

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

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SC Court of Appeals

All parties agree that control of Stoncrest COA was transitioned to the community owners on July 1, 2010, and the Plaintiffs and Stoncrest COA agree the common elements were not in good repair as of that date. In order to pay for repairs to the common elements, Stoncrest 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 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.

A large special assessment was undesirable for obvious reasons. Pursuant to Section 8.1(c) of Stoncrest COA's bylaws, such an assessment would have to be approved by at least 67% of the community owners. However, virtually no one in the community, the Plaintiffs included, felt they should be assessed tens of thousands of dollars to pay for repairs which they believed were the responsibility of the general contractor and developer. The following deposition testimony is representative.

Q. So now, if the HOA was to make a special assessment of whatever Mr. Hall said -- for example, if it was 6, 7, 10 million --

A. Right.

Q. -- then you're okay with that special assessment and you paying whatever 1/89th of that is?

A. Obviously, I'm not. I filed a lawsuit.

Q. So you don't want the special assessment?

A. Why should I pay for someone else's crap? I didn't -- I thought I was buying a luxury ranch condo. I got a waterlogged tent. I got a white elephant. I cannot sell it.

Q. Do you know if some of the Plaintiffs would -- like Mr. Vesting -- would prefer, Let's just pay 1/89th of whatever the costs would be, would you agree with that position?

A. I have no clue what Mr. Vesting's theory is, but I would not think that's my responsibility.

Q. Do you think, based on you knowing a lot of the people out here, that they would like a special assessment of some enormous amount to fix the construction problems?

A. They would hate it. They couldn't do it.

Q. Is it fair to say a lot of the people out here are retired, living on fixed incomes?

A. That would include me.

Deposition of Joe Marvin Moore at 230:12-231:17 (quoted excerpts attached as Exhibit

C).

Q. . . . But I'm saying, if someone made a motion at your next homeowners meeting to do a special assessment where everybody in the association was going to have to pay \$250,000, a one-time special assessment, and that was going to fix everything out here, how would you vote?

A. I wouldn't vote for it.

Q. Okay. So would it be fair to say that in your estimation, that nobody would vote for that?

A. I can't answer for anybody else. Only for myself.

Q. Okay. But you would vote no?

A. That's correct.

Q. And if everybody votes like you, it's not going to pass, correct?

A. I guess not.

Q. And therefore, there would not be the money to fix all of these problems?

A. I guess not.

Q. So the only option at that point, then, is to sue the people that really were responsible for the problems, correct?

MS. NICHOLS: Object to the form.

BY MR. STRICKLAND:

Q. You still answer.

A. I'm sorry, yes.

Deposition of Josephine Anna Sciacca at 236:2-237:4 (quoted excerpts attached as Exhibit D).

Given the circumstances, Stonecrest COA elected to pursue a recovery against the community's general contractor and developer, 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.⁶

⁶ The 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 (attached as Exhibit E). Accordingly, the earliest the statute of limitations could have run was the late spring or summer of 2011.

As the court is aware, Stoncrest 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. The court approved the settlement, finding it to be reasonable, and indeed held that Stoncrest COA exercised sound business judgment when it agreed to the settlement. Specifically, the court found:

5. The Board of Directors for [Stoncrest] 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, 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 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) (attached as Exhibit F).

"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). This means that a 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 and cannot produce any evidence of bad faith on the part of Stonecrest COA.⁷ Thus, the decision by Stonecrest COA to pursue and, ultimately, 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 (Cl. 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

⁷ In fact, the evidence is to the contrary. The following deposition testimony regarding Stonecrest COA's board members is illustrative.

Q. Do you know Mr. Moscovitz?

A. I know who he is, yes.

Q. Would you know him if you saw him walk in?

A. Absolutely.

Q. And what about Dave Cook?

A. I know Dave Cook.

Q. And Ms. [Paulette] Iadanza?

A. I do.

Q. Do you have any -- well, let me ask you, is this a volunteer position that they have, or are they paid?

A. I would not think they would be paid.

Q. Do you fault any of those three individuals for anything they have done as board members for the HOA?

A. I don't know anything that they've done. I think they're in the middle of a maelstrom, can't escape from it.

Moore Deposition at 233:10-234:3.

discretionary assessments] shall not be grounds for any action against the Association or the Executive Board[.]”). Indeed, the court has already recognized the reasonableness of Stonecrest COA’s conduct. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

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

As set forth herein, 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 HOA.⁸

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 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 and without regard to whether Stonecrest COA has the financial resources to do so. 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

⁸ Stonecrest COA notes that because the Plaintiffs are suing as individuals rather than as a class, each individual Plaintiff must personally establish every element of every cause of action asserted in the Amended Complaint.

