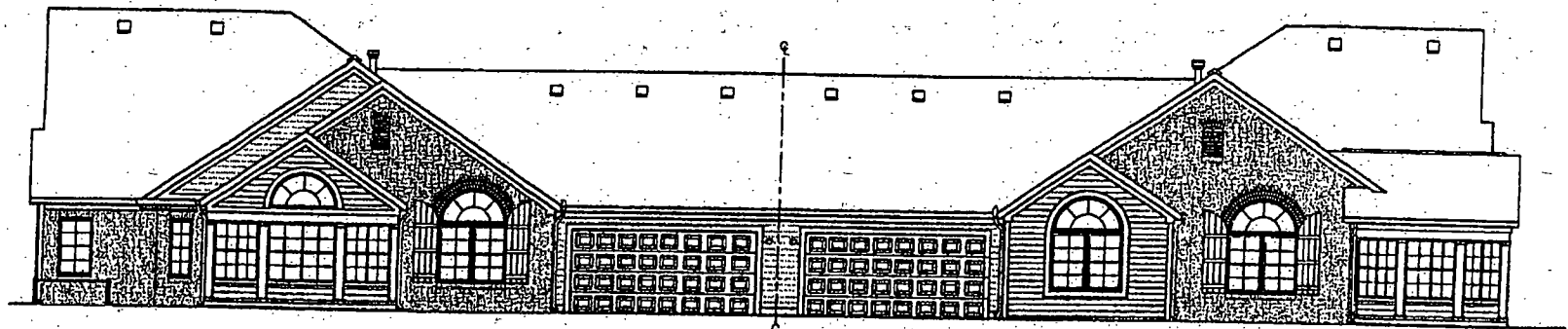
Stonecrest Villas of Tega Cay
 Tega Cay, York County, South Carolina



UNIT: 876
CANTERBURY

END ELEVATION

UNIT: 874
ABBAY



UNIT: 874
ABBAY

SIDE ELEVATION

UNIT: 880
CANTERBURY



EXTERIOR ELEVATIONS
1 of 2

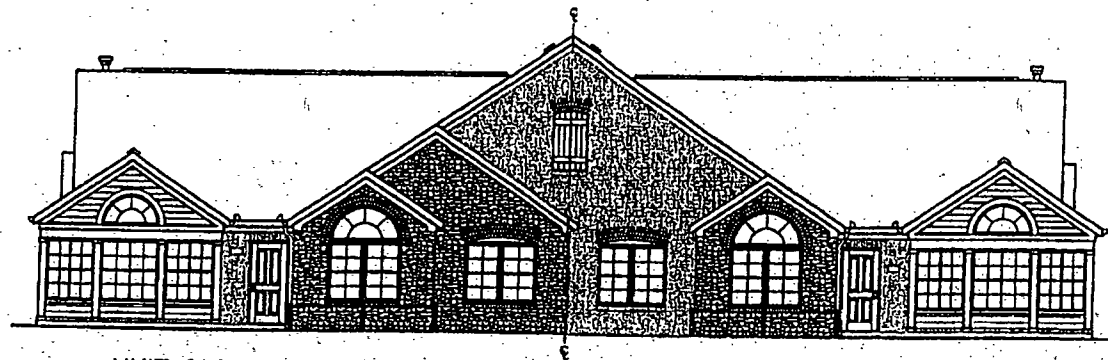
FANKHAUSER PROPERTY GROUP
300 East John St., Suite 128
Matthews, NC 28105
Ph: (704) 822-4824

MICHAEL J. FITZPATRICK,
ARCHITECT
193 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.499.7600

BUILDING # 4

UNITS # 874, 876, 878, 880

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina



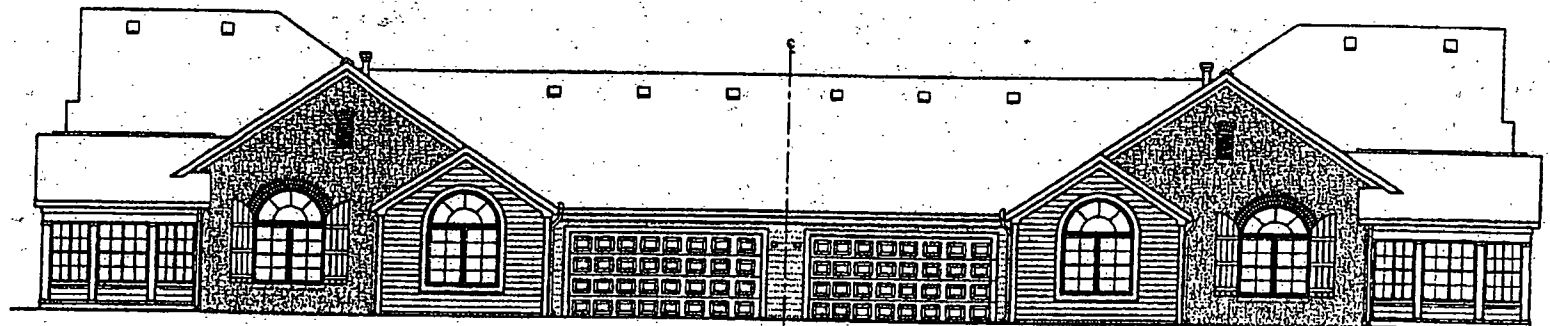
UNIT: 880

CANTERBURY

END ELEVATION

UNIT: 878

CANTERBURY



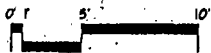
UNIT: 878

CANTERBURY

SIDE ELEVATION

UNIT: 876

CANTERBURY



EXTERIOR ELEVATIONS

2 of 2

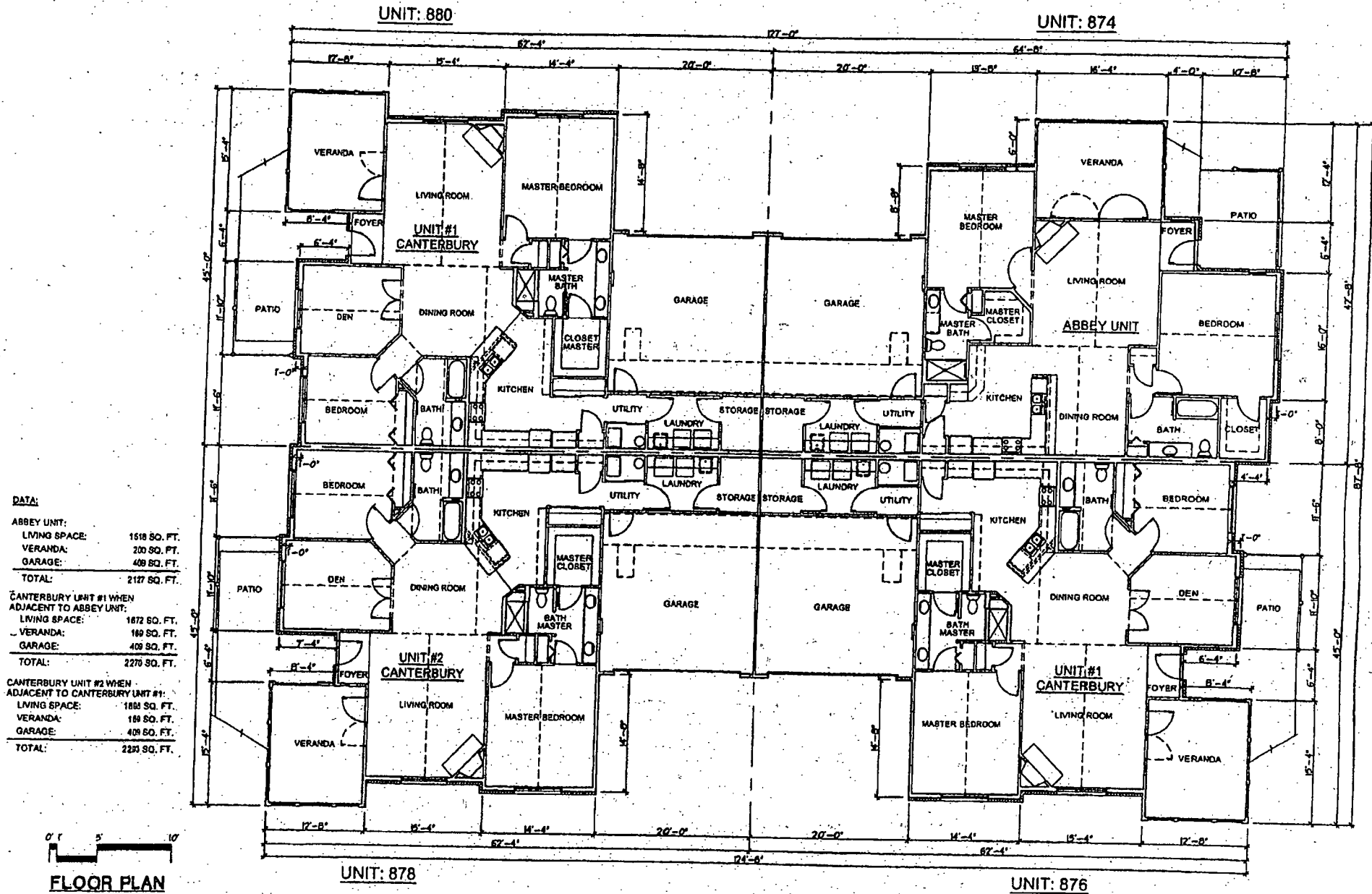
FANKHAUSER PROPERTY GROUP
300 East John St., Suite 126
Matthews, NC 28105
Ph: (704) 622-4624

MICHAEL J. FITZPATRICK,
ARCHITECT
166 NORTH FIFTH ST.
COLUMBUS, OHIO 43215

BUILDING # 4

UNITS # 874, 876, 878, 880

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina



DATA:

ABBEY UNIT:	
LIVING SPACE:	1518 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2127 SQ. FT.

CANTERBURY UNIT #1 WHEN ADJACENT TO ABBEY UNIT:

LIVING SPACE:	1872 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2270 SQ. FT.

CANTERBURY UNIT #2 WHEN ADJACENT TO CANTERBURY UNIT #1:

LIVING SPACE:	1884 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2282 SQ. FT.

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 128
Matthews, NC 28105
PH: (704) 822-4524

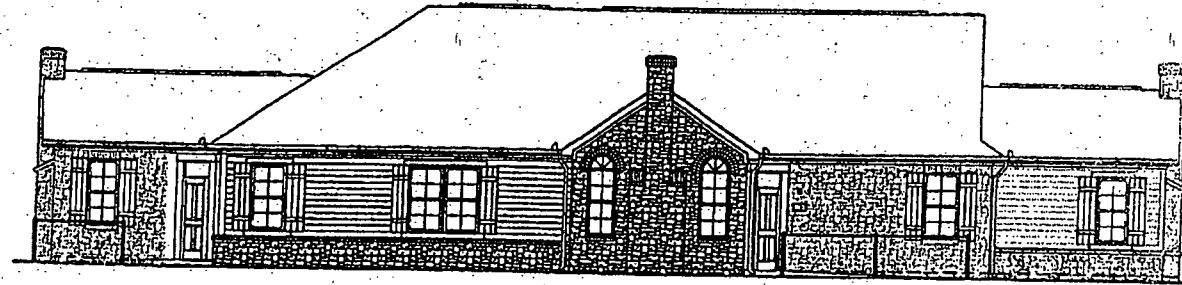
MICHAEL J. FITZPATRICK
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS, OHIO 43216
614 469,7556

BUILDING # 4

UNITS # 874, 876, 878, 880

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

S.R.O.A Vol.2 p. 0505



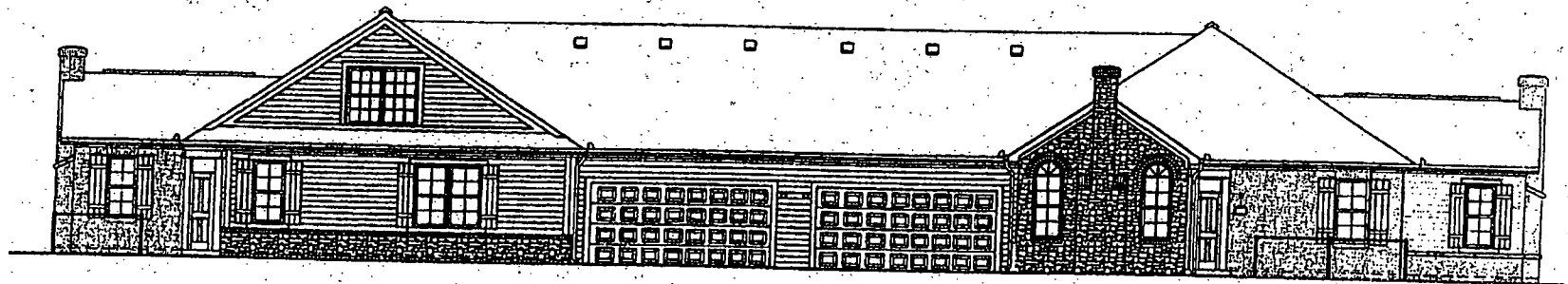
UNIT: 750, 746

VILLA

END ELEVATION

UNIT: 748, 744

CHATEAU



UNIT: 744, 748

CHATEAU

SIDE ELEVATION

UNIT: 750, 746

VILLA



EXTERIOR ELEVATIONS

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 128
Matthews, NC 28105
Ph: (703) 622-9524

MICHAEL J. FITZPATRICK,
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.466.7600

BUILDING # 17

UNITS # 744, 746, 748, 750

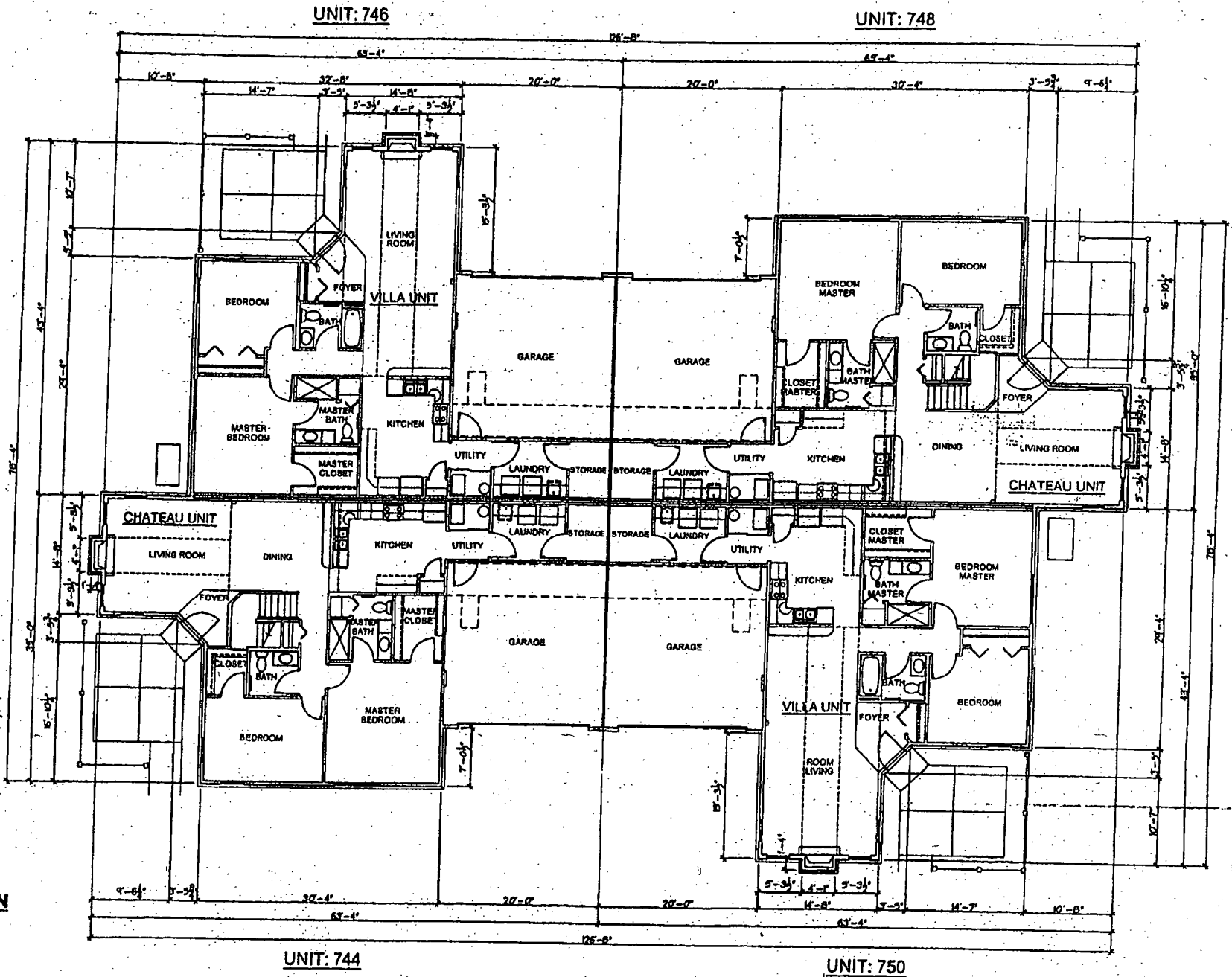
Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

DATA:

VILLA UNIT:	
LIVING SPACE:	1324 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	1733 SQ. FT.
CHATEAU UNIT:	
FIRST FLOOR LIVING SPACE:	1418 SQ. FT.
SECOND FLOOR LIVING SPACE:	510 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2335 SQ. FT.

0' 5' 10'

FIRST FLOOR PLAN



FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Mathews, NC 28105
Ph: (704) 622-4624

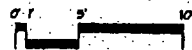
MICHAEL J. FITZPATRICK,
ARCHITECT
168 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.488.7800

BUILDING # 17 UNITS # 744, 746, 748, 750

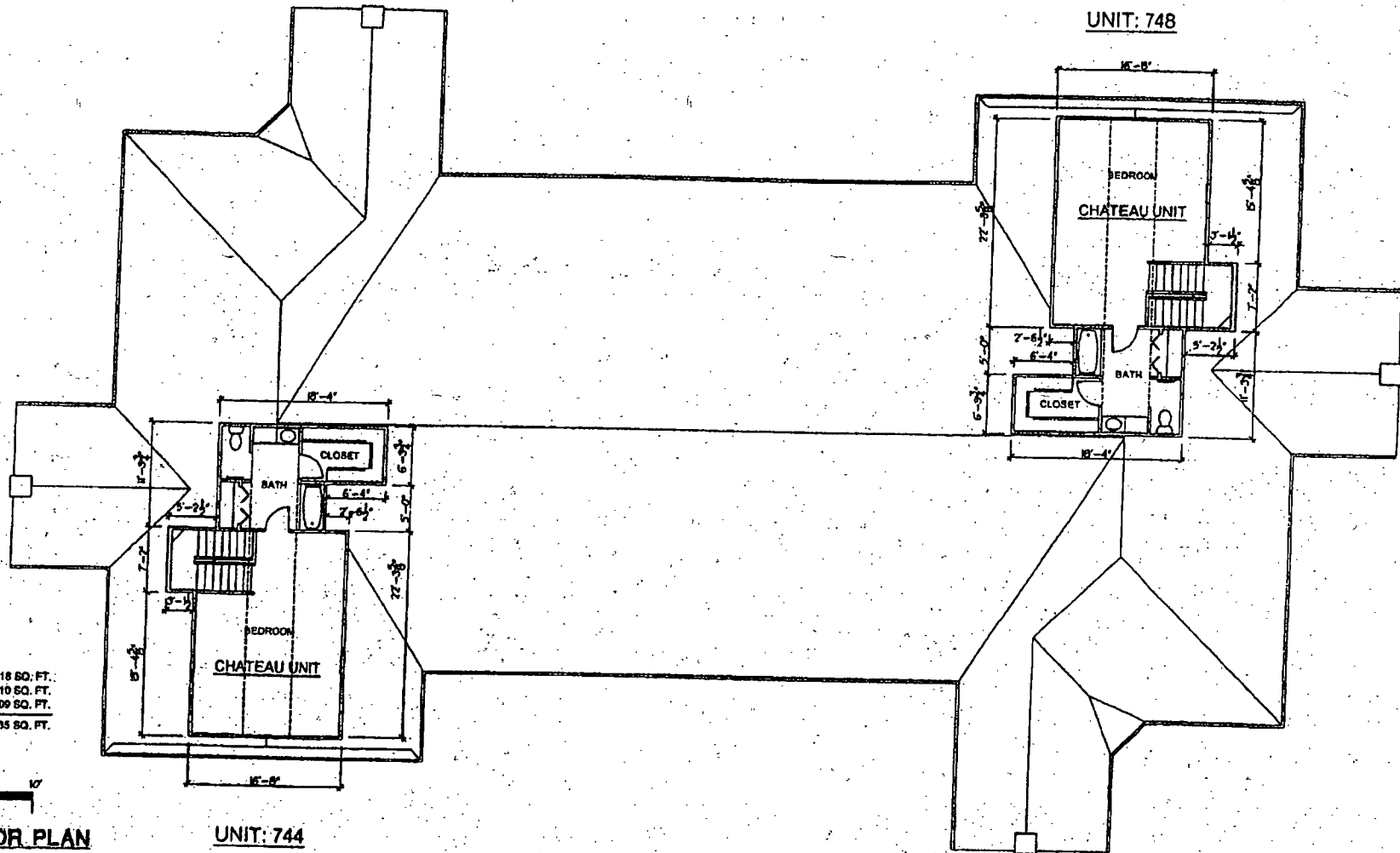
Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

DATA:

CHATEAU UNIT:
 FIRST FLOOR LIVING SPACE: 1418 SQ. FT.
 SECOND FLOOR LIVING SPACE: 810 SQ. FT.
 GARAGE: 409 SQ. FT.
 TOTAL: 2335 SQ. FT.



SECOND FLOOR PLAN



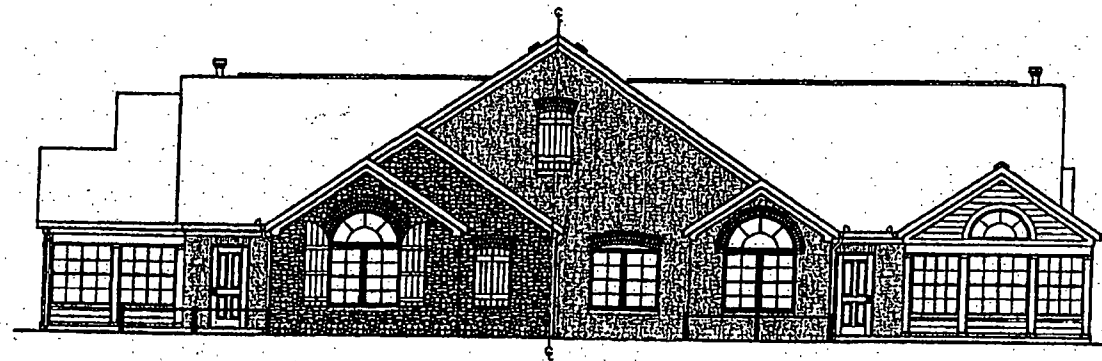
FANKHAUSER PROPERTY GROUP
 300 East John St., Suite 126
 Matthews, NC 28105
 Ph: (704) 622-4524

MICHAEL J. FITZPATRICK,
 ARCHITECT
 100 NORTH FIFTH ST.
 COLUMBUS, OHIO 43215
 614.499.7500

BUILDING # 17

UNITS # 744, 746, 748, 750

Stonecrest Villas of Tega Cay
 Tega Cay, York County, South Carolina



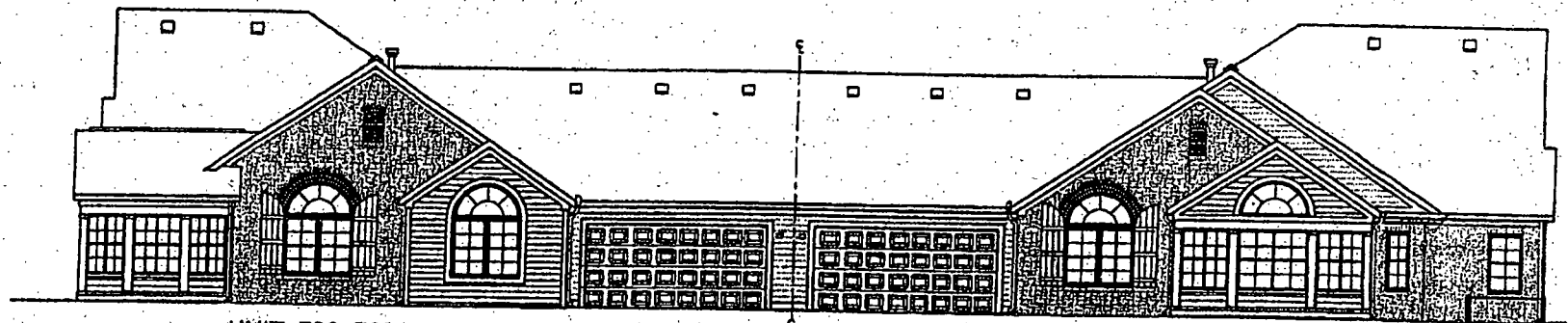
UNIT: 724, 728

END ELEVATION

UNIT: 730, 726

ABBEY

CANTERBURY



UNIT: 726, 730

SIDE ELEVATION

UNIT: 724, 728

CANTERBURY

ABBEY



EXTERIOR ELEVATIONS

FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Mathews, NC 26105
Ph: (704) 622-4824

MICHAEL J. FITZPATRICK,
ARCHITECT
100 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.286.7500

BUILDING # 18

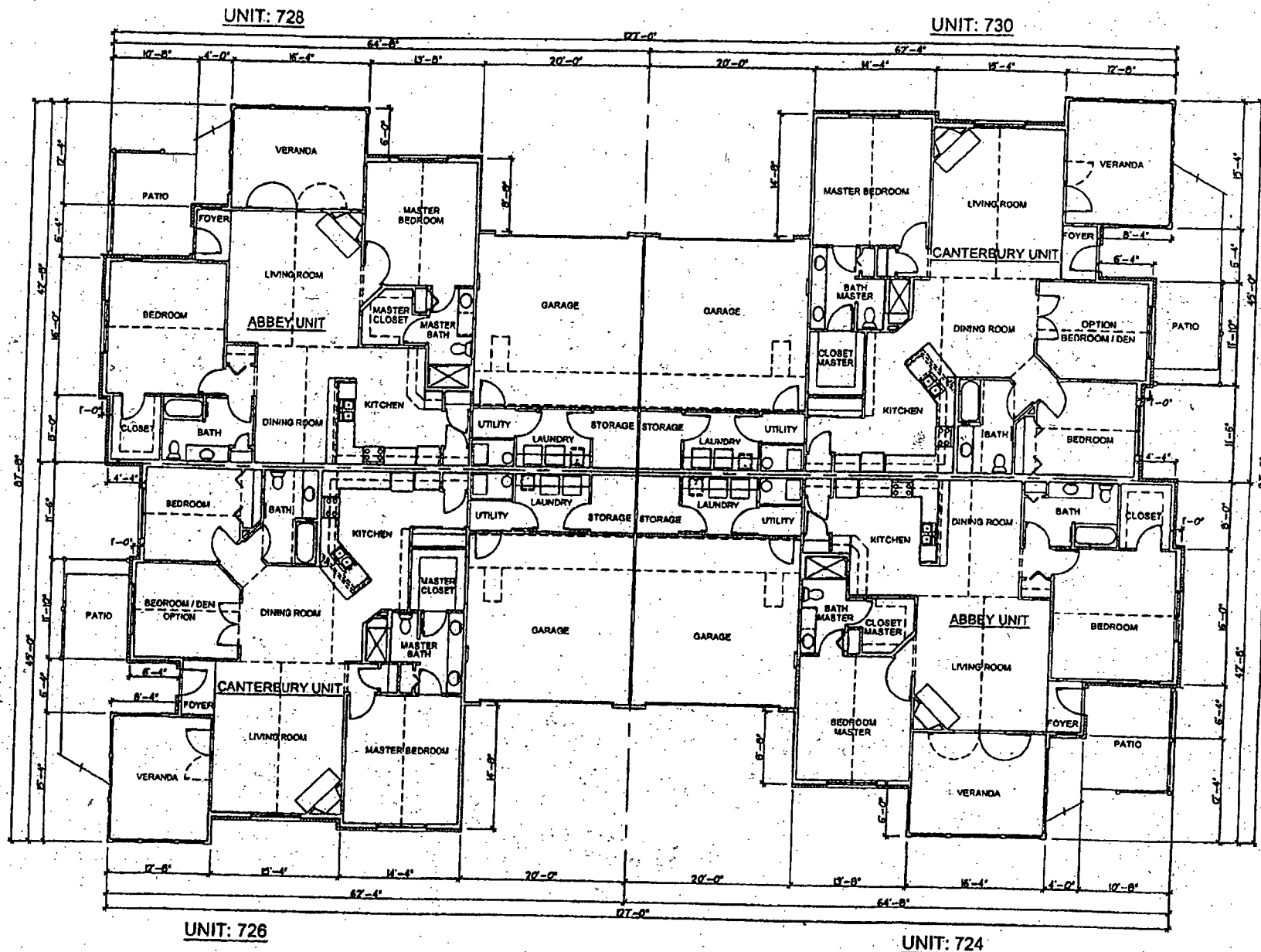
UNITS # 724, 726, 728, 730

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

DATA:	
ABBEY UNIT:	
LIVING SPACE:	1519 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT:	
LIVING SPACE:	1672 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2270 SQ. FT.

0' 5' 10'

FLOOR PLAN



FANKHAUSER PROPERTY GROUP
300 East John St., Suite 120
Matthews, NC 28105
PH: (704) 822-4524

MICHAEL J. FITZPATRICK,
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.469.7500

BUILDING # 18

UNITS # 724, 726, 728, 730

Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

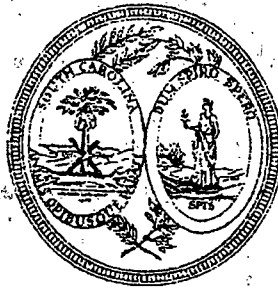
EXHIBIT D
IDENTIFICATION NUMBERS OF UNITS

<u>Building 1</u>	<u>Units 1-707; 1-705; 1-711; 1-709</u>
<u>Building 2</u>	<u>Units 2-717; 2-715; 2-721; 2-719</u>
<u>Building 3</u>	<u>Units 3-727; 3-725; 3-731; 3-729</u>
<u>Building 4</u>	<u>Units 4-876; 4-874; 4-880; 4-878</u>
<u>Building 5</u>	<u>Units 5-866; 5-864; 5-870; 5-868</u>
<u>Building 6</u>	<u>Units 6-856; 6-854; 6-860; 6-858</u>
<u>Building 7</u>	<u>Units 7-846; 7-844; 7-850; 7-848</u>
<u>Building 8</u>	<u>Units 8-834; 8-840; 8-838; 8-836</u>
<u>Building 9</u>	<u>Units 9-824; 9-830; 9-828; 9-826</u>
<u>Building 10</u>	<u>Units 10-814; 10-820; 10-818; 10-816</u>
<u>Building 11</u>	<u>Units 11-804; 11-810; 11-808; 11-806</u>
<u>Building 12</u>	<u>Units 12-794; 12-796</u>
<u>Building 13</u>	<u>Units 13-790; 13-788; 13-786; 13-784</u>
<u>Building 14</u>	<u>Units 14-780; 14-778; 14-776; 14-774</u>
<u>Building 15</u>	<u>Units 15-770; 15-768; 15-766; 15-764</u>
<u>Building 16</u>	<u>Units 16-760; 16-758; 16-756; 16-754</u>
<u>Building 17</u>	<u>Units 17-750; 17-748; 17-746; 17-744</u>
<u>Building 18</u>	<u>Units 18-730; 18-728; 18-726; 18-724</u>
<u>Building 19</u>	<u>Units 19-755; 19-761; 19-759; 19-757</u>
<u>Building 20</u>	<u>Units 20-829; 20-827; 20-825; 20-831</u>
<u>Building 21</u>	<u>Units 21-819; 21-817; 21-815; 21-821</u>
<u>Building 22</u>	<u>Units 22-765; 22-771; 22-769; 22-767</u>
<u>Building 23</u>	<u>Units 23-809; 23-807; 23-805; 23-811</u>

EXHIBIT E

ARTICLES OF INCORPORATION

The State of South Carolina



Office of Secretary of State Mark Hammond

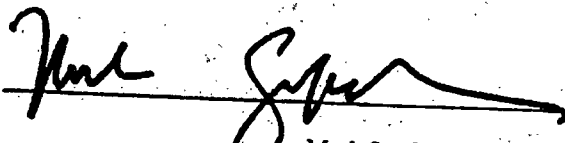
Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS, a nonprofit corporation duly organized under the laws of the State of South Carolina on February 7th, 2007, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 14th day of February, 2007.


Mark Sanford, Governor

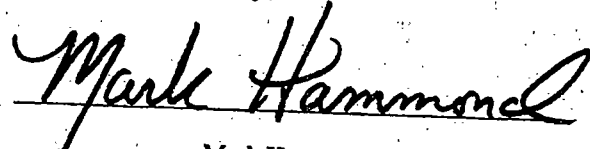

Mark Hammond, Secretary of State

EXHIBIT "A"

7. (b) Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to the Association's successor as governing entity of the condominium, or if the Condominium be terminated, after payment of all debts and expenses, divided as provided according to the percentage ownership interests of the Co-Owners in the Common Elements and disbursed as provided in The Act and/or the Master Deed, provided, however, the residual of any property of any nature owned by the Association not held by it on behalf of the Co-Owners or any of them, shall, if appropriate, be turned over to one or more organizations described in Sections 501(c)(3) and 170(c) of the Internal Revenue Code and from South Charlotte Income Tax, or to the Federal State or Local Government for exclusively public purposes.

STATE OF SOUTH CAROLINA
 SECRETARY OF STATE
 NONPROFIT CORPORATION
 ARTICLES OF INCORPORATION

FEB 07 2007

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

Mark Hammond
 SECRETARY OF STATE OF SOUTH CAROLINA

1. The name of the nonprofit corporation is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.
2. The initial registered office of the nonprofit corporation is 105 Stone Village Dr.
Fort Mill York SC 29708
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is

Brock L. Fankhauser

Print Name

I hereby consent to the appointment as registered agent of the corporation.