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." Sleele 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. But even if the Amended Complaint properly alleged the existence of a fiduciary relationship, the Plaintiffs 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.⁹ Cf. O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 632 (1992) ("We have never imposed the high standard of fiduciary duty on planned community organizations[.]"). 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.¹⁰ Accordingly, Stonecrest COA is entitled to judgment as a matter of law for lack of a fiduciary duty owed.

⁹ 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 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 (because they, like the other community owners, did not desire an assessment).

¹⁰ Stonecrest COA previously sought partial summary judgment on this cause of action, but the 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) (attached as Exhibit G). 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.").

Of course, the court can avoid addressing the novel issue of whether a homeowners' association owes a fiduciary duty to its members by simply following in the footsteps of the Goddard court and finding that even if Stonecrest COA owes a fiduciary duty to the Plaintiffs, it has not violated 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. As discussed above, the court has already found that Stonecrest COA exercised sound business judgment when it entered into a settlement under which it will recover \$2.6 million for the repair of the common elements. Accordingly, Stonecrest COA is entitled to judgment as a matter of law pursuant to the business judgment rule and for lack of a breach of any duty that may exist.

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." Tuller 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.

The only contract referenced in the breach of contract cause of action is the Franchise Agreement between Epcon Communities Franchising, Inc. and Pankhauser Property Group, Inc. Amended Complaint p.12, ¶ 1. The Plaintiffs allege they are intended third-party beneficiaries of that agreement. *Id.* p.12, ¶2. The court has already rejected the latter contention, but even if it were 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, Stonecrest COA first notes 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"¹¹ 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 documents both 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 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 II, *supra*,

¹¹ "A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree." Id. at 406, 581 S.E.2d at 166 (citations and quotations omitted).

Stonecrest COA did the only thing it reasonably could do in the circumstances: pursue and obtain a monetary recovery from the Pankhauser 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 III(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. The court 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) 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.”) (attached as Exhibit H). 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), SCRPC. 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 absolutely no record evidence whatsoever, 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.

Upon information and belief, this cause of action is based on alleged "overpayments" by Stonecrest COA to the so-called "master association." However, these overpayments have not been established as fact. Stonecrest COA board member Lou Moscovitz ran some calculations and believes Stonecrest COA was previously over-

invoiced by the master association. Deposition of Louis C. Moscovitz at 135:5-8 (cited excerpts attached as Exhibit I). As a result, Stonecrest COA has, for the past several years, been withholding payments to the master association until the issue is resolved. Id. at 134:21-135:2. The dispute may eventually be settled via litigation, but any recovery will belong to Stonecrest COA, not the Plaintiffs. See Exhibit II p.7 ("[A]ny recovery of monies transferred to a master association would nonetheless inure to the benefit of the COA party."). See also 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). 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 (Cl. 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 is merely a repackaging of the allegations asserted in other causes of action with a new bow on top labeled "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 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. The Plaintiffs simply 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 time of Mr. Fankhauser’s control, no conspiracy could have existed because Mr. Fankhauser was an agent of Stonecrest COA. Accordingly, Stonecrest COA is entitled to judgment as a matter of law.

G. Breach of Express Warranty.¹²

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

¹² This section covers both the tenth and fourteenth causes of action asserted in the Amended Complaint. See note 2, *supra*.

(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"¹³ 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.

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 III(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

¹³ 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 wholly inapplicable in this case regardless of who the seller was. See also Exhibit H at p.5 (finding that the UCC only applies to the sale of "goods," which does not include the Plaintiffs' condominium units).

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. It goes without saying that Stonecrest COA 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 court treats this cause of action not as one for breach of the implied warranty of merchantability but one for 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 Stoncrest COA because Stoncrest COA is not and was not a "seller" of "goods" and could not possibly have given such a warranty. Stoncrest COA is 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 Stoncrest 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 Stoncrest 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 Stoncrest 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 under the SCUTPA.

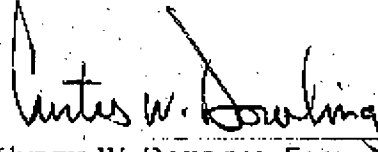
Moreover, the Plaintiffs cannot establish that any alleged "unlawful trade practice" committed by Stonecrest COA had an "adverse impact on the public interest." "To be actionable under the Unfair Trade Practices Act, an unfair or deceptive act or practice must have an impact upon the public interest. 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). Predictably, the Amended Complaint, like so many other complaints filed in South Carolina these days, contains rote allegations that the Defendants' alleged actions affect the public interest because they are "capable of repetition." However, it contains no factual allegations supporting those conclusory assertions and the record contains no evidence supporting them. 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.”).