X Brockhauser
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
 - a. ☐ The nonprofit corporation is a public benefit corporation.
 - b. ☐ The nonprofit corporation is a religious corporation.
 - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
 - a. ☐ This corporation will have members.
 - b. ☒ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is
105 Stone Village Drive, York, Fort Mill, SC 29708
Street Address City County State Zip Code
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
 - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated

070207-0051

FILED: 02/07/2007

TED TO BE A TRUE COPY

STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNER

Filing Fee: \$25.00 ORIG



Mark Hammond

South Carolina Secretary of State

Owners Assoc., Inc.

exclusively for such purposes.

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

- a. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

- b. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

See attached Exhibit A

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

9. The name and address of each incorporator is as follows (only one is required)

Brock L. Fankhauser 300 East John St., Ste 126, Matthews, NC 28105
Name Address Zip Code

Name Address Zip Code

Name Address Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

11. Each incorporator must sign the articles.

X [Signature]
Signature of incorporator

Signature of incorporator

Signature of incorporator

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk, which will allow for expansion of space on the form.
3. This form must be accompanied by the filing fee of \$25.00 payable to the "Secretary of State."
- Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211
4. If this organization is a Political Association it must also be accompanied by the First Annual Report of Corporations and an additional \$25.00 fee is required.

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

HP-ARTICLES OF INCORPORATION.doc

Form Revised by South Carolina
Secretary of State, January 2000

EXHIBIT F
BYLAWS

**BYLAWS OF
STONECREST VILLAS OF TEGA CAY CONDOMINIUM
OWNERS ASSOCIATION, INC.**

**ARTICLE I.
Definitions**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime recorded in the Clerk of Court's Office of York County, South Carolina, to which a copy of these Bylaws is attached as Exhibit F.

**ARTICLE II.
Administration of Condominium**

Section 2.1. Authority and Responsibility. Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements.

Section 2.2. Official Action. Unless specifically required in the Condominium Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Executive Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Executive Board as set forth in the Condominium Documents or these Bylaws. The Association, its Executive Board, Directors, officers and Members shall at all times act in conformity with the South Carolina Nonprofit Corporation Act of 1994 (South Carolina Code of Laws section 33-31-101 et seq.) ("South Carolina Nonprofit Corporation Act"), the Condominium Documents, and the South Carolina Horizontal Property Act.

**ARTICLE III.
Offices - Seal - Fiscal Year**

Section 3.1. Principal Office and Registered Office. The initial principal office and registered office of the Association shall be located at 105 Stone Village Drive, Fort Mill, South Carolina 29708.

Section 3.2. Other Offices. The Association may have other offices at such other places within the State of South Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

Section 3.3. Seal. The seal of the Association shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Executive Board.

Section 3.4. Fiscal Year. The fiscal year of the Association shall be the calendar year.

**ARTICLE IV.
Membership**

Section 4.1. Qualification.

(a) Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a Member of the Association (the "Membership"). Membership in the Association shall be appurtenant to and may not be separated from Unit ownership.

(b) Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the

Clerk of Court's Office of York County of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2. Place of Meetings. All meetings of the Membership shall be held at a place in York County, South Carolina designated by the Executive Board.

Section 4.3. Annual Meetings. A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the third Monday in February of each year at 6:30 p.m., Eastern Standard Time. If the third Monday in February shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Executive Board shall be elected in accordance with Article V of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4. Substitute Annual Meeting. If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5. Special Meeting. After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty percent (20%) of all votes in the Association; or by not less than fifty-one percent (51%) of the Executive Board Directors. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6. Notices of Meeting.

(a) Written or printed notice stating the time and place of a Membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Master Deed or these Bylaws, any budget changes, and any proposal to remove a Director or officer, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such Membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit.

(b) Notice given to any one tenant-in-common, tenant-by-entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

(c) The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast fifty percent (50%) of the votes which may be cast for election of the Executive Board shall constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8. Voting Right.

(a) The total percentage of voting interests in the Association will be one hundred percent (100%) and each Member will have a voting interest in the Association in the amount set forth on Exhibit B of the Master Deed.

(b) If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the voting interest with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast all or a portion of the voting interest allocated to the particular Unit.

(c) Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such Joint Owners.

(d) In no event may the voting interest which may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of voting interests that may be cast by any Member or Members.

Section 4.9. Proxies.

(a) Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A Member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

(b) All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

Section 4.10. Majority Vote. The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Master Deed, the Articles of Incorporation of the Association, or the Horizontal Property Act.

Section 4.11. Actions Without Meeting. Any action which may be taken at a meeting of the Membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

ARTICLE V. Executive Board

Section 5.1. General Powers. The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Article VI of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Master Deed, to terminate the Condominium, to elect Directors of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board Directors. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2. Number, Term and Qualification. The initial Executive Board shall consist of those individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association (a "Director" or collectively "Directors"). During the Declarant Control Period, the Declarant may appoint and remove Directors of the Executive Board; subject, however to the limitations contained in Section 9.3 of the Master Deed. Prior to the expiration of the Declarant Control Period, the Members shall elect three (3) Directors, each to serve for a term of one (1) year, and thereafter the Executive Board shall have three (3) Directors. Directors may succeed themselves in office. In the event of the death, resignation, retirement,

removal or disqualification of a Director during the elected term of office, the Director's successor shall be elected to serve only until the expiration of the term of the predecessor.

Section 5.3. Election of Directors. The election of all Directors shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4. Removal. Any Director, other than a Director appointed by Declarant, may be removed from the Executive Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Directors are so removed, their successors as Directors may be elected by the Membership at the same meeting to fill the unexpired terms of the Directors so removed.

Section 5.5. Vacancies. A vacancy occurring in the Executive Board may only be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. As indicated in Section 5.4, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Director.

Section 5.6. Chairman. A Director of the Executive Board shall be elected as Chairman of the Executive Board by the Directors at the first meeting of the Executive Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Executive Board, the President shall preside.

Section 5.7. Compensation. No Director of the Executive Board shall receive any compensation from the Association for acting as such. Provided, however, each Director shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Executive Board from compensating a Director for unusual and extraordinary services rendered on the basis of *quantum meruit*. Further provided, each Director, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 5.8. Loans to Directors and Officers. No loans shall be made by the Association to its Directors or officers. The Directors who vote for or assent to the making of a loan to a Director or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 5.9. Liability of Directors. To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act, in effect at the applicable time, each Director is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Director. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10. Meetings of the Executive Board.

(a) **Regular Meeting.** Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Executive Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(b) **Special Meetings.** Special Meetings shall be held when called by the President of the Association, or by any Director, after not less than three (3) or more than thirty (30) days written notice to each Director.

(c) **Notices of Special Meetings.** The notice provided for herein may be waived by written instrument signed by those Directors who do not receive said notice. Except to the extent otherwise

required by law, the purpose of a Directors' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one (1) day following deposit of same in the United States mail with proper postage paid and addressed to the Director at his last known address on file with the Association; (2) deposit of same in his Unit mail box; (3) personal delivery to the Director. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting unless the subject Director gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

(d) Approved Meeting Place. All Executive Board meetings shall be held in York County, South Carolina.

(e) Quorum. A majority of the Directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Executive Board.

Section 5.11. Action Without Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Executive Board. Said written approval shall be filed with the minutes of the proceedings of the Executive Board, whether done before or after the action so taken.

Section 5.12. Presumption of Assent. A Director who is present at a meeting of the Executive Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 5.13. Powers and Duties. The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Executive Board. The powers and duties to be exercised by the Executive Board shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

(b) Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;

(c) Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

(d) Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;

(e) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(f) Obtaining insurance as required or permitted under the terms of the applicable provisions of the Master Deed;

- (g) Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;
- (h) Keeping a complete record of the minutes of all meetings of the Executive Board and Membership in which minute book shall be inserted actions taken by the Executive Board and/or Members by consent without meeting;
- (i) Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;
- (j) Enforcing, on behalf of the Association, the obligations and assessments provided in the Master Deed, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Master Deed, the institution of actions to foreclose liens for such assessments in accordance with the terms of the Horizontal Property Act, the imposition of charges for late payment of assessments, after notice and an opportunity to be heard, levying reasonable fines not to exceed One Hundred Fifty and No/100 Dollars (\$150.00) for violations of the Master Deed, Bylaws and rules and regulations of the Association;
- (k) Making of repairs, additions, and improvements to or alterations or restoration of the Condominium in accordance with the other provisions of these Bylaws and the Master Deed, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;
- (l) Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Master Deed or the rules and regulations hereinafter promulgated governing use of the Common Elements;
- (m) Paying all taxes and assessments which are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;
- (n) Hiring attorneys and other professionals;
- (o) Maintaining and repairing any Unit, if such maintenance or repair is required by the Master Deed or is necessary in the discretion of the Executive Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Executive Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;
- (p) Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Executive Board and such expenses shall be treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Executive Board to be an emergency;
- (q) Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Executive Board. In the absence of such determination by the Executive Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Director;

(r) Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor;

(s) Making reasonable rules and regulations and approving the appearance and location of all signage on the Property;

(t) Reviewing and approving, or disapproving, plans for any proposed alterations or improvements to any Units proposed by the Owners of such Unit;

(u) Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Master Deed, the Articles of Incorporation, these Bylaws, or the Horizontal Property Act;

(v) Acquiring, holding, and disposing of tangible and intangible personal property and real property;

(w) Dealing with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Master Deed, Articles of Incorporation, these Bylaws, or the Horizontal Property Act;

(x) Representing the Owners in the Condominium's dealings with governmental entities.

Section 5.14. Independent Manager. The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Condominium as the Executive Board deems appropriate. The Independent Manager's contract shall be for a term not to exceed one (1) year, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than thirty (30) days' prior written notice and without payment of any penalty, and any such contract entered into during the Declarant Control Period also shall be terminable. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

ARTICLE VI. Committees

Section 6.1. Creation. The Executive Board, by resolutions adopted by a majority of the number of Directors then holding office, may create such committees as they deem necessary and appropriate in aiding the Executive Board to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Executive Board deems appropriate and as set forth in the resolutions creating such committee. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) Director of the Executive Board.

Section 6.2. Vacancy. Any vacancy occurring on a committee shall be filled by a majority of the number of Directors then holding office at a Regular or Special meeting of the Executive Board.

Section 6.3. Removal. Any member of a committee may be removed at any time with or without cause by a majority of the number of Directors then holding office.

Section 6.4. Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Executive Board when required.

Section 6.5. Responsibility of Directors.

(a) The designation of committees and the delegation thereto of authority shall not operate to relieve the Executive Board or any Director thereof of any responsibility or liability imposed upon it or him by law.

(b) If action taken by a committee is not thereafter formally considered by the Executive Board, a Director may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

ARTICLE VII. Officers

Section 7.1. Enumeration of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Executive Board may from time to time elect. Except for the President, no officer need be a Director of the Executive Board.

Section 7.2. Election and Term. The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the Executive Board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3. Removal. Any officer elected or appointed by the Executive Board may be removed by the Executive Board whenever, in its judgment, the best interest of the Association will be served thereby.

Section 7.4. Vacancy. A vacancy in any office may be filled by the election by the Executive Board of a successor to such office. Such election may be held at any meeting of the Executive Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5. Multiple Offices. The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a Director of the Executive Board.

Section 7.6. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the South Carolina Nonprofit Corporation Act in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7.7. Vice Presidents. The Vice Presidents in the order of their election, unless otherwise determined by the Executive Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

Section 7.8. Secretary. The Secretary shall keep the minutes of all meetings of Members and of the Executive Board; he shall have charge of such books and papers as the Executive Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under the South Carolina Nonprofit Corporation Act.

Section 7.9. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for (1) keeping full and accurate financial records and books of account showing all receipts and disbursements and/or expenditures affecting the Property and its administration, in chronological order, and specifying the maintenance and repair expenses of the Common Elements and any

other expenses incurred; and (2) the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Executive Board) and the other reports to be furnished to the Members as required in the Master Deed. He shall perform all duties incident to the office of Treasurer of a corporation organized under the South Carolina Nonprofit Corporation Act.

Section 7.10. Assistant Secretaries and Treasurers. The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Executive Board.

Section 7.11. Compensation. Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 7.12. Indemnification. To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

ARTICLE VIII. Operation of the Property

Section 8.1. Determination of Common Expenses and Fixing of the Common Charges.

(a) The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in the manner provided in Article XI of the Master Deed, all in accordance with the procedure set forth in this Article VIII, but subject to the limitations set forth in Article XVII of the Master Deed. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Master Deed. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Condominium, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year.

(b) Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Members, and shall set a date for a meeting of the Members to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that meeting a majority of all the Members present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Members ratify a subsequent budget proposed by the Executive Board.

(c) The Association, acting through the Executive Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Members to which at least sixty-seven percent (67%) of the

votes in the Association are allocated, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

(d) The Association, acting through the Executive Board, may equitably assess Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units among Unit Owners according to the benefit received.

(e) The Association, acting through the Executive Board, may assess any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units among such Unit or Units.

(f) The Declarant, as the agent of the Association, shall collect from each initial purchaser of a Unit at the time of closing an "Initial Capital Contribution" equal to twice the estimated monthly assessment for Common Expenses. Such funds shall not be considered advance payments of assessments. The Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. In addition, upon the expiration of the Declarant Control Period, the Declarant shall forward to the Association a contribution to the working capital fund, in the amount specified above, for each unsold Unit in the Condominium held by Declarant, and in that event, Declarant shall be entitled to retain as a reimbursement the working capital contributions ultimately made by the initial purchasers of such Units. Such funds may be used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Executive Board may determine. Except for the permitted reimbursement of prepaid contributions referred to above, the Declarant may not use the working capital fund to defray any of the Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits of the Association during the Declarant Control Period.

Section 8.2. Payment of Common Expenses.

(a) All Owners shall be obligated to pay the Common Expenses assessed by the Executive Board pursuant to the provisions of Section 8.1 hereof at such time or times as the Board shall determine.

(b) No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Master Deed and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3. Collection of Assessments.

(a) The Executive Board shall assess Common Expenses against the Units from time to time and at least monthly in accordance with the allocations set forth in the Master Deed. The Executive Board shall take prompt action to collect any Common Expenses which remain unpaid for more than thirty (30) days from the due date for payment thereof.

(b) The Executive Board shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4. Default in Payment of Common Expenses: Remedies.

(a) In the event of default by any Owner in paying to the Executive Board the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorneys' fees (if permitted by law), incurred by the Executive Board in any

proceeding brought to collect such unpaid Common Expenses. In addition, the Executive Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

(b) The Executive Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Executive Board shall also have the right to impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

(c) In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Condominium Documents and the Horizontal Property Act, the Executive Board shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5. Lien and Personal Obligations.

(a) All Common Expenses provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the Clerk of Court's Office of York County, South Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

(b) The lien for unpaid assessments shall not be affected by the sale or transfer of the Unit, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any assessments against such Unit that became due prior to the date of acquisition of title by such purchaser. Such unpaid assessments shall be deemed Common Expenses collectible from all Owners of Units, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any assessment against his Unit. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

Section 8.6. Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Executive Board to foreclose on a Unit because of unpaid Common Expenses, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7. Abatement and Enforcement of Violations by Owners. The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Master Deed, shall give the Executive Board the right, in addition to any other rights set forth in the Master Deed, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Executive Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Executive Board shall be obligated to institute judicial proceedings before any item of construction can be altered or demolished; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed One Hundred Fifty and No/100 Dollars (\$150.00).

Section 8.8. Maintenance and Repair. (a) Except as is specifically provided in the Master Deed, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, other than parking spaces, if any, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Master Deed, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Executive Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Executive Board to the extent the Executive Board receives insurance proceeds for such repairs.

Section 8.9. Additions, Alterations or Improvements by Owners. No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with the terms of the Master Deed.

Section 8.10. Use of Common Elements. An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees and invitees.

Section 8.11. Right of Access. An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspections; for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements; for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.12. Rules of Conduct. Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Executive Board with the approval of a majority of Members. Copies of such rules and regulations shall be furnished by the Executive Board to each Member prior to the time when the same shall become effective.

Section 8.13. Common Expenses for Utilities. Any utilities which may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Elements, shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Executive Board, such may be paid by the Board and assessed against the Units as a Common Expense.

Section 8.14. Covenant to Pay Association: Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the association: (i) annual assessments or charges; (ii) special assessments, and (iii) any other assessment provided for within the Master Deed, the Bylaws.

ARTICLE IX Amendments

Subject to the provisions of Article XVII of the Master Deed, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Members holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Clerk of Court's Office of York County. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Members holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Condominium shall be bound to abide by any amendment to these Bylaws which

is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant.

ARTICLE X. Miscellaneous

Section 10.1. Severability. Invalidation of any covenant, condition, restriction or other provisions of the Master Deed or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 10.2. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Condominium and shall be binding upon all persons who own or hereafter acquire any interest in the Condominium.