The fact is that 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, cannot possibly affect anyone other than its own members. If Stonecrest COA were never to repair the common elements, no one outside the community would notice or care. Clearly, the allegations against Stonecrest COA are of private, intracorporate wrongs which do not affect the public interest. See, e.g., Bessinger v. Food Lion, Inc., 305 F.Supp.2d 574, 581 (D.S.C. 2003) (“[C]onduct that affects only the parties to the transaction and not the public interest provides no basis for a SCUTPA claim.”); 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.

CONCLUSION

For the reasons set forth herein, the Defendant, Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., respectfully requests an Order granting its Motion for Summary Judgment as to the Plaintiffs' Claims.



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(Cross-Claims and Third-Party Complaint)

March 18, 2013

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:

Memorandum in Support of Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.'s Motion for Summary Judgment As to Plaintiffs' Claims

PERSON(S) SERVED:

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Columbus, OH 43215
Attorney for Epcor


DEBBIE J. RAINES

March 18, 2013

Exhibit A

Musgrave Property Card

York County Tax Assessor


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Owner and Parcel Information

Owner Name	MUSGRAVE BARBARA J	Today's Date	March 18, 2013
Mailing Address		Parcel Number	6440701024
	8504 CHEVERNY DR WAXHAW NC 28173	Tax District	County (District 4)
Location Address		Fire District	
		Town Code	TC
Class Code (NOTE: Not Zoning Info)	RIL	Acres	.00
Description	UNIT # 748 STONECREST VILLAS	Parcel Map	Show Parcel Map
		Owner Occupied	
Generate Owner List By Radius			

Value Information

[Online Taxes](#)

Land Value	Improvement Value	Total Value	Taxable Value	Total Assessment
\$ 0	\$ 149,000	\$ 149,000	\$ 149,000	\$ 8,940

Building Information

First Floor Square Footage	Second Floor Square Footage	Garage Square Footage
0	0	0

Lot Size Information (Dimensions in Feet)

Front	Back	Left	Right

Sale Information

Sale Date	Price	Deed Book	Plat Book	Grantor
12-05-2012	\$ 1	13061.65	D192.1	MUSGRAVE BARBARA J & LOREN E
12-30-2008	Not Available	10477 319	Not Available	Not Available
03-06-2007	Not Available	8883.3	Not Available	Not Available

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Exhibit B

Master Deed and Bylaws

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

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:

Jule B. Glenn, Attorney at Law

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

Charlotte, NC 28213

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE
DATE: 2/26/07
TAX MAP NO. out 8644-1-1-28
INITIALS TS Kj

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BK 08852 PG 0149

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 E, 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.

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(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 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 Tege 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. Unsanitary 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.

- (l) 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

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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: Brock L. Fankhauser
Name: BRICK 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.

Notary Public

My commission expires: May 7, 2011

[NOTARY SEAL]

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xxx

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**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

-33-

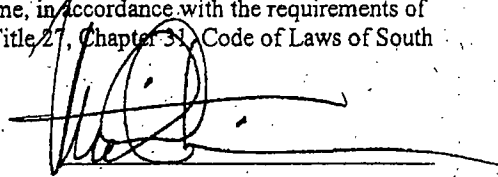
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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

ARCHITECT'S CERTIFICATION

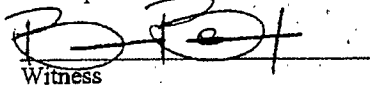
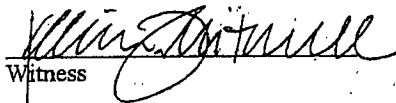
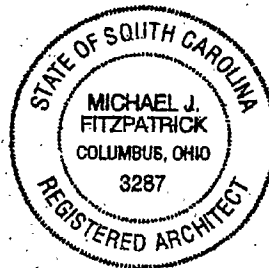
I certify to the best of my knowledge, information and belief, Exhibit C (Floor Plans and Elevations) adequately and accurately depict the dimensions, layout, area and location, within normal construction tolerances, of Buildings 1, 2, 3, 4, 17, and 18 of Stonecrest Villas of Tega Cay Horizontal Property 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

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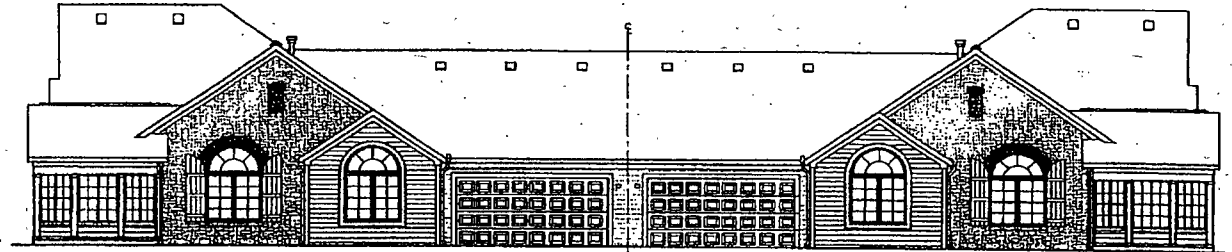
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UNIT: 707
ABBEE

END ELEVATION

UNIT: 705
CANTERBURY



UNIT: 705
CANTERBURY

SIDE ELEVATION

UNIT: 711
CANTERBURY



EXTERIOR ELEVATIONS

1 of 2

FANKHAUSER PROPERTY GROUP
380 East John St., Suite 124
Millsboro, NC 28355
PH: (704) 622-4524

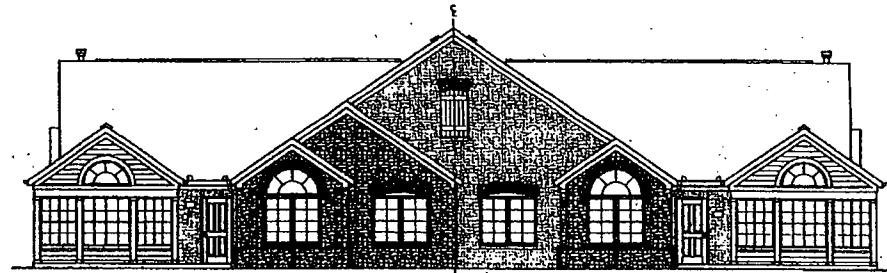
MICHAEL J. FITZPATRICK,
ARCHITECT
114 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.459.7588

BUILDING # 1

UNITS # 705, 707, 709, 711

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

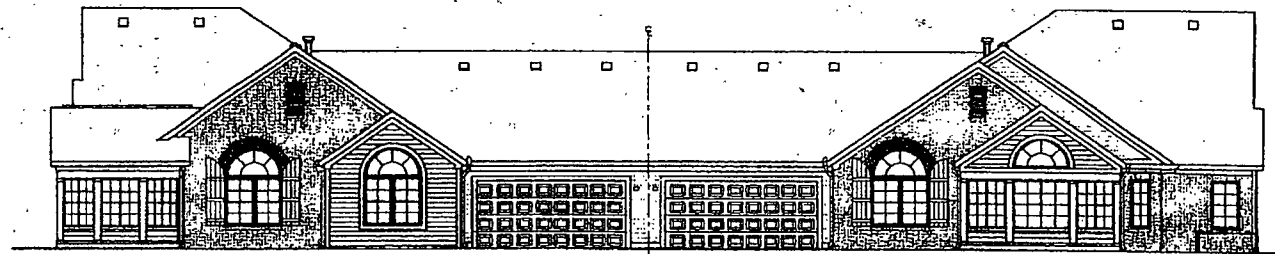
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UNIT: 711
CANTERBURY