Section 10.3. Gender, Singular or Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 10.4. Nonprofit Corporation. No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the Directors of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

CONSENT OF MORTGAGEE

ATTACHED TO MASTER DEED OF
STONECREST VILLAS OF TEGA CAY HORIZONTAL PROPERTY REGIME

First Charter Bank, being the Beneficiary under that certain Deed of Trust Securing Future Advances ("Deed of Trust") from Declarant to First Charter Bank, dated 5/25/06, and recorded 5/26/06 at 2:07 p.m. in Book 8065 at Page 197 of the Clerk of Court's Office of York County, South Carolina, and being modified in Book 8778, Page 0035 of the Clerk of Court's Office of York County, South Carolina, encumbering the property described on Exhibit A attached to this Master Deed, does consent to the recordation of this Master Deed and the imposition of the provisions hereof and the provisions of the South Carolina Horizontal Property Act to the real property described in Exhibit A and the subordination of the Deed of Trust to this Master Deed. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of Declarant under the Master Deed. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above.

Signed, sealed and delivered

In the presence of

Witness

Witness

BENEFICIARY:

FIRST CHARTER BANK, A NORTH CAROLINA
BANKING CORPORATION

BY: Eric Ford

Name: Eric Ford
Title: Vice President

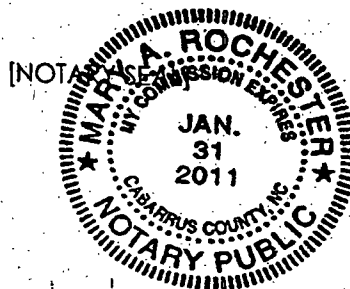
STATE OF North Carolina
COUNTY Cabarrus

I, Mary A Rochester, a Notary Public of aforesaid County and State, certify that ERIC FORD, either being personally known to me or proven by satisfactory evidence (said evidence being a driver's license), personally appeared before me this day and acknowledged that he/she is vice president of First Charter Bank, North Carolina Banking Corporation, and that by authority duly given and as the act of such entity, he/she being authorized to do so, executed the foregoing instrument voluntarily in its behalf as its act and deed.

Witness my hand and official seal this the 12th day of Feb. 2007.

Mary A Rochester
Notary Public

My commission expires: 1-31-11



Prepared by and please return to:
Julie B. Glenn
2760 East W.T. Harris Blvd. Suite 200
Charlotte, NC 28213

CERTIFIED TO BE A TRUE COPY

Excise Stamps: \$817.70

STATE OF SOUTH CAROLINA

COUNTY OF YORK

**TITLE TO REAL ESTATE/GENERAL
WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that Stonecrest Villas of Tega Cay, LLC, in consideration of the sum of Two-Hundred and Twenty-One Thousand Dollars and 00/100 (\$221,000.00) to it in hand paid at and before the sealing of these presents by Brock L. Fankhauser, Member/Manager of Stonecrest Villas of Tega Cay, LLC, whose address is 300 East John Street, #126, Matthews, NC 28105, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said JAMES J. BARONE AND WIFE, DEBORAH BARONE, whose address is 52 Central Parkway, Huntington, NY 11743, as joint tenants with rights of survivorship, and not as tenants in common, their heirs/successors and assigns the following described property to wit:

See Exhibit A attached hereto and incorporated
herein by reference.

The within described property is conveyed subject to existing easements and to restrictive covenants, if any, appearing in the chain of title or apparent upon a reasonable inspection of the premises, which said restrictions, if any, are not intended to be reimposed hereby.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said JAMES J. BARONE AND WIFE, DEBORAH BARONE, as joint tenants with rights of survivorship, and not as tenants in common, heirs/successors and assigns forever.

And the said Stonecrest Villas of Tega Cay, LLC does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said JAMES J. BARONE AND WIFE, DEBORAH BARONE, as joint tenants with rights of survivorship, and not as tenants in common, heirs/successors and assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Stonecrest Villas of Tega Cay, LLC has caused these presents

IN WITNESS WHEREOF, Stonecrest Villas of Tega Cay, LLC has caused these presents to be executed in its name by Brock L. Fankhauser, its Member, this 13th day of September, in the year of our Lord two thousand seven (2007) and in the two hundred and twenty-ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

STONECREST VILLAS OF TEGA CAY, LLC

By: Brock L. Fankhauser
Name: Brock L. Fankhauser
Title: Member

Witness: Melissa Holmes

Witness: John D. Davis

STATE OF NORTH CAROLINA)
COUNTY OF MECKLENBURG)

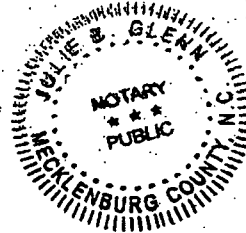
PERSONALLY APPEARED before me the undersigned witness, who, in oath, says that (s)he saw the within named STONECREST VILLAS OF TEGA CAY, LLC, by BROCK L. FANKHAUSER as MEMBER, sign the within Deed, and the said Corporation, by said officer, seal the said Deed, and, as its act and deed delivery the same, and that (s)he along with John D. Davis, witnessed the execution thereof.

Melissa Holmes
Witness

SWORN to before me this 13
day of September, A.D. 2007

Julie B. Glenn
Notary Public for North Carolina
Commission Expires: 11/20/08

Grantee Address:
767 Ledgestone Court
Tega Cay, SC 29708



MAIL TO: 52 CENTRAL PKWY
HUNTINGTON, NY 11743

BEING all of Apartment/Unit 767, Building 22, of Stoncrest Villas of Tega Cay Horizontal Property Regime, a Condominium, according to the plans of said apartment by Michael J. Fitzpatrick, Registered Architect, State of South Carolina, dated 2/16/07, and recorded with the Master Deed. Said apartment/Unit of Stoncrest Villas of Tega Cay Horizontal Property Regime is more fully described on a survey entitled "Stoncrest Villas of Tega Cay Condominium, Map 2, Phase 1", prepared by E. Daniel Wooten, PLS, dated January 4, 2007, and recorded in the Office of the Clerk of Court for York County in Plat Book D228, at Page 3.

Subject to all of the provisions of the Master Deed thereof dated February 12, 2007, and recorded in the Office of the Clerk of Court for York County in Deed Book 8852, at Page 149, and supplemented in the First Amendment to the Master Deed dated June 25, 2007 and recorded in the Office of the Clerk of Court for York County in Deed Book 9215, Page 138.

Together with an undivided interest in the common elements and all appurtenances thereto according to said Master Deed and the Grantees assume and agree to observe and perform their obligations under said Master Deed and First Amendment, including but not limited to the payment of assessments for the maintenance and operation of the dwelling and condominium. Subject to the provisions of the By-Laws of Stoncrest Villas of Tega Cay Horizontal Property Regime, and to all other reservations, restrictions, and rights of way of record, including those as set out on the aforesaid documents.

Derivation: Deed Book 8065, Page 192, Office of the Clerk of Court for York County.

(BARONEJAMES0708.PFD\BARONEJAMES0708/6)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney,)
Plaintiff,)

CASE NO. 2010-CP-46- 2326

v.)

Brock L. Frankhauser,)
Frankhauser Property Group, Inc.,)
and Stonecrest Villas of Tega Cay,)
Home Owners Association,)
Inc.,)
Defendants.)

COMPLAINT
(JURY TRIAL DEMANDED)

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2010 JUN -2 PM 3:01

FILED-RECEIVED

Plaintiff, complaining of the Defendants identified above, would respectfully show and allege:

1. Plaintiff is a resident of York County residing at 809 Ledgestone Court in Fort Mill, South Carolina, 29708, in York County, a condominium property built and constructed by Defendant Frankhauser Property Group, Inc.
2. Defendant Frankhauser Property Group, Inc. is a business organized and existing pursuant to the laws of the State of North Carolina, constructed the Plaintiffs' residence, and does business in York County, South Carolina.
3. Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc. is an ellemosyntry corporation organized and existing under South Carolina law and those certain covenants and restrictions filed with the York County Clerk of Court by and through Defendant Brock L. Frankhauser and/or Frankhauser Property Group, Inc. ("developer").
4. Defendant Brock F. Frankhauser is developer, owner, principal, president, and registered agent for both Defendants Frankhauser Property Group, Inc. and Stonecrest Villas of Tega Cay, does business in York County, and on information and belief is a resident of the state of North Carolina.
5. Jurisdiction is proper in York County, South Carolina as all causes of action as alleged *infra* occur from conduct, errors, omissions, duties, and privities (seller to purchaser) associated with a sale and/or maintenance of York County properties known as Stonecrest Villas Condominiums situated within York County.

2/13
JL

FOR A FIRST CAUSE OF ACTION
[AS TO ALL DEFENDANTS NAMED]
BREACH OF CONTRACT

1. The above allegations are set forth and incorporated as if repeated verbatim.
2. Plaintiff is informed and believes that Defendants jointly and severally knew, or should have known, that Plaintiff's property serves as Plaintiff's primary residence and home.
3. Plaintiff is informed and believes that contractual duties exist between Plaintiff and all three Defendants, supported by consideration, and that Defendants have breached said contractual obligations, to wit:
 - a. Defendant Brock L. Frankhauser as developer and leader of Stonecrest HOA has through inaction, errors, omissions, neglect, and procrastination refused to take sufficient corrective action to prevent water intrusion, damage to Plaintiff's residence, and effect necessary repairs, despite Defendant Brock Frankhauser's awareness of the ongoing problems.
 - b. Defendant Frankhauser Property Group, Inc. has by breach of warranties and contractual duties of good faith and fair dealing failed to render workmanlike construction on Plaintiffs residence, resulting in defects and water intrusion.
 - c. Defendant Stonecrest Villas Owners Association has, by and through Defendant Brock L. Frankhauser (chairman) failed to act promptly to protect Plaintiffs property from damage and effect required repairs, despite notice and despite acceptance of monthly assessments.
 - d. Defendants Brock L. Frankhauser and Stonecrest Owners Association, Inc. have knowingly, deliberately, and recklessly disregarded fiduciary obligations imposed by contract with Plaintiff and by restrictive covenants in ignoring defects and repair needs existing at Plaintiffs' residence.
 - e. Defendants Brock L. Frankhauser, Frankhauser Property Group, Inc. and Stonecrest Villas Owners Association have improperly and in bad faith employed monthly assessments toward development and maintenance of adjacent commercial tracts, instead of remedying defects, damages, and water intrusion at Plaintiff's property, thereby breaching contractual duties owed to Plaintiff.

4. That the conduct of Defendants, jointly and severally, constitutes a *breach of contract, breach of implied duties of good faith and fair dealing, breach of contract by fraudulent act, and breach of warranties* as described below.
5. That as a result of Defendants' Breach of Contract, respectively, Plaintiff has been damaged in amounts exceeding \$7,500 to be proven at trial of this matter before the court.
6. Plaintiffs damages are legally and proximately the result of Defendants' Breach of Contractual obligations to Plaintiff.
7. Plaintiff seeks actual, punitive, compensatory and expectation damages and attorney's fees as against Defendants in amounts to be proven at trial of this matter before the court, including the value of what Plaintiff purchased vs. the value of the product and services Plaintiff contracted for with Defendants.

FOR A SECOND CAUSE OF ACTION

[AS TO DEFENDANT BROCK L. FRANKHAUSER AND FRANKHAUSER
PROPERTY GROUP, INC.]
(CONSTRUCTION DEFECT)

1. The above allegations are set forth here and incorporated by reference as if repeated verbatim.
2. Defendant Frankhauser Property Group, Inc. constructed the condominium project Stonecrest Villas of Tega Cay, which construction encompasses the residence of the Plaintiff.
3. Defendant Frankhauser Property Group, Inc. constructed said condominiums with a stone masonry veneer exterior.
4. Plaintiff is informed and believes that Defendant Frankhauser Property Group, Inc. was careless, willful, wanton and negligent in its construction practices, to wit:
 - a. By failing to install a proper waterproofing, including a moisture barrier, concurrently with the masonry veneer building exterior directly contributing to water infiltration of the Plaintiff's residence;
 - b. By improperly constructing brick masonry at window sill structures to divert rain water intrusion properly from the Plaintiff's residence;
 - c. By improperly sealing brick masonry veneer exterior walls to prevent water infiltration into Plaintiff's residence.

- d. By failing to install proper flashing and internal drainage to prevent water infiltration into Plaintiff's residence.
 - e. By failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exterior.
 - f. By failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exterior.
 - g. By failing to provide a proper slope around brick masonry ledges and wall transitions to deflect water flow away from Plaintiff's residence;
 - h. By failing to properly grade and slope exterior foundation walls to prevent surface water intrusion per code.
 - i. By failing to properly gutter the condominiums go properly divert rainwater away from the Plaintiff's dwelling.
5. Plaintiff is informed and believes that Defendants' construction practices were carried out in a negligent and un-workmanlike manner and constitute building code violations.
 6. As a direct and proximate result of the unworkmanlike quality of Defendant Frankhauser Property Group, Inc.'s construction, Plaintiff has repeatedly experienced water infiltration into Plaintiff's home and has incurred actual and special damages exceeding \$7,500 to be proven at trial of this matter before a jury.
 7. Plaintiff seeks all attorneys' fees and costs associated with the necessity of prosecuting this matter.

FOR A THIRD CAUSE OF ACTION
[AS TO ALL DEFENDANTS]
(NEGLIGENCE AND NEGLIGENT SUPERVISION)

1. The above allegations are restated here and incorporated by reference as if set forth verbatim.
2. Defendant Brock L. Frankhauser is owner and principal of Defendant Frankhauser Property Group, Inc. and was developer of the Stonecrest Villas of Tega Cay condominium properties.
3. Defendant Brock L. Frankhauser is likewise the principal and registered agent of Defendant Stonecrest Villas of Tega Cay Home Owners Association (the "HOA").

4. Plaintiff is informed and believes that Defendants, jointly and severally, were negligent, willful, wanton, careless, and reckless as more fully set forth in the Plaintiff's First Cause of action, paragraphs 4(a) through 4(a), *infra*.
5. That Defendants Brock L. Frankhauser and Frankhauser Property Group, Inc. failed as developer to properly oversee and supervise the construction of condominium units by its agents, employees, and subcontractors, which resulted in shoddy and un-workmanlike construction.
6. That Defendants Brock L. Frankhauser and Stonecrest Villas ("HOA") have acted negligently, wantonly, willfully, carelessly, and in reckless disregard of Plaintiff's rights and Protection of Plaintiff's property after refusing to take curative work and after being placed on notice of the need for repairs by Plaintiff, *specifically knowing* that Plaintiff's home is experiencing routine episodes water infiltration.
7. That Defendants *knew or should have known* of the necessity and opportunity required of Defendants to act promptly to protect Plaintiffs property and to effect a permanent resolution to water intrusion into Plaintiffs home, but Defendants failed to act.
8. The negligence of the Defendants, jointly and severally, has proximately caused Plaintiff damages exceeding \$7,500 to be proven at trial of this matter.
9. Plaintiff seeks judgment as against Defendants in an amount necessary to properly compensate Plaintiff for damage to Plaintiff's property occasioned by developer and HOA negligence, errors, omissions, and/or inaction.

FOR A FOURTH CAUSE OF ACTION
[AS TO FRANKHAUSER DEFENDANTS ONLY]
(BREACH OF IMPLIED WARRANTY OF HABITABILITY AND WORKMANLIKE CONSTRUCTION)

1. The above allegations are restated and incorporated by reference as if set forth verbatim.
2. Plaintiff purchased a Stonecrest condominium constructed by Defendant / Developers Brock L. Frankhauser and Frankhauser Property Group, Inc.
3. Plaintiff's residence is being infiltrated by water seepage, proximately caused by defects in construction occasioned by Defendants Brock L. Frankhauser and/or Frankhauser Property Group, Inc. errors and/or omissions.

4. Plaintiff's flooring has been removed and not replaced due to Defendants' failure to pursue a permanent resolution to the construction defects which are continuing to cause water intrusion to Plaintiff's residence.
5. As a result, the condominium purchased from Defendants by Plaintiff is not fit for habitation, leaks water, and is damaged by water seepage occasioned by defects as set forth in Plaintiff's First Cause of Action, paragraph (4)(a) through 4(i), *infra*.
6. That the Defendant Frankhauser Property Group, Inc. by and through Brock L. Frankhauser rendered shoddy and unworkmanlike construction in development of the condominiums as set forth *infra*, paragraphs 4(a) through 4(i) of Plaintiff First Cause of Action.
7. That as a result, Plaintiff has been damaged in amounts exceeding \$7,500 to be proven at trial of this matter, and has incurred special damages.
8. That as a result, Plaintiff's flooring has been removed from his residence, forcing Plaintiff the inconvenience and loss of residing in Plaintiffs' home with damaged walls and absence of floor covering.

FOR A FIFTH CAUSE OF ACTION

[AS TO DEFENDANTS BROCK L. FRANKHAUSER AND FRANKHAUSER
PROPERTY GROUP, INC.]
(BREACH OF IMPLIED WARRANTY FITNESS FOR PARTICULAR PURPOSE)

1. The above allegations are set forth here and incorporated by reference as if repeated verbatim.
2. Plaintiff is informed and believes that the Defendants' shoddy and unworkmanlike construction has resulted in breach of an implied warranty of fitness for a particular purpose wherein Plaintiff's walls, floors, and exterior are not fit as a residence and do not prevent water infiltration and seepage into the residence.
3. That as a direct and proximate result of the developers' unworkmanlike construction, Plaintiff has incurred economic and structural damages to this residence in amounts to be proven at trial of this matter exceeding \$7,500.
4. That Defendants, at the time of contracting, knew that Plaintiff would utilize the property he purchased as his primary residence and as a family dwelling.
5. That Plaintiff was relying upon the Developer Defendants' skill, judgment, and workmanship, and good faith dealing in purchasing a home from Defendants free of defects, and that Plaintiff was entitled to rely upon the same.
6. That as a result of Defendants' unworkmanlike construction, Plaintiffs residence and its components are not fit for the particular purpose for which Plaintiff

purchased the property, and the structural components of Plaintiffs home are not fit to prevent water intrusion into Plaintiff's home.