END ELEVATION

UNIT: 709
CANTERBURY



UNIT: 709
CANTERBURY

SIDE ELEVATION

UNIT: 707
ABBEY



EXTERIOR ELEVATIONS
2 of 2

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

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

BUILDING # 1

UNITS # 705, 707, 709, 711

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

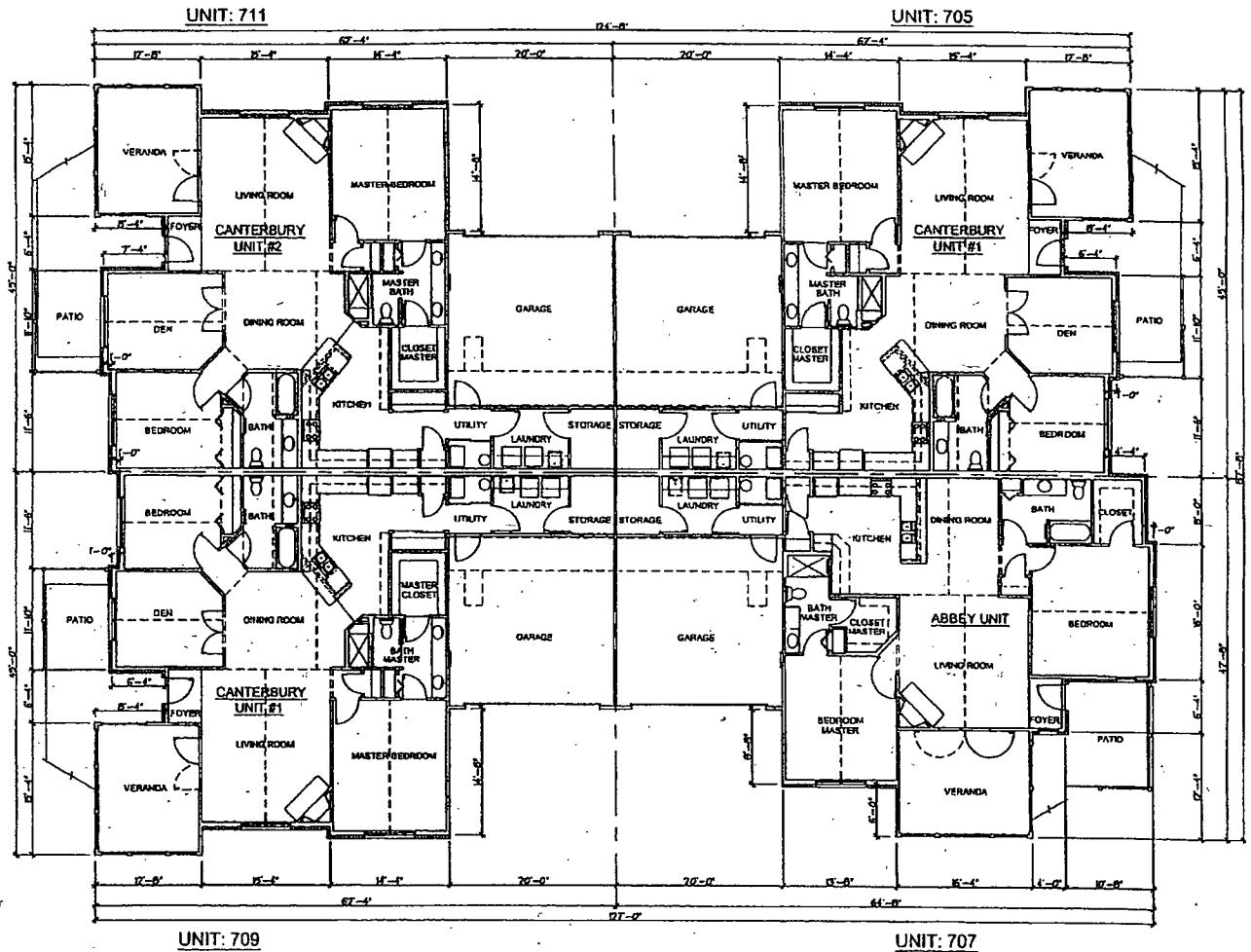
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DATA:	
ABBEY UNIT:	
LIVING SPACE:	1518 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT #1 WHEN ADJACENT TO ABBEY UNIT:	
LIVING SPACE:	1872 SQ. FT.
VERANDA:	183 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2270 SQ. FT.
CANTERBURY UNIT #2 WHEN ADJACENT TO CANTERBURY UNIT #1:	
LIVING SPACE:	1885 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2293 SQ. FT.



FAIRGILDER PROPERTY GROUP
300 East John St., Suite 128
Matthews, NC 28105
Ph: (704) 822-4324

MICHAEL J. FITZPATRICK,
ARCHITECT
112 NORTH FIFTH ST
COLUMBUS, OHIO 43216
614-469-7388



BUILDING # 1 UNITS # 705, 707, 709, 711

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

BK08852PG0186



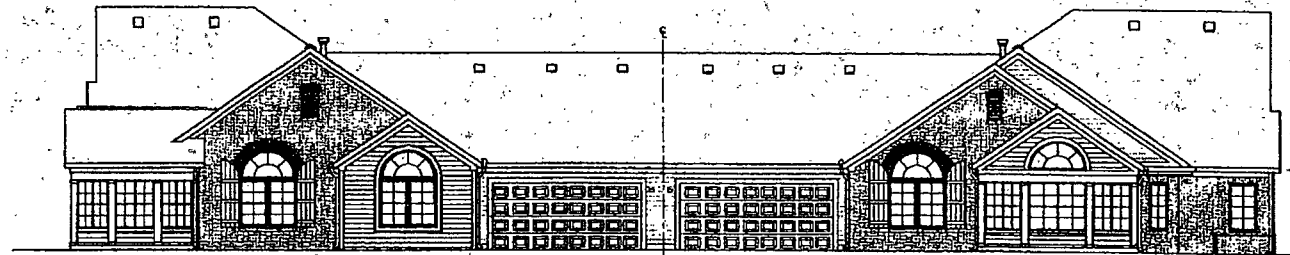
UNIT: 717, 721

ABBAY

END ELEVATION

UNIT: 715, 719

CANTERBURY



UNIT: 719, 715

CANTERBURY

SIDE ELEVATION

UNIT: 717, 721

ABBAY



EXTERIOR ELEVATIONS

FANSHAUSER PROPERTY GROUP
380 East John St., Suite 120
Wilmington, NC 28403
Ph: (704) 822-4624