FOR A SIXTH CAUSE OF ACTION
[AS TO ALL DEFENDANTS JOINTLY]
(BREACH OF EXPRESS WARRANTY)

1. The above allegations are restated here and incorporated by reference as if set forth verbatim.
2. Plaintiff is informed and believes that all Defendants by affirmation and/or promise, seller to purchaser, and HOA to purchaser, represented to Plaintiff that the condominium was properly constructed in a workmanlike manner, free of defects, and that the HOA was under a duty and would properly maintain and enforce maintenance as to exteriors and common areas pursuant to restrictive covenants.
3. That Defendants' representations, by contract, covenants, restrictions, and bylaws, formed the basis of and were material to Plaintiffs' decision to purchase a Stonecrest Villas condominium.
4. Plaintiff is informed and now believes that said representations were false, or were made with a reckless disregard of Plaintiff's rights.
5. That the water intrusion into Plaintiff's residence, and that Defendants' joint failure to act to Protection Plaintiff and Plaintiff's property has breached an Express Warranty made by the defendants, resulting in the property and management not conforming to the representations and express warranties made by the Defendants to Plaintiff.
6. Plaintiff seeks an award of special damages, all actual, incidental and consequential damages as against Defendants for breach of said express warranty.
7. That Plaintiff has been forced to engage the services of an attorney and seeks an award of attorney's fees and costs should the court determine that an Express Warranty from Defendants to Plaintiff was breached.

FOR A SEVENTH CAUSE OF ACTION
(STRICT LIABILITY - DEFECTIVE CONSTRUCTION PRODUCT)

1. The above allegations are restated here and incorporated by reference as if set forth verbatim.
2. Plaintiff is informed and believes that Defendants Brock L. Frankhauser and Frankhauser Property Group, Inc. were responsible for selection of dwelling

design, installation, and/or supervision of the building materials and practices utilized in construction of the Stonecrest condominiums, including Plaintiff's home.

3. Plaintiff is informed and believes that Defendants Brock Frankhauser and Frankhauser Property Group, Inc. installed defective products in the construction phase of Stonecrest Villas Condominiums.
4. That as a result, Plaintiff now experiences water intrusion and damage to the structural components of Plaintiff's home caused by routine water infiltration, intrusion, and seepage.
5. Plaintiff is informed and believes that the resulting defective product(s) were proximately caused by errors and omissions described in Plaintiff's first cause of action, paragraph 4(a) through 4(i), and are the direct and proximate cause of injuries and damages now sustained by Plaintiff and Plaintiff's home.
6. That said injury and damages sustained by Plaintiff would not have occurred, but for the negligence of the developer, defective design selection, and defective products, and defective practices used in combination by Defendants.
7. That Plaintiff's property damage would not have occurred, but for the negligent products or combination of products utilized and/or created by Defendants and sold to Plaintiff.
8. That water intrusion into Plaintiff's residence was the natural and probable consequence of Defendants' failure to include a proper moisture barrier and effect proper construction as described in Paragraph 4(a) through 4(i) of Plaintiff's First Cause of Action (Construction Defect).
9. That the brick veneer and structural components installed by the developer, its agents, subcontractors, or assigns, without proper grading and moisture barrier, resulted in a combination of products not reasonably fit or safe for their intended purpose, and as such Plaintiff has incurred damages exceeding \$7,500 to be proven at trial of this case.
10. Plaintiff is informed and believes that Plaintiff is entitled to an award of actual and punitive damages due to the willful and wanton conduct of the developer, plus attorneys' fees and costs associated with prosecuting this matter.

FOR AN EIGHTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
[AS TO ALL DEFENDANTS]

1. The above allegations are restated and incorporated by reference as if set forth verbatim.

2. The Plaintiff is informed and believes that Brock Frankhauser is the property developer, owner of Defendant Frankhauser Property Group, Inc. and is organizer, President and Registered Agent for Defendant Stonecrest Villas of Tega Cay, Inc. Owners' Association ("HOA").
3. Plaintiff is informed and believes that Plaintiff as a Stonecrest Condominium purchaser and resident pays Defendant Stonecrest Villas Owners Association ("HOA") monthly assessments and dues for the HOA maintenance of condominium exteriors and common areas.
4. Plaintiff is informed and believes that a fiduciary relationship exists between Plaintiff and Defendants wherein Plaintiff was required by covenants and restrictions binding the properties to repose a special confidence such that the developer and the HOA, in equity and good conscious are bound to act in good faith and with due regard to the interests of Plaintiff in protecting Plaintiff's home and residence from further water damage.
5. Plaintiff is informed and believes that the Defendants accepted this fiduciary obligation, imposed by property covenants and restrictions binding all property purchasers, including Plaintiff and payment of monthly assessments, which the Defendants accepted.
6. Plaintiff is informed and believes that Defendants have improperly utilized monthly HOA assessments for the development of adjacent commercial tracts instead of employing said funds to remedy defects, make repairs, and cure water intrusion issues at Plaintiff's home, thereby undercapitalizing the HOA.
7. That Plaintiff's demands for help to the HOA and Developer to remedy water intrusion issues and make repairs has met with procrastination, failure to act, and has required this legal action be brought against Defendants jointly.
8. That Plaintiff's hardwood flooring was removed at the direction of HOA without being replaced and the developer and HOA have failed to permanently cure water intrusions and have failed to replace Plaintiff's flooring.
9. That due to the breach of fiduciary obligation of the Defendants, Plaintiff has incurred damages in excess of \$7,500 to be proven at trial of this matter.
10. Plaintiff is informed and believes that Plaintiff is entitled to an award of actual and punitive damages due to deliberate inaction and delays occasioned by Brock Frankhauser individually and as principal of both Defendants, wherein both Defendants have acted in willful, wanton and reckless disregard of Plaintiff's rights and residence as a Stonecrest owner.

11. Plaintiff is informed and believes that Plaintiff is entitled to an award of all attorney's fees and costs associated with prosecution of this matter before the court.

FOR A NINTH CAUSE OF ACTION
[AS AGAINST ALL DEFENDANTS]
UNFAIR TRADE PRACTICES ACT VIOLATION

1. The above allegations are set forth and incorporated by reference as if repeated verbatim.
2. That the relationship between Plaintiff and Defendants relationship is characterized by privity of title, Defendant Seller to Plaintiff Purchaser/Resident, wherein Plaintiff and others purchased real property from Defendant under a scheme which required owners to become dues paying members of the HOA Stonecrest Village Owners Association.
3. That the conduct of Defendants, jointly and severally, created false assurances to purchasers of Stonecrest property that Defendants would act in the best interest of owners, which assurances were false and constitute methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.
4. That the Defendants, jointly and severally, knew or should have known, due to the existing privities and restrictive covenants and the necessity to take immediate action to protect owners' properties, yet Defendants deliberately failed to act with diligence whereby Plaintiff and others continue to experience inaction, procrastination, further water intrusions, interior damages, and mold.
5. That Plaintiff and others have suffered an ascertainable loss of money, property damages, diminution of property value and special damages proximately caused by Defendants' deceptive acts and practices, to wit:
 - a. By falsely advertising, pricing, offering for sale, falsely warranting, and falsely binding properties per restrictive covenants where the HOA Stonecrest Villas is undercapitalized, incapable, or unwilling to serve owners'/residents' needs to preventing water intrusion, proper maintenance and/or proper diligence to preserve owners' properties and property values.
 - b. By creating a Owners Association (HOA) where Defendant Brock L. Frankhauser knew, *or should have known*, that a conflict of interest would exist between his duties as developer and that of HOA chairman and president to enforce covenants and adequately protect owners' properties and interests.

- c. By falsely charging dues and assessments where the HOA, by and through Brock L. Frankhauser, failed to honor duties to preserve and protect properties required by restrictive covenants.
 - d. By willfully and knowingly applying property assessments for development of adjacent commercial tracts instead of properly capitalizing the HOA and acting promptly to remedy defects existing in the residence of Plaintiff and other Stonecrest residents whose homes bear similar defects.
 - e. By violation of duties imposed by restrictive covenants where Defendants knew, *or should have known*, of the need to act promptly to prevent Plaintiff and others from further property damage and where Defendants knew, *or should have known*, residence were paying assessments.
 - f. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties including breach of Express and Implied Warranties set forth *infra*.
6. That Defendants conduct affects the public interest at large; the same conduct has occurred with numerous Stonecrest owners, *has been repeated, is capable of further repetition*, and affects commerce at large within York County.
 7. That damages and special damages suffered by Plaintiff and others would not have occurred but for Defendants' unfair and deceptive acts and should be legally deterred.
 8. Plaintiff is informed and believes that it is entitled to an award of actual and trebled damages pursuant to South Carolina Code Ann. §39-5-140(a), *et seq*, together with any cost associated with prosecution of this action.

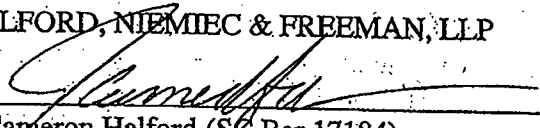
WHEREFORE, Plaintiff having fully set forth its causes of action as against Defendants, the Plaintiff would pray for the following relief:

1. For trial by jury of the matters outlined above.
2. For judgment as against Defendant Frankhauser Property Group, Inc. on Plaintiff's First through Ninth Causes of Action as set forth, *supra*.
3. For an award of actual, consequential, incidental, and punitive damages as against Defendants in the discretion of the court and jury.
4. For an award of any special damages as may be proven by Plaintiff.

5. For an award of all attorneys fees and costs associated with bringing this matter before the court.
6. For such other and further relief as the court deems just and proper under the circumstances.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, LLP



J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive,
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 (fax)

June 1, 2010
Fort Mill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Addie L. Smith

Plaintiff(s)

vs.

Brock L. Fankhauser, Fankhauser Property Group, Inc., and Stonecrest Villas of Tega Cay, Home Owners Association, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 46- 02327

(Please Print)

Submitted By: Curtis W. Dowling, Esquire

Address: 1613 Main Street

Post Office Box 8448

Columbia, SC 29202-8448

SC Bar #: 6493

Telephone #: 803-799-1111

Fax #: 803-254-1335

Other:

E-mail: curtis@basjlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

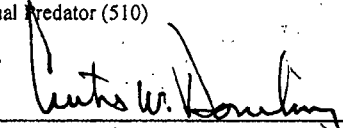
**If Action is Judgment/Settlement, do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:


S.R.O.A Vol.2 p. 0546

Date: August 5, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Addie L. Smith,

Plaintiff,

v.

Brock L. Fankhauser, Fankhauser
Property Group, Inc., and Stonecrest
Villas of Tega Cay, Home Owners
Association, Inc.,

Defendants.

Fankhauser Property Group, Inc.,

Third-Party Plaintiff,

v.

Exterior Expressions of North Carolina,
Inc., Al-Mega Construction, Inc., Procar,
Inc., The Southeastern Group, Inc., Lucas
Lawn and Landscape, Inc., and Jose
Simenez, Individually and d/b/a M&L
Roofing Co., LLC and/or MB Roofing
Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay Home
Owners Association, Inc.,

Third Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC,

Third-Party Defendant.

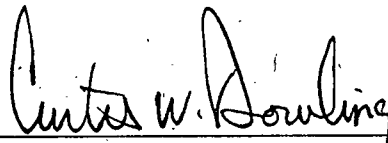
Civil Action No. 2010-CP-46-02327

**SUMMONS ON THIRD PARTY
COMPLAINT**

TO: THIRD-PARTY DEFENDANT STONECREST VILLAS OF TEGA CAY, LLC
ABOVE-NAMED:

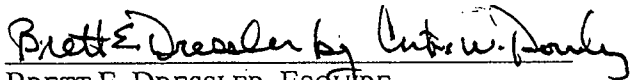
YOU ARE HEREBY SUMMONED and required to Answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers at their offices, Barnes, Alford, Stork & Johnson, LLP, 1613 Main Street, Post Office Box 8448, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, the Third-Party Plaintiff Stonecrest Villas of Tega Cay Home Owners Association, Inc. in this action will apply to the Court for the relief demanded in the Third-Party Complaint and will seek a default judgment against you.

This the 5th day of August, 2010.



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Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.

and



BRETT E. DRESSLER, ESQUIRE
SELLERS, HINSHAW, SYERS, DORTCH & LYONS, P.A.
301 S. McDowell Street
Charlotte, NC 28204
704.377.5050 (Office)
704.339.0172 (Fax)
bdressler@sellershinshaw.com
Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.
(Cross-Claims and Third-Party Complaint)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Addie L. Smith,

Plaintiff,

v.

Brock L. Fankhauser, Fankhauser
Property Group, Inc., and Stonecrest
Villas of Tega Cay, Home Owners
Association, Inc.,

Defendants.

Fankhauser Property Group, Inc.,

Third-Party Plaintiff,

v.

Exterior Expressions of North Carolina,
Inc., Al-Mega Construction, Inc., Procar,
Inc., The Southeastern Group, Inc., Lucas
Lawn and Landscape, Inc., and Jose
Simenez, Individually and d/b/a M&L
Roofing Co., LLC and/or MB Roofing
Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay Home
Owners Association, Inc.,

Third Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC,

Third-Party Defendant.

Civil Action No. 2010-CP-46-02327

**ANSWER, CROSS-CLAIM AND
THIRD-PARTY COMPLAINT OF
DEFENDANT STONECREST VILLAS
OF TEGA CAY HOMEOWNERS
ASSOCIATION, INC.
(Jury Trial Demanded)**

Defendant Stonecrest Villas of Tega Cay, Home Owners Association, Inc., reserving all rights under motions within or separately filed, answering the Complaint herein, will respectfully show unto the Court as follows^{1,2,3,4}:

FOR A FIRST DEFENSE
(Response to Factual Allegations)

1. Defendant denies each and every allegation of the Complaint except for those things specifically admitted below.
2. Paragraphs 1 and 2 are admitted, upon information and belief.
3. Paragraph 3 is admitted with the exception that the correct identity of the Defendant is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (See footnote 4):
4. Paragraph 4 is admitted.⁵
5. Defendant lacks sufficient knowledge or information to admit the allegations of paragraph 5.

¹ Any and all inconsistent material is pled in the alternative pursuant to Rule 8(e)(2), SCRPC and such other law as is applicable. Such inconsistent material may—or may not—be specifically designated as such.

² To the extent material appearing in one defense is applicable to another defense and not inconsistent with the other defense, the material is to be deemed incorporated into the other defense.

³ To the extent material appearing herein is inconsistent with existing law, the Defendant respectfully requests to argue in good faith for a change in the law. Nothing pled in any portion of the Answer, Cross-Claim and Third-Party Complaint is to be deemed a waiver of any defense available to the Defendant or consent to this Court exercising jurisdiction over the matter or over this Defendant.

⁴ The Defendant is incorrectly identified. The proper party is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.

⁵ Upon information and belief, Defendant Brock E. Fankhauser's last day as President of the Association was June 30, 2010.

AS TO THE FIRST CAUSE OF ACTION

(Breach of Contract)

6. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

7. Paragraph 2 is admitted, upon information and belief.

8. Paragraphs 3, 4, 5 and 6 are denied as to this Defendant.

9. As to paragraph 7, Defendant denies that the Plaintiff is entitled to any recovery against this Defendant.

AS TO THE SECOND CAUSE OF ACTION

(Construction Defect)

10. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

11. Paragraphs 2, 3, 4, 5, 6 and 7 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

AS TO THE THIRD CAUSE OF ACTION

(Negligence and Negligent Supervision)

12. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

13. Paragraphs 2 and 3 are admitted.

14. Paragraph 4 is denied as to this Defendant.

15. Paragraph 5 is admitted, upon information and belief.

16. Paragraphs 6, 7 and 8 are denied as to this Defendant.

17. As to paragraph 9, Defendant denies that the Plaintiff is entitled to any recovery against this Defendant.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Implied Warranty – Habitability)

18. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

19. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

AS TO THE FIFTH CAUSE OF ACTION
(Breach of Implied Warranty - Fitness for Partake Purpose)

20. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

21. Paragraphs 2, 3, 4, 5 and 6 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

AS TO THE SIXTH CAUSE OF ACTION
(Breach of Express Warranty)

22. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

23. As to paragraph 2, 3 and 4, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding what Plaintiff is

informed and believes as to this Defendant and, therefore, denies them and demands strict proof thereof.

24. Paragraphs 5 and 6 are denied as to this Defendant.

25. As to paragraph 7, Defendant denies it breached any warranties to the Plaintiff and further denies that Plaintiff is entitled to an award of attorney's fees.

AS TO THE SEVENTH CAUSE OF ACTION

(Strict Liability)

26. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

27. Paragraphs 2 and 3 are admitted, upon information and belief.

28. As to paragraph 4, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations and, therefore, denies them and demands strict proof thereof.