MICHAEL J. FITZPATRICK,
ARCHITECT
145 NORTH 719TH ST
COLUMBUS OHIO 43215
614.669.7599

BUILDING # 2

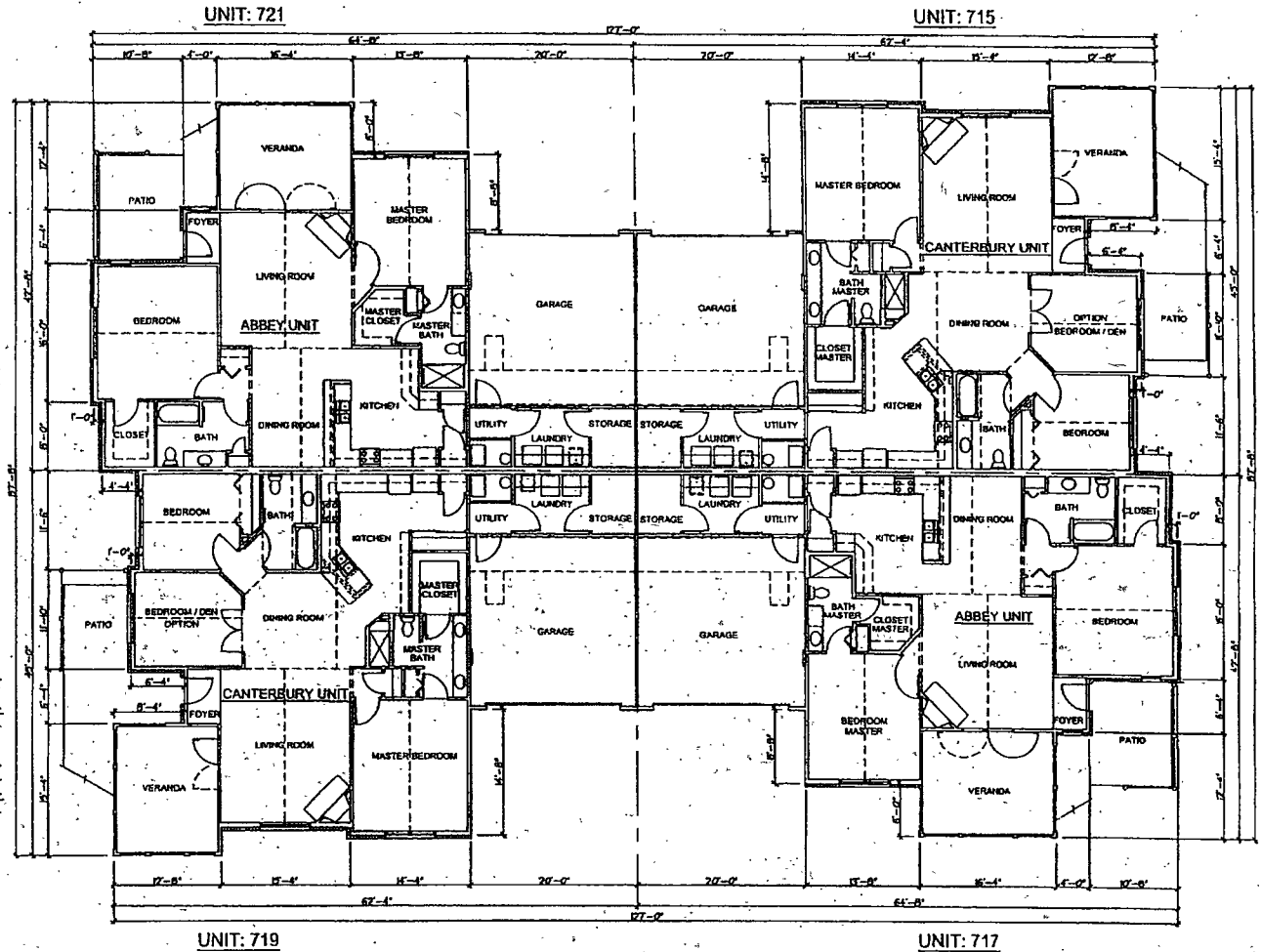
UNITS # 715, 717, 719, 721

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

BK08852PG0187

DATA	
ABBEY UNIT:	
LIVING SPACE:	1519 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT:	
LIVING SPACE:	1872 SQ. FT.
VERANDA:	188 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2270 SQ. FT.