29. As to paragraph 5, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations.

30. Paragraphs 6 and 7 are denied as to his Defendant.

31. As to paragraphs 8 and 9, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

32. Paragraph 10 is denied as to this Defendant.

AS TO THE EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

33. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

34. Paragraph 2 is admitted.

35. As to paragraph 3, Defendants admit only that certain payments are to be paid by members as set forth in the Bylaws.

36. As to paragraph 4, while it is admitted that certain rights and duties exist between the parties, it is denied that a fiduciary relationship exists between the Plaintiff and this Defendant.

37. Paragraph 5 is denied as to this Defendant.

38. As to paragraph 6, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations

39. Paragraph 7 is denied as to this Defendant.

40. Paragraphs 8 and 9 are denied as to this Defendant.

41. As to paragraph 10, Defendant denies any liability to the Plaintiff.

42. Paragraph 11 is denied as to this Defendant.

AS TO THE NINTH CAUSE OF ACTION
(Unfair Trade Practices Act)

43. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

44. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are denied as to this Defendant.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRPC—Failure to State Facts)

45. With regard to some or all causes of action appearing in the Complaint, the Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted and thus, those causes of action should be dismissed.

FOR A THIRD DEFENSE
(Attorney's Fees – Not Recoverable)

46. With regard to some or all of the causes of action appearing in the Complaint, the Complaint fails to state facts sufficient to constitute causes of action on which the recovery of attorney's fees are allowed.

FOR A FOURTH DEFENSE
(Improper Identify of the Defendant)

47. The Defendant is improperly identified in this action.

FOR A FIFTH DEFENSE
(Standing)

48. With regard to some or all causes of action appearing in the Complaint, the Plaintiff lacks standing.

FOR A SIXTH DEFENSE
(Proximate Cause)

49. No acts or omissions on the part of this Defendant were the proximate cause or cause in fact of some or all damages allegedly suffered by the Plaintiff (the existence of such damages being denied); therefore, the Plaintiff's action is barred in whole or in part.

FOR A SEVENTH DEFENSE
(Alleged Damages Caused by Third-Party)

50. Some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom this Defendant had no control or duty to control. The Defendant pleads the acts of another party or parties as a complete defense to all claims.

FOR AN EIGHTH DEFENSE
(Waiver)

51. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of waiver.

FOR A NINTH DEFENSE
(Estoppel)

52. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of estoppel.

FOR A TENTH DEFENSE
(Assumption of Risk)

53. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the Plaintiff's assumption of risk.

FOR AN ELEVENTH DEFENSE
(Intervening Causes)

54. Some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening causes which the Defendant pleads as a bar to this action.

FOR A TWELFTH DEFENSE

(Punitive Damages)

55. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and the Excessive Fines Clause of the South Carolina Constitution in that:

a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. Any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;

d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

e. Even if it can be argued that a standard governing the imposition of punitive damages exists, the standard is void for vagueness and ambiguity;

f. The claim for punitive damages violates the equal protection and due process clauses of the United States Constitution, Article 1, Section 3 of the South Carolina Constitution, and the Excessive Fines Clause of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant and other factors which are constitutionally impermissible; and

g. The claim for punitive damages violates the Federal Doctrine of Separation of Powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A THIRTEENTH DEFENSE

(South Carolina Unfair Trade Practices Act Inapplicable)

56. The South Carolina Unfair Trade Practices Act is inapplicable to the allegations contained in the Complaint directed at this Defendant.

FOR A FOURTEENTH DEFENSE

(Statute of Limitations)

57. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in her damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendants plead the statute of limitations as a complete defense to some or all of the Plaintiff's claims.

FOR A FIFTEENTH DEFENSE

(Laches)

58. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in her damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the doctrine of laches as a complete defense to some or all of the Plaintiff's claims.

FOR A SIXTEENTH DEFENSE

(Meeting of the Minds)

59. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the contracts terms did not include those allegedly breached by the Defendant nor did the duties require the Defendant to take any action that has not been taken or abstain from any action that has been taken because there was no meeting of the minds with regard to those contract terms or duties.

FOR A SEVENTEENTH DEFENSE

(Failure to Mitigate)

60. With regard to some or all causes of action appearing in the Complaint for which the Plaintiff seeks damages, the Plaintiff's claims are barred in whole or in part because of the Plaintiff's or their agents' failure to mitigate damages.

FOR A EIGHTEENTH DEFENSE

(Impossibility of Performance)

61. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the Defendant's performance of such duties was rendered impossible in a manner that excused performance.

FOR A NINETEENTH DEFENSE

(Plaintiff's Own Negligence)

62. The Plaintiff's own negligence, gross negligence, recklessness, or willfulness contributed to her damages in a manner which should reduce or completely bar any award in this matter.

FOR A TWENTIETH DEFENSE

(Acquiescence)

63. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of acquiescence.

FOR A TWENTY-FIRST DEFENSE

(Frustration of Purpose)

64. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the Defendant's performance of such duties was discharged under the doctrine of frustration of purpose.

FOR A TWENTY-SECOND DEFENSE

(Course of Conduct)

65. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in her damages. This ongoing course of conduct was approved of by the Plaintiff. The Plaintiff is now barred from complaining about this course of conduct.

FOR A TWENTY-THIRD DEFENSE

(Election of Remedies)

66. The Plaintiff will be subject to an election of remedies should she prevail on some or all of their causes of action.

FOR A TWENTY-FOURTH DEFENSE

(Defenses of other Defendants)

67. Defendant incorporates by reference any defenses pled by other Defendants which apply to Plaintiff's claims against this Defendant and which are not inconsistent with this Defendant's other defenses stated herein.

FOR A TWENTY-FIFTH DEFENSE

(Economic Loss Rule)

68. With regard to some or all claims for damages appearing in the Complaint, the Plaintiff's claims are barred, in whole or in part, by the economic loss rule.

FOR A TWENTY-SIXTH DEFENSE

(Arbitration)

69. Defendant reserves all rights it may have to demand binding arbitration.

FOR A TWENTY-SEVENTH DEFENSE

(Additional Defenses)

70. Defendant places the Plaintiff on notice that it will subsequently move to amend this Answer to assert other defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF CROSS-CLAIM AGAINST BROCK FANKHAUSER AND FANKHAUSER PROPERTY GROUP, INC. AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST STONECREST VILLAS OF TEGA CAY, LLC.

(Factual Background)

1. The allegations of the above paragraphs are realleged to the extent they are relevant and not inconsistent with the allegations of the claims which follow.

2. Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., ("Association"), is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

3. Defendant Fankhauser Property Group, Inc. ("FPG"), is a corporation organized and existing under the laws of the State of North Carolina which is authorized to conduct business in the State of South Carolina, and was the general contractor for construction of the Stonecrest Villas at Tega Cay Condominium project (the "Project").

4. Third-Party Defendant Stonecrest Villas of Tega Cay, LLC ("Stonecrest"), upon information and belief, is the developer of the Project.

5. Defendant Brock Fankhauser is a resident and citizen of Mecklenburg County, North Carolina, and is the owner, principal and president of Defendant FPG, and is the sole member of Defendant Stonecrest. At all relevant time herein, Defendant Fankhauser was the President of Defendant Association.

6. On February 26, 2007, Stonecrest, as Declarant, filed a Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime ("Master Deed") pursuant to the South Carolina Horizontal Property Act, recorded in Book 8852 at page 149 of the public registry of the York County Clerk of Court.

7. The Master Deed states that the Defendant Stonecrest deemed it desirable to create the Defendant Association which will be delegated and assigned the powers of maintaining and administering the common elements and facilities on the property.

8. Article V, Section 5.4(a) of the Master Deed states that the "Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner."

9. Article V, Section 5.1, of the Master Deed defines the Common Elements to include among other things, all portions of the Buildings (as defined in the Master Deed) located outside the Units (as defined in the Master Deed), roofs, foundations, and exterior and interior load bearing walls.

10. The Project was constructed in or about 2007.

11. After the Project was completed, Third-Party Defendant Stonecrest and/or Defendant FPG maintained control of the Defendant Association. Defendant Fankhauser was the president of the Defendant Association at all relevant times herein. Defendant Fankhauser resigned his position with the Association in June 2010 after this litigation was commenced.

12. Upon information and belief, in or about 2009, individual condominium

unit owners within Stonecrest Villas of Tega Cay, including Plaintiff herein, experienced water intrusion into their units. The neighborhood clubhouse also experienced water intrusion.

13. The Common Elements and other portions of the Project for which the Association is responsible for maintenance, repair and replacement are collectively referred to herein as the "Improvements."

14. The Improvements were constructed by Third-Party Defendant Stonecrest and/or FPG, acting by and through its agents, representatives and employees, or acting through contractors and suppliers selected by said Defendants.

15. There exists defects and deficiencies in the workmanship and material used by the Third-Party Defendant/Defendants in the construction of the Improvements including, without limitation, defects and deficiencies in the workmanship and materials used in connection with the construction and installation, including but not limited to:

- a. Failing to install a proper waterproofing, including a moisture barrier, concurrently with the masonry veneer building exterior directly contributing to water infiltration into individual unit owners residences and the Common Elements;
- b. Improperly constructing brick masonry at window sill structures to divert rain water intrusion properly from the individual unit owners residences and the Common Elements;
- c. Improperly sealing brick masonry veneer exterior walls to prevent water infiltration into individual unit owners residences and the Common Elements;
- d. Failing to install proper flashing and internal drainage to prevent water infiltration into individual unit owners residences and the Common Elements;

- e. Failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exterior;
- f. Failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exterior;
- g. Failing to provide a proper slope around brick masonry ledges and wall transitions to deflect water flow away from individual unit owners residences and the Common Elements;
- h. Failing to properly grade and slope exterior foundation walls to prevent surface water intrusion per code; and
- i. Failing to properly gutter the condominiums to properly divert rainwater away from the individual unit owners residences and the Common Elements.

16. As a result of the deficiencies in the construction of the Project by Third-Party Defendant Stonecrest and FPG and the resulting damage, Defendant Association has been sued as set forth in Plaintiff's Complaint which is incorporated by reference herein.

17. Defendant Association contends that the fault lies with Defendants FPG and Fankhauser and Third-Party Defendant Stonecrest.

FOR A FIRST CAUSE OF ACTION
(Negligence as to Stonecrest, FBG and Fankhauser)

18. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

19. Defendant Fankhauser is the sole shareholder of Defendant FPG and the sole member of Third-Party Defendant Stonecrest (Defendants Fankhauser and FPG and

Third-Party Defendant Stonecrest are collectively referred to as the "Fankhauser Defendants.")

20. The Fankhauser Defendants were negligent as is more fully set forth in Paragraphs 15(a) through (i), supra.

21. The Fankhauser Defendants failed to properly oversee and supervise the construction of the Project by its agents, employees, and subcontractors which resulted in Project being constructed not in a good and workmanlike manner.

22. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks and by failing to employ construction practices and methods that conformed with project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

23. As a direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been sued by Plaintiff herein and other unit owners for the development and construction of the Project by the Fankhauser Defendants, and faces liability for the work performed by or at the direction of the Fankhauser Defendants.

24. As direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been damaged in an amount greater than \$7,500.00, and is entitled to a judgment against the Fankhauser Defendants in an amount necessary to properly compensate Defendant Association for damage to the Common Elements and any amount it may be required to compensate Plaintiff as a result of these Defendants' negligence.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnity – Fankhauser Defendants)

25. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

26. The Fankhauser Defendants were under a duty by virtue of the duties that they took on the Project as set forth herein to comply with the Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and to properly oversee and supervise its agents, employees, and subcontractors.

27. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and failing to properly oversee and supervise its agents, employees and subcontractors.

28. Defendant Association is entitled to equitable indemnity from the Fankhauser Defendants, individually and severally, for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay the Plaintiff herein as result of the negligence of the Fankhauser Defendants.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Habitability and
Workmanlike Construction – Fankhauser Defendants)

29. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

30. The Improvements are being infiltrated by water caused by the defects in

construction caused by the Fankhauser Defendants.

31. The Fankhauser Defendants impliedly warranted, for the benefit of the Association and all individual unit Owners, that the construction of the Project, including the Improvements which are a part thereof, the proper quality, care, adequacy, suitability, and workmanship of the labor and materials that they provided on the Project.

32. The Fankhauser Defendants have breached their obligations and duties under the implied warranties of habitability, quality and fitness. As a result of Defendants' breach of implied warranties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

33. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of warranty.

FOR A FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for Particular
Purpose – Fankhauser Defendants)

34. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

35. Defendant Association is informed and believes that the Fankhauser Defendants' unworkmanlike construction resulted in the breach of an implied warranty of fitness for a particular purpose wherein the Improvements do not prevent water infiltration and seepage into individual units and/or the Common Elements.

36. As a direct and proximate result of the Fankhauser Defendants' un-workmanlike construction, Defendant has incurred economic and structural damages to the Improvements in amounts to be proven at trial of this matter exceeding \$7,500.

37. The Fankhauser Defendants, at the time of contracting, knew that Defendant Association would utilize the clubhouse for Association related activities and that individual unit owners would use their units as a family dwelling.

38. As a result of the Fankhauser Defendants' un-workmanlike construction, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements home are not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

39. The Fankhauser Defendants have breached their obligations and duties under the implied warranty of fitness for a particular purpose. As a result of Defendants' breach of implied warranty as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

40. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of warranty.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Fankhauser Defendants)

41. The allegations contained the foregoing paragraphs are incorporated by reference herein.

42. Defendant Fankhauser was the sole member and president of Third-Party Defendant Stonecrest and the sole shareholder and president of Defendant FPG. Defendants Stonecrest and FPG were under the total control of Defendant Fankhauser. Defendant Fankhauser was a member of the Board of Directors of the Association and owed a fiduciary duty to the Defendant Association.

43. Defendant Fankhauser was in control of the Association at all times relevant herein, and promoted the Association, and therefore, had a fiduciary duty to the Defendant Association.

44. Defendant Fankhauser had a fiduciary duty to Defendant Association due to the special relationship that existed between the two.

45. This duty required, among other things, that the Fankhauser Defendants act in the best interests of Defendant Association to ensure that all Common Areas and Improvements were constructed and turned over to the Association in a reasonable state of repair.

46. As a member of the Board of Directors, Defendant Fankhauser acted in his own interests in breach of his duties as a Board Member.

47. Defendant Fankhauser breached his duty by failing to ensure that the Improvements were turned over to Defendant Association in a good state of repair.

48. The Fankhauser Defendants breached their duties by failing to ensure that the Improvements were constructed in a good and workmanlike manner.

49. As a result of Defendants' breach of fiduciary duties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

50. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of fiduciary duty.

FOR A SIXTH CAUSE OF ACTION

(Unfair Trade Practices Act Violations – Fankhauser Defendants)

51. The allegations contained the foregoing paragraphs are incorporated by reference herein.

52. The Fankhauser Defendants owed Defendant Association certain fiduciary duties as hereinabove described, thereby creating a special relationship between the parties.

53. The conduct of the Fankhauser Defendants, jointly and severally, created false assurances to the Defendant Association that Defendants would act in the best interest of the Association, which assurances were false and constitute methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.

54. The Fankhauser Defendants, jointly and severally, knew or should have known, due to the existing privities and restrictive covenants and the necessity to take immediate action to protect the Improvements, yet Defendants deliberately failed to act with diligence whereby the Association and individual unit owners continue to experience inaction, procrastination, further water intrusions, interior damages, and mold.

55. Defendant Association and others have suffered an ascertainable loss of money, property damages, diminution of property value and special damages proximately caused by Defendants' deceptive acts and practices which are pled upon information and belief to wit:

- a. By falsely advertising, pricing, offering for sale, falsely warranting, and falsely binding properties per restrictive covenants where the Association is undercapitalized, making it difficult to serve the Association's and owners'/residents' needs to prevent water intrusion, proper maintenance and/or proper diligence to preserve the Association's and owners' properties and property values.
- b. By creating an Owners Association where Defendant Fankhauser knew, or should have known, that a conflict of interest would exist between his duties as developer, contractor and that of HOA chairman and president to enforce covenants and adequately protect the Association's and owners' properties and interests.
- c. By falsely charging dues and assessments where Defendant Association, by and through Defendant Fankhauser, failed to honor duties to preserve and protect the Improvements as required by restrictive covenants.
- d. Upon information and belief, by willfully and knowingly applying property assessments for development of adjacent commercial tracts instead of properly capitalizing Defendant Association and acting promptly to remedy defects existing in the Improvements and individual residences.
- e. By violation of duties imposed by restrictive covenants where the Fankhauser Defendants knew, or should have known, of the need to act promptly to prevent Defendant Association and individual unit owners from further property damage.

- f. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties.

56. The Fankhauser Defendants' conduct affects the public interest at large; the same conduct has occurred with at least four Stonecrest owners, has been repeated, and affects commerce at large within York County.

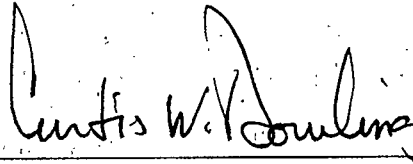
57. Damages and special damages suffered by Defendant Association and others would not have occurred but for the Fankhauser Defendants' unfair and deceptive acts and should be legally deterred.