0' 5' 10'
FLOOR PLAN



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

MICHAEL J. FITZPATRICK,
ARCHITECT
155 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
414.249.7504

BUILDING # 2 UNITS # 715, 717, 719, 721

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

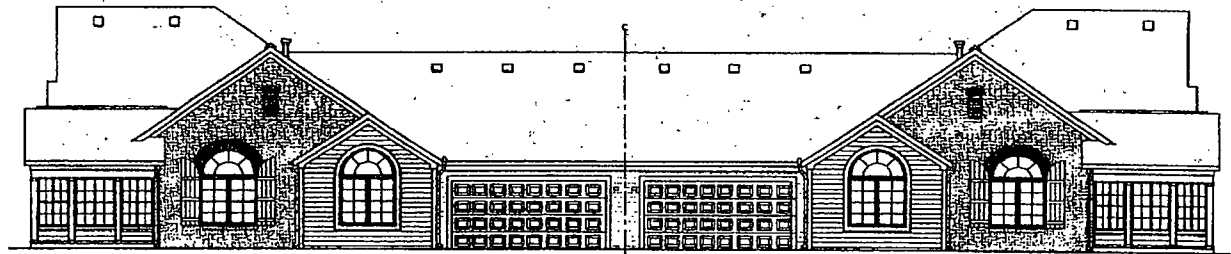
BK08852PG0188



UNIT: 731
ABBEY

END ELEVATION

UNIT: 729
CANTERBURY



UNIT: 729
CANTERBURY

SIDE ELEVATION

UNIT: 727
CANTERBURY



EXTERIOR ELEVATIONS
1 of 2

FAMMHAUSER PROPERTY GROUP
260 East John St., Suite 128
Matthews, NC 28105
PH: (704) 822-4324