58. Defendant Association is informed and believes that it is entitled to an award, of actual and trebled damages pursuant to South Carolina Code Ann. §39-5-140(a), *et seq*, together with any costs associated with prosecution of this action.

WHEREFORE, Defendant Association prays the Court that:

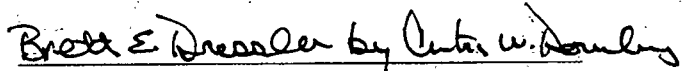
1. The Plaintiff's Complaint be dismissed with Prejudice;
2. It have and recover judgment against the Defendant Brock L. Fankhauser, Fankhauser Property Group, Inc., and Third Party Defendant Stonecrest Villas of Tega Cay, LLC, on Defendant Association's First through Sixth Causes of Action as set out hereinabove;
3. It be awarded actual, consequential, incidental, and punitive damages as against the Fankhauser Defendants in the discretion of the court and jury;
4. It be awarded any special damages as may be proven by Defendant Association;
5. It receive a trial by jury of the matters alleged herein; and

6. It be awarded such other and further relief as the Court may deem just and proper.



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and



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Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.
(Cross-Claims and Third-Party Complaint)

August 5, 2010

CERTIFICATE OF SERVICE

The undersigned employee of Barnes, Alford, Stork & Johnson, LLP certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

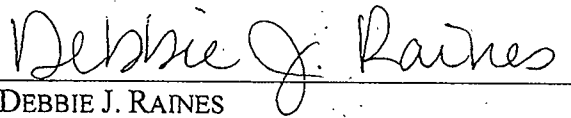
**ANSWER, CROSS-CLAIM AND THIRD-PARTY COMPLAINT OF
DEFENDANT STONECREST VILLAS OF TEGA CAY HOMEOWNERS
ASSOCIATION, INC.**

PERSON(S) SERVED:

J. Cameron Halford, Esquire
Halford, Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, SC 29708

Morgan S. Templeton, Esquire
Graham P. Powell, Esquire
145 King Street, Suite 302
P. O. Box 1200
Charleston, SC 29402

Thomas F. Dougall, Esquire
Law Offices of Thomas F. Dougall
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045


DEBBIE J. RAINES

August 5, 2010

(DISTRIBUTION CLOCKED COPY)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK

JUONTONIO PINCKNEY, et al.,

Civil Action No.: 10-CP-46-2326

Plaintiffs,

v.

EPCON COMMUNITIES, INC.,
BROCK L. FANHAUSER, FANKHAUSER
PROPERTY GROUP, INC.; and
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Defendants.

AMENDED SUMMONS

FANKHAUSER PROP. GROUP, INC.,

JURY TRIAL DEMANDED

Third-Party Plaintiff,

v.

EXTERIOR EXPRESSIONS OF NC, INC., AL-
AL-MEGA CONSTRUCTION, INC.; PROCAR,
INC.; THE SOUTHEASTERN GROUP, INC.;
And JOSE SIMENEZ, Individually and d/b/a
M&L ROOFING CO., LLC and/or MB
ROOFING COMPANY,

Third-Party Defendants.

STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

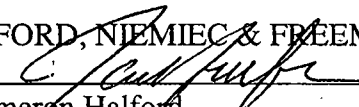
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2010 OCT 13 PM 12:03
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Third-Party Defendant.	)
_____	)
EXTERIOR EXPRESSIONS OF NORTH	)
CAROLINA, INC.,	)
	)
Fourth-Party Plaintiff,	)
	)
v.	)
	)
MARCOS GONZALEZ,	)
	)
Fourth-Party Defendant.	)
_____	)

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Amended Consolidated Complaint in the above captioned lawsuit, a copy of which is hereby served upon you. You should provide your Answer to the Complaint within thirty (30) days of the service of these documents upon you, excluding the day you receive the Summons and Complaint, by filing your Answer with the court and providing a copy to the undersigned subscriber for Plaintiffs at the office address listed below.

YOU WILL TAKE NOTICE that should you fail to Answer as set forth above, Plaintiffs will by and through the undersigned counsel petition the court for judgment to be rendered against you in your absence and by default for the relief demanded in the Amended Complaint.

HALFORD, NIEMIEC & FREEMAN, LLP


 J. Cameron Halford
 238 Rockmont Drive,
 Fort Mill, South Carolina 29708
 803-547-6618
 803-547-6638 fax

(DISTRIBUTION CLOCKED COPY)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

JUONTONIO PINCKNEY, et al.,

Plaintiffs,

v.

EPCON COMMUNITIES, INC.,
BROCK L. FANHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; and
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

v.

EXTERIOR EXPRESSIONS OF NC, INC., AL-
AL-MEGA CONSTRUCTION, INC.; PROCAR,
INC.; THE SOUTHEASTERN GROUP, INC.;
And JOSE SIMENEZ, Individually and d/b/a
M&L ROOFING CO., LLC and/or MB
ROOFING COMPANY,

Third-Party Defendants.

STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 10-CP-46-2326

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Third-Party Defendant.	)
	)
EXTERIOR EXPRESSIONS OF NORTH	)
CAROLINA, INC.,	)
	)
Fourth-Party Plaintiff,	)
	)
v.	)
	)
MARCOS GONZALEZ,	)
	)
Fourth-Party Defendant.	)

TO: DEFENDANTS ABOVE NAMED:

This Amended Complaint is filed to add party Plaintiffs and party Defendant Epcon Communities, Inc. pursuant to the September 25, 2010 Order of Consolidation and pursuant to the Consent Order permitting Amendment of the Consolidated cases filed with this court on September 24, 2010.

Plaintiffs would respectfully show the court the following:

JURISDICTION

1. Jurisdiction of this case is proper in York County as all causes of action alleged *infra* occur from conduct, errors, omissions, duties, and privities (seller to purchaser) associated with the sale and/or maintenance of York County real properties known as "Stonecrest Villas of Tega Cay" condominiums situated within York County.
2. Plaintiffs are purchasers and owners of condominium properties within the horizontal property regime known as Stone Crest Villas of Tega Cay, Inc. constructed and sold to Plaintiffs by Brock L. Fankhauser ("Fankhauser") and Fankhauser Property Group, Inc. ("FPG, Inc."), consisting of the following:
 - a. James and Deborah Barone : 767 Ledgestone Court, Tega Cay, SC 29708.
 - b. Ismael & Valerie Gonzales : 709 Ledgestone Court, Tega Cay, SC 29708.
 - c. Joe and Sandra Moore : 821 Ledgestone Court, Tega Cay, SC 29708.
 - d. David Musgrave : 748 Ledgestone Court, Tega Cay, SC 29708.
 - e. Juontonio Pinckney : 809 Ledgestone Court, Tega Cay, SC 29708.
 - f. Josephine Sciacca : 717 Ledgestone Court, Tega Cay, SC 29708.
 - g. Addie Smith : 858 Ledgestone Court, Tega Cay, SC 29708.
 - h. Thea – Eve Vicari : 830 Ledgestone Court, Tega Cay, SC 29708.
 - i. Troy and Nancy Williams : 828 Ledgestone Court, Tega Cay, SC 29708.

3. Defendant Brock L. Fankhauser ("Fankhauser") is the owner, builder, principal, president, and registered agent for both Defendant Fankhauser Property Group, Inc. ("FPG, Inc.") and Stonecrest Villas of Tega Cay Owners Association, Inc. ("Stonecrest HOA") all of whom do business in York County, South Carolina. This Defendant is a resident of North Carolina doing business in York County, South Carolina.
4. Defendant Fankhauser Property Group, Inc. ("FPG, Inc.") is a corporation owned by Brock L. Fankhauser; FPG, Inc. served as the general contractor for the construction and development of Stonecrest condominiums, and is responsible for the construction of each respective Plaintiff's home.
5. Defendant Stonecrest Villas of Tega Cay Owners Association, Inc. ("Stonecrest HOA") is a South Carolina corporation organized by Defendant Brock L. Fankhauser under South Carolina law and existing pursuant to those certain declaration of covenants and restrictions filed with the York County Clerk of Court.
6. Defendant Epcon Communities, Inc. ("Epcon") is a commercial developer of single story attached residential condominiums, including the "pinwheel" design, which offers for sale to purchasers by and through Brock L. Fankhauser ("Fankhauser") and FPG, Inc. condominiums within the Stonecrest development in Tega Cay.
7. Stonecrest Villas of Tega Cay, Inc. is a community developed, marketed and constructed as an Epcon Community by and through Defendants Fankhauser, FPG, Inc., Epcon Communities, Inc. and Stonecrest HOA.
8. Plaintiffs are informed and believe that direct privity exists between the Plaintiffs and Defendant parties by virtue of Plaintiffs' purchase and ownership of a Stonecrest Villas condominium and by virtue of restrictive covenants running with, appurtenant to, and binding said properties.
9. Plaintiffs are informed and believe that contractual duties existed between the Plaintiffs and all Defendants, supported by consideration, and that Defendants jointly and severally have breached said contractual obligations and express warranties, to wit:

FOR A FIRST CAUSE OF ACTION

[AS TO DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(BREACH OF FIDUCIARY DUTY)

1. The above allegations are restated and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Plaintiffs as owners are required to pay monthly assessments and dues to Stonecrest HOA for preservation and maintenance of condominium exteriors and common areas and amenities pursuant to bylaws and restrictive covenants.

3. Plaintiffs are informed and believe that a fiduciary relationship exists between Plaintiffs and these Defendants wherein Defendants are required, by virtue of bylaws and restrictive covenants, to act in equity, in good faith, and with proper due regard for Plaintiffs' interests in preservation, maintenance, and protecting Plaintiffs' properties from water intrusion damages.
4. Plaintiffs are informed and believe that Defendants voluntarily undertook this fiduciary obligation, imposed by restrictive covenants, through acceptance of Plaintiffs' monthly assessments.
5. Plaintiffs are informed and believe that Defendants have breached this fiduciary obligation by failing to act to protect Plaintiffs' health and properties. Defendants, jointly and severally, have failed to act to preserve and maintain Plaintiff's Properties from water intrusion and potential health risks, including mold, as reported by Barone unit 767 specifically.
6. Plaintiffs are informed and believe that Defendants, jointly and severally, have breached said fiduciary obligation by failing to prudently act to preserve and maintain common properties within Stonecrest, including the Stonecrest club house, and despite accepting monthly assessments.
7. Plaintiffs are informed and believe that Defendants, through Brock L. Fankhauser individually, have deliberately and arbitrarily refused to enforce bylaws by permitting Fankhauser-appointed board members to operate small businesses out of their garages in express violation of restrictive covenants.
8. Plaintiffs are informed and believe that Defendants, jointly and severally, improperly utilized monthly HOA assessments for purposes other than maintenance of Stonecrest properties, including development of adjacent commercial property tracts and roadways, instead of employing said funds to remedy defects, make needed repairs, and cure water intrusions issues at Plaintiffs' homes.
9. Plaintiffs are informed and believe that Defendants, jointly and severally, have undercapitalized the HOA and have depleted reserves as set forth in paragraph (8), resulting in the HOA being unable or unwilling to protect and preserve Plaintiffs' properties and repair water damages.
10. That Plaintiffs' demands to Stonecrest HOA, Fankhauser and FGP, Inc. to remedy water intrusion and make repairs has met with procrastination, deliberate failure to act, and has required that this legal action be brought against Defendants.
11. Defendants have breached fiduciary obligations by voluntarily undertaking to remove flooring at the residences of Plaintiffs Sciacca and Pinckney, and thereafter refusing to replace the same without lawful justification while repairing residences of HOA board members.

12. Defendants have breached fiduciary obligations by arbitrarily permitting Fankhauser-appointed HOA board members to install new floor coverings, while denying repairs to Sciacca, Pinckney, and other Plaintiffs.
13. Defendants have breached fiduciary obligations by voluntarily conveying value to board members, including conveying common area properties for deck extensions, in violation of restrictive covenants and bylaws.
14. Defendants have breached fiduciary obligations to Plaintiffs by refusing to undertake temporary protective measures using tarps to prevent water intrusion at Plaintiffs' residences, while arbitrarily repairing the residences of Fankhauswer-appointed board members, including Paulette Iadanza.
15. That due to Defendants' breach of fiduciary duties to Plaintiffs, Plaintiffs each have been damaged in amounts exceeding \$7,500 to be proven at trial of this matter before a jury.
16. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages due to the mismanagement, inaction, and delays created by Brock L. Fankhauser individually and as principal and controlling officer of Stonecrest HOA and FPG, Inc. wherein Defendants, through Fankhauswer, have acted in an arbitrary, willful, wanton, and reckless disregard of Plaintiffs' rights and interests as Stonecrest owners.
17. Plaintiffs are informed and believe that they are entitled to an award of all attorneys' fees and costs associated with bringing this matter before the court.

FOR A SECOND CAUSE OF ACTION
AS TO BROCK L. FANKHAUSER, INDIVIDUALLY,
FPG, INC. AND STONECREST HOA
(BREACH OF CONTRACT)

1. The above allegations are set forth and incorporated by reference as if stated again verbatim.
2. Plaintiffs are informed and believe that the Defendants named in this cause of action knew, or should have known, that the property being purchased by each respective Plaintiff would serve as the Plaintiff's primary residence and home.
3. Plaintiffs are informed and believe that contractual duties exist between Plaintiffs and these Defendants, supported by consideration, and that the Defendants jointly and severally have breached said contractual obligations, to wit:
 - a. Defendant Brock L. Fankhauser until July, 2010 was the sole controlling board member, owner, and agent of Stonecrest HOA. FPG, Inc. as contractor, developer, and sole controlling HOA interest is solely responsible for misrepresentations, breach of warranties, inaction, errors, omissions, neglect, procrastination, and

arbitrary refusal to take sufficient corrective action to prevent recurring water intrusion to Plaintiffs' residences and effect necessary repairs despite Brock Fankhauser's awareness of ongoing water intrusion issues at Stonecrest properties.

- b. That Defendants, specifically including Defendant Brock L. Fankhauser, knew, *or should have known*, of the construction defects and/or design defects which plagued the Stonecrest Condominium properties, yet continued to repeatedly market and sell the same to innocent purchasers for cash, including Plaintiffs Williams and Vicari, *supra*.
- c. Defendant Fankhauser Property Group (FPG, Inc.) as general contractor, by and through Brock L. Fankhauser, has by breach of warranty and breach of implied duties of good faith and fair dealing failed to render workmanlike construction on Plaintiffs' residences, resulting in defects and water intrusion caused by construction defects and/or design defects.
- d. Defendant FPG, Inc., as general contractor, by and through Brock L. Fankhauser individually, has arbitrarily refused to vigilantly protect and restore Plaintiffs' properties from further damage and conduct needed repairs, despite repeated written notices and demands.
- e. Defendants, including FPG, Inc., as general contractor, by and through Brock L. Fankhauser individually, has arbitrarily refused to repair and/or maintain Plaintiffs' properties.
- f. Defendants, by and through Brock L. Fankhauser, have arbitrarily commenced free repairs to those properties belonging to Stonecrest HOA board members appointed by Fankhauser, including Lou Moscowitz and Paulette Iadanza, while ignoring the Plaintiffs' needs for repairs in the face of known water intrusion and mold damages at Plaintiffs' residences.
- g. Defendant Stonecrest HOA, despite notice, permitted Brock L. Fankhauser individually to exercise control of the HOA in violation of bylaws. Stonecrest HOA by and through Fankhauser individually (sole board member and owner) failed to act promptly to protect Plaintiffs' properties and interests from damages and failed to effect repairs, despite notice and despite acceptance of Plaintiffs' monthly assessments.
- h. Defendant Stonecrest HOA has ratified the conduct of Fankhauser individually, acting arbitrarily to perform work on board members' property while ignoring repair needs of the Plaintiffs and other residents whose properties leak water and are affected by mold.

- i. Defendants Brock, FPG, Inc. and Stonecrest HOA have knowingly, deliberately, and recklessly disregarded fiduciary obligations imposed upon Defendants by contract privity with Plaintiffs and by restrictive covenants; ignored defects and repair needs existing at Plaintiffs' residences despite knowledge of water intrusion and mold growth.
 - j. Plaintiffs are informed and believe Defendants named in this cause have improperly and in bad faith employed Plaintiffs' monthly assessments toward development and maintenance of adjacent commercial tracts and roadways, resulting in HOA undercapitalization and inability to protect, preserve, repair or remedy defects, damages, and water intrusion at Plaintiffs' properties, thereby breaching contractual duties owed to Plaintiffs as purchasers for value within an Epcon community.
 - k. Defendants, jointly, have failed to act prudently and preserve common properties, including the Stonecrest Club House, from being damaged by mold and water intrusion despite accepting monthly assessments.
4. That the conduct of each respective Defendant, jointly and severally, constitutes breach of contract as between the parties as set forth more fully below, including Breach of Fiduciary Duty, Breach of Contract Accompanied by Fraudulent Act, Breach of Implied Duties of Good Faith and Fair Dealing, and Breach of Express Warranties as set forth more fully below.
 5. That as a direct and proximate result of the Defendants' breach of contractual duties, jointly and severally, each respective Plaintiff has been damaged in amounts exceeding \$7,500 to be proven at trial of this matter before the court. Plaintiffs' damages are legally and proximately the result of Defendants' breach of contractual duties and obligations.
 6. Plaintiffs seek actual, punitive, compensatory, and expectation damages, attorney's fees, and costs as against Defendants in amounts to be proven at trial of this matter before the court, including the expectation value of what Plaintiffs purchased vs. the value of the product and services each Plaintiff was sold by Defendants.

FOR A THIRD CAUSE OF ACTION

**[AS TO BROCK L. FANKHAUSER, and FPG, INC. and STONECREST HOA]
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACTS)**

1. Plaintiffs are informed and believe that Defendants, including Brock L. Fankhauser individually, *knew or was substantially certain* that the Epcon Communities, Inc. "Stonecrest" condominium properties built by Fankhauser were plagued by water intrusion problems, construction defects, and/or design defects. Yet, Defendants dishonestly continued to market and sell the condominiums as Epcon properties without full disclosure to purchasers for value, specifically including Plaintiffs Williams and Vicari. Plaintiffs are informed and believe said conduct constitutes dishonesty in fact.

2. Despite express knowledge by Defendants of the problems identified in paragraph (1) above, on March 19, 2009, Defendants permitted to be sold condominium # 828 to Troy and Nancy Williams.
3. Despite express knowledge by Defendants of the problems identified in paragraph (1) above, on May 28, 2010, Defendants permitted to be sold condominium # 830 to Thea-Eve Vicari, *for cash*.
4. That Defendant Brock L. Fankhauser, individually and on behalf of Defendants, expressly reassured Plaintiffs at time of purchase, specifically including Plaintiffs Addie Smith (unit 858) and Thea-Eve Vicari (unit 83), that their condominium properties would be properly repaired; said assurances were materially false and designed to induce Plaintiffs to purchase condominium properties despite Defendants' express knowledge of existing defects.
5. Plaintiff Vicari, upon notice of the extent of defects, demanded rescission of sale refund of cash paid to Brock L. Fankhauser. Plaintiffs are informed and believe that Defendant Brock L. Fankhauser denied contract rescission and refund to Plaintiff Vicari, while permitting rescission and refund to others, said conduct constituting dishonesty in fact.
6. Defendants, expressly including Stonecrest HOA, have refused despite demand to effect repairs to Plaintiffs' properties to prevent water intrusion, despite accepting monthly assessments.
7. Defendants, despite undertaking to remove the flooring of Sciacca (unit 717) and Pinckney (unit 809), have arbitrarily refused to complete repairs and install replacement flooring while arbitrarily providing repairs to other Stonecrest properties belonging to HOA board members, including Moscovitz and Iadanza. As a result, Sciacca and Pinckney have suffered loss of use of their residence flooring for months without being compensated.
8. Plaintiffs are informed and believe that Defendants misrepresentations and failures to act are arbitrary and dishonest in fact; Defendants having never repaired Plaintiffs' properties despite repeated pleas and demands.
9. Plaintiffs are informed and believe Defendants, jointly and severally, failed by *deliberate concealment* to *fully disclose* to Vicari and Williams, as purchasers, the full extent of the construction defects and/or design flaws described above and known to Defendants, including Brock L. Fankhauser individually, as affecting numerous condominium structures in Stonecrest.
10. Plaintiffs are informed and believe that Defendants, including Fankhauser individually, had a pecuniary interest in the sale proceeds from defective residences being sold to Plaintiffs and others.

11. That Plaintiffs as a group were ignorant of the false representations made by Defendants that their properties would be properly repaired, and believed that they were purchasing an EPCON property as constructed by Defendant Brock L. Fankhauser and Fankhauser Property Group, Inc. which would be maintained and preserved by Stonecrest HOA pursuant to restrictive covenants and bylaws of the HOA. Said representations were materially false.
12. That Plaintiffs, expressly including Williams and Vicari, as purchasers for value, had the right to rely upon Defendants' representations, jointly and severally, in purchasing their Stonecrest condominium home and did in fact rely upon the representations of Defendants that they were purchasing an Epcon Communities, Inc. product, built by the Fankhauser Defendants, which would be maintained and preserved by Stonecrest HOA.
13. That Plaintiff Vicari and others are now informed and believe that they have consequently been deceived, and were sold for value condominium properties which suffer from construction defects and/or design defects known to the Defendants jointly and severally at the time of sale, and which were in bad faith concealed from Plaintiffs to induce purchase of the properties by Plaintiffs.
14. That Plaintiffs have paid monthly assessments despite the Defendants being unwilling or unable to effect repairs required to protect each Plaintiffs' property, and that the HOA unwillingness or inability to repair properties while preserving board members' properties constitutes arbitrary, bad faith, and dishonest in fact breach of contract.
15. Plaintiffs are informed and believe that they have incurred damages as a direct and proximate result of the Defendants' knowing and deliberate concealment concerning construction defects and/or design defects known to Defendants to exist in the Epcon "Stonecrest" development as constructed by Defendants Fankhauser and by Defendants' continued refusal to assist and repair Plaintiffs' properties.
16. Plaintiffs believe they are entitled to all actual and punitive damages including an award of attorney's fees and costs due to Defendants' bad faith breach of contract accompanied by fraudulent act.

FOR A FOURTH CAUSE OF ACTION

[AS AGAINST DEFENDANTS BROCK L. FANKHAUSER, FANKHAUSER PROPERTY GROUP, INC., STONECREST HOA and EPCON COMMUNITIES, INC.]

FRAUD AND MISREPRESENTATION

1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. That these Defendants, by and through Brock L. Fankhauser created, developed, marketed and operate a horizontal property regime known as Stonecrest Villas of Tega Cay marketed, advertised, and sold as an Epcon Community selling Epcon Community type condominiums.

3. That each respective property is bound by restrictive covenants requiring monthly assessments of any owner within the Stonecrest development.
4. That Defendants, by and through Brock L. Fankhauser, created Stonecrest HOA and corporate bylaws applicable to Stonecrest HOA to preserve and maintain the Stonecrest Community under the restrictive covenants and thereby accepted and undertook and express duty to carry out preservation and protection of the properties in Stonecrest.
5. That Defendants have required monthly assessments which have been paid by each respective Plaintiff without fail. That despite payment of monthly assessments, Defendants have failed to preserve, protect and repair Plaintiffs' properties to cure water infiltration, mold growth, and personal property damages.
6. That Defendants, through Fankhauser individually, have *knowingly* employed monthly assessments in violation of the restrictive covenants imposed by Defendants, including utilization of assessments for the development of other commercial properties and roadways thereby undercapitalizing the HOA, without notice or lawful authorization.
7. That as a result of said conduct, the HOA Stonecrest Villas of Tega Cay Owners Association, Inc., by and through its past and existing corporate board, is unwilling or incapable of carrying out preservation and maintenance of the Plaintiff's properties to prevent further water intrusion and mold damages.
8. That as a result of financial mismanagement by Brock L. Fankhauser and the HOA board of directors, Plaintiffs are informed and believe that the HOA board now seeks to assess Plaintiffs and others for Defendants' mismanagement and errors, and levy assessments against each respective property owner to pay for the costs of repairs and litigation after deliberately failing to preserve, protect and maintain Plaintiff's residences from ongoing water intrusion damages.
9. Plaintiffs are informed and believe they are entitled to all actual, compensatory and punitive damages as against defendants, *including any equitable relief as may be ordered by the court*, to protect their properties against further Defendant malfeasance.

FOR A FIFTH CAUSE OF ACTION

[AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(EQUITABLE ACTION FOR ACCOUNTING)

1. The above allegations are set forth here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants have undercapitalized the HOA and have improperly employed assessments for improper purposes, including development of adjacent commercial tracts and roadways by Fankhauser and FPG, Inc. in violation of HOA bylaws and restrictive covenants.

3. Plaintiffs as owners and residents are entitled to an accounting by the HOA to Plaintiffs to account for the manner in which reserves have been depleted and to investigate whether monthly assessments and reserves have been employed by Fankhauser or FPG, Inc. improperly during the time Fankhauser was in sole control of the Stonecrest HOA board.
4. Plaintiffs seek that the court require the Defendants, specifically including Fankhauswer and the HOA, its past and current board, to render an accounting of all receipts and disbursements to Plaintiffs as interested owners and residents.

FOR A SIXTH CAUSE OF ACTION

[AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(CONVERSION)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Brock L. Fankhauser individually exercised exclusive dominion and control of the HOA board, and exclusive ownership of Stonecrest HOA, until approximately July, 2010.
3. Plaintiffs are informed and believe that said conduct was a violation of restrictive covenants, bylaws, and constituted a conflict of interest.
4. Plaintiffs are informed and believe that Fankhauser has improperly employed HOA financial reserves and assessments for development of commercial tracts and roadways, violating corporate bylaws and duties imposed upon Defendants by restrictive covenants to preserve, protect, maintain and repair Plaintiffs' properties.
5. That despite demand, Defendants are unwilling and/or unable to effect necessary repairs to Plaintiffs' residences to prevent water infiltration and mold.
6. Plaintiffs are informed and believe that Fankhauser individually or corporately assumed and exercised control over community assessments and reserves, depleting the same through mismanagement, illegal use, misuse to the exclusion of the HOA and Plaintiff owners.
7. That Plaintiffs as owners and payors of monthly assessments had an interest in the funds so converted or misused by Fankhauser, as set forth in paragraph (6).
8. Plaintiffs are informed and believe that Fankhauser as controlling board member of Stonecrest HOA converted reserves and assessments to his own use without authority of Plaintiffs or Stonecrest owners at large, without notice, vote, or minutes advising Plaintiff owners of the same.

9. That use of HOA reserves and assessments for purposes other than required by restrictive covenants was without Plaintiffs' permission and/or consent and was accomplished by Fankhauser recklessly and with conscious indifference to Plaintiff's rights as Stonecrest Owners' needs for repairs and preservation of Plaintiffs' properties.
10. That as a direct and proximate result, the Defendants, including Stonecrest HOA, is unwilling or incapable of acting to protect, preserve and maintain Plaintiffs' properties.
11. Plaintiffs are informed and believe that they are entitled to all amounts converted by Fankhauser or FPG, Inc., with legal interest, from the date of conversion.

FOR A SEVENTH CAUSE OF ACTION

[AS AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(CIVIL CONSPIRACY)

1. The above allegations are set forth here and incorporated by referenced as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants Fankhauser as Stonecrest controlling board member and agent, and Stonecrest HOA by and through Fankhauser appointed board members, conspired to injure Plaintiffs by depleting HOA reserves and assessments for purposes other than preservation and maintenance of Plaintiffs' properties per restrictive covenants.
3. Plaintiffs are informed and believe that Fankhauser, by and through Stonecrest HOA assessments, has employed reserves and assessments to develop adjacent commercial tracts and roadways owned by or under development by Fankhauswer and FPG, Inc. without notice or lawful authority.
4. Plaintiffs are informed and believe that Fankhauser and HOA board members, past and present, have acted maliciously and in conscious disregard of Plaintiffs' rights by permitting financial mismanagement of reserves and assessments.
5. Plaintiffs are informed that the HOA board, by and through Fankhauswer, has effecting free repairs to certain board members' homes, while arbitrarily denying repairs needed at Plaintiffs' residences to prevent water intrusion.
6. Plaintiffs are informed and believe that the combination of Fankhauser and Stonecrest board conduct violated HOA bylaws and restrictive covenants and has injured the HOA and Plaintiffs financially.
7. That as a result, Plaintiffs have incurred special damages and are unable to compel Defendants to repair their residences to prevent further water intrusion, damages, and mold.

8. Plaintiffs are informed and believe Defendants' depletion of reserves and assessments was with the express knowledge of Fankhauser individually and other Fankhauser appointed board members, before and after July, 2010.
9. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages for Defendants' willful and malicious misuse of HOA reserves and assessments paid by Plaintiffs.

FOR AN EIGHTH CAUSE OF ACTION

[AGAINST ALL DEFENDANTS AND EPCON COMMUNITIES, INC.]

(BREACH OF EXPRESS WARRANTY)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Defendants, in concert with Epcon Communities, Inc., by voluntary affirmative act permitted display of model condominium homes shown to Plaintiffs as potential purchasers. The model homes and communities shown to Plaintiffs were represented to be Epcon products and communities.
3. Defendants, in concert with Epcon Communities, Inc. represented that Plaintiffs were purchasing homes in an Epcon Communities, Inc. property development which were constructed to Epcon quality standards and in a workmanlike manner. Said representations were materially false.
4. That Defendant Brock L. Fankhauser, prior to closing of the Vicari residence, expressly reassured Plaintiff Vicari that all inspections and repairs had been completed on condominium 830, and that said representations were materially false.
5. That Defendants Fankhauser, FPG, Inc. and Stonecrest HOA knew that Plaintiffs' residences, including Vicari condominium 830, were plagued by either design defect or construction defect at the time of sale, but that Defendants nevertheless proceeded in the face of this knowledge to sell the same to Plaintiffs, including Vicari, for cash.
6. That said representations of quality and workmanship were material to each Plaintiffs' decision to purchase within the Stonecrest community and became a material part of the bargain wherein each Plaintiff entered into a purchase contract with Defendants believing they were purchasing Epcon Communities product in an Epcon community development.
7. That said representations, affirmations, display of models, and marketing of restricted community by Defendants, including Epcon, created an express warranty that the product and community being sold to Plaintiffs would conform to the representations of Defendants, jointly. Said representations were materially false.

8. That Plaintiffs, including Williams and Vicari, were sold condominium properties by Defendants not reasonably fit or safe for use as a residence due to construction defects or design defects *well after* Defendants, particularly Brock L. Fankhauser, knew or should have known of the defects existing in the construction of the Stonecrest condominiums.
9. Plaintiffs are informed and believe their residences leak, suffer from water intrusion, and that their residences fail to conform to the EPCON model display homes they were sold by Defendants, jointly.
10. That Plaintiffs are informed and believe that the community was represented by Defendants to be a restricted community by virtue of restrictive covenants and HOA bylaws which Defendants would preserve, protect and maintain; said assurances were materially false.
11. That Defendants' failure, inability, or unwillingness to enforce restrictive covenants and HOA corporate bylaws is a material breach wherein the community does not conform to the representations made by Defendants which induced Plaintiffs to purchase in an Epcon Community.
12. Defendants Fankhauser, FPG, Inc. and Stonecrest HOA knew, *or should have known*, of the need to fully disclose to potential purchasers the defects each knew to exist within the condominiums property; yet failed to disclosed the same and continued to market and sell the properties despite defects for cash to innocent purchasers for value.
13. Plaintiffs are informed and believe that they are entitled to all actual and punitive damages, attorneys fees and costs, in the discretion of the court and jury for Defendants' knowing and willful breach of express warranty.

FOR A NINTH CAUSE OF ACTION

[AS AGAINST ALL DEFENDANTS AND EPCON COMMUNITIES, INC.]
(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

1. The above allegations are set forth and incorporated by reference as if stated again verbatim.
2. Plaintiffs are informed and believe that Defendants, jointly and severally, sold Plaintiffs defective products used to construct residences characterized by construction defects or design defect and which suffer from water infiltration and leak water due to the defects described in paragraphs 5(a) through 5(h) of the Eleventh Cause of Action, *infra*.
3. Plaintiffs are informed and believe that Defendants Fankhauser, FPG, Inc. and Epcon Communities, Inc. are sellers of condominium residences and specifically are merchants of condominium products and communities of the kind sold to Plaintiffs.
4. Plaintiffs are informed and believe that Defendants represented Stonecrest to be an Epcon community and property with implied warranty they residences sold to Plaintiffs were

constructed in a workmanlike manner and would have with no construction defects, design defects, and would not leak or suffer water intrusion.

5. That the products, residences and community sold to Plaintiffs as an Epcon development are not fit for the ordinary purposes for use due to water leakage, water intrusion, and Defendants' failures to remedy the same.
6. Plaintiffs are informed and believe that they are entitled to all actual and punitive damages arising from Defendants' breach of Implied Warranties of Merchantability due to condominium components being unfit for its intended use.

FOR A TENTH CAUSE OF ACTION

[AS AGAINST ALL DEFENDANTS AND EPCON COMMUNITES, INC.]
(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants, jointly and severally, at the time of contracting with each respective Plaintiff had reason to know the Plaintiffs were purchasing an Epcon product constructed by Fankhauser and FPG, Inc. which would serve as each Plaintiffs' primary residence and home.
3. Plaintiffs relied on Defendants' representations and skill in selecting an Epcon product which was to be constructed by FPG, Inc. and Brock L. Fankhauser.
4. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the homes and property being purchased would be fit to serve as a restricted community and home which would not leak or suffer from water intrusion issues due to construction defect or design defect.
5. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the Stonecrest HOA would pursuant to restrictive covenants and bylaws preserve, protect and maintain Plaintiffs' properties.
6. That the condition of the condominiums is such that they leak water and that the condition of the HOA is such that the HOA, by and through Brock L. Fankhauser (and post July, 2010 through its board of directors) has been unwilling or incapable of protecting, repairing or preserving Plaintiffs' properties.
7. Plaintiffs are informed and believe the Epcon property they were sold, including the Stonecrest condominiums and Stonecrest HOA, is unfit for intended use as sold to Plaintiffs by Defendants as the Plaintiffs' condominiums suffer from water intrusion wherein the HOA is either unwilling or incapable of preserving Plaintiffs' properties and common areas.