MICHAEL J. FITZPATRICK,
ARCHITECT
163 NORTH LITTLE ST.
COLUMBUS, OHIO 43215
614.249.7199

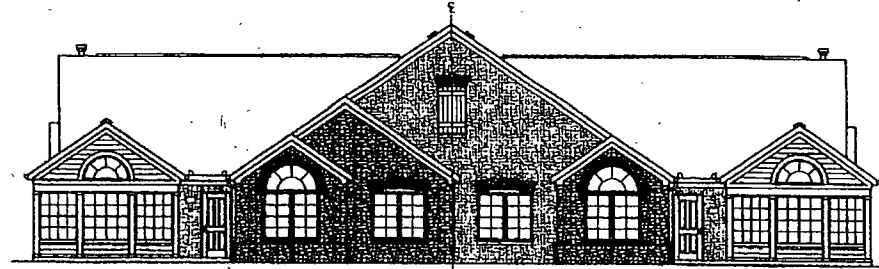
BUILDING # 3

UNITS # 725, 727, 729, 731

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

BK08852PG0189

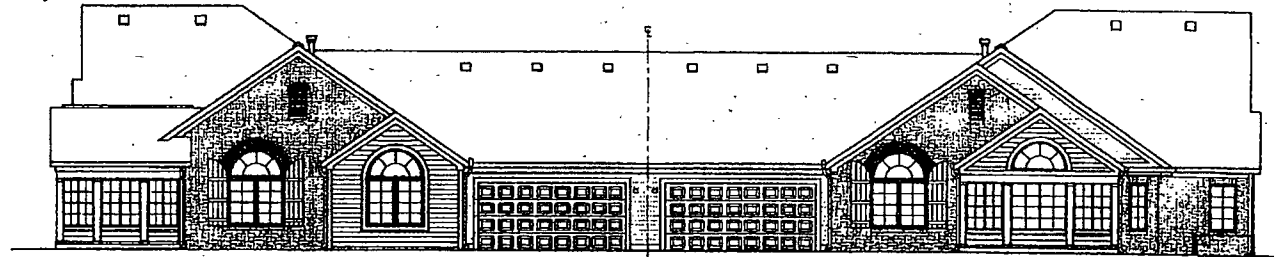
S. ROA Vol. 4 p. 0914



UNIT: 727
CANTERBURY

END ELEVATION

UNIT: 725
CANTERBURY



UNIT: 725
CANTERBURY

SIDE ELEVATION

UNIT: 731
ABBEY



EXTERIOR ELEVATIONS
2 of 2

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

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

BUILDING # 3

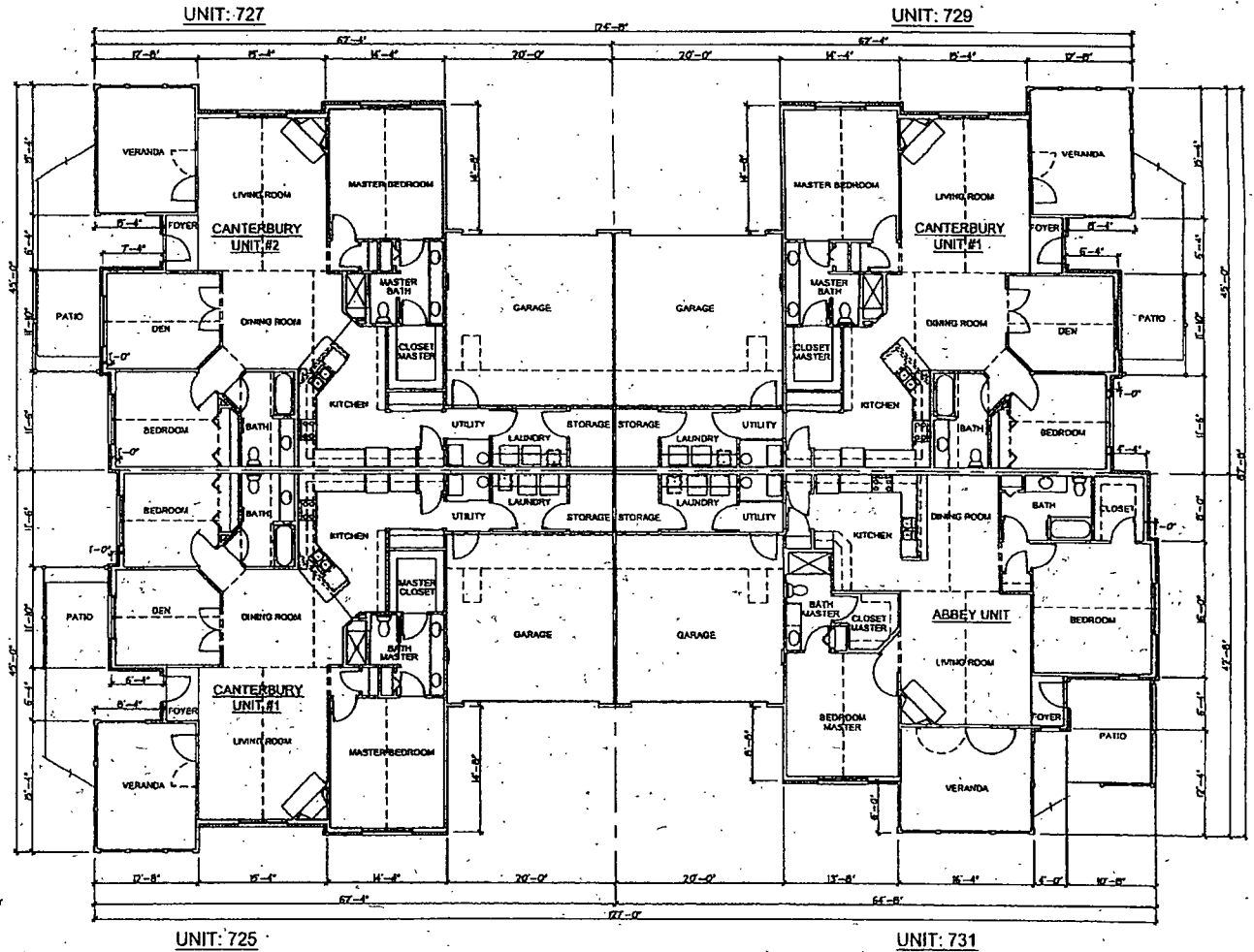
UNITS # 725, 727, 729, 731

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

BK08852PG0190

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:	1672 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:	1695 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2293 SQ. FT.



FANKHAUSER PROPERTY GROUP
308 East John St., Suite 120
Maitheps, NC 28105
Ph: (704) 823-4524

MICHAEL J. FITZPATRICK,
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS OHIO 43215
614 460 7188

BUILDING # 3

UNITS # 725, 727, 729, 731,

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

BK08852PG0191

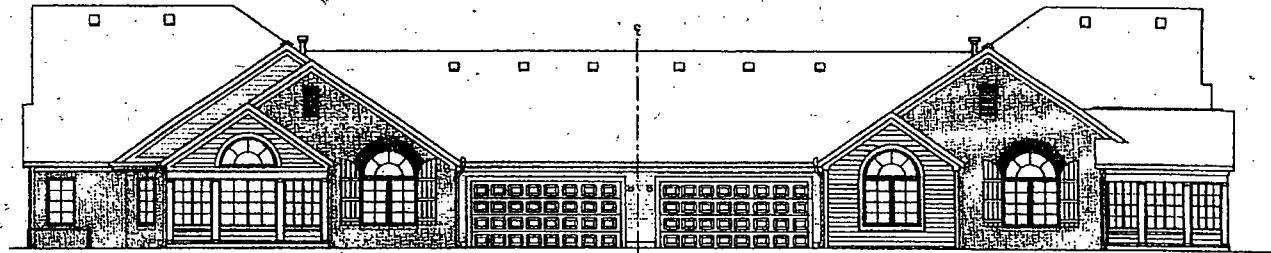
S. ROA Vol. 4 p. 0916



UNIT: 876
CANTERBURY

END ELEVATION-

UNIT: 874
ABBAY



UNIT: 874
ABBAY

SIDE ELEVATION

UNIT: 880
CANTERBURY



EXTERIOR ELEVATIONS
1 of 2

FANSHAUSER PROPERTY GROUP
300 East John St., Suite 126
Maitland, NC 28105
PA (704) 823-4524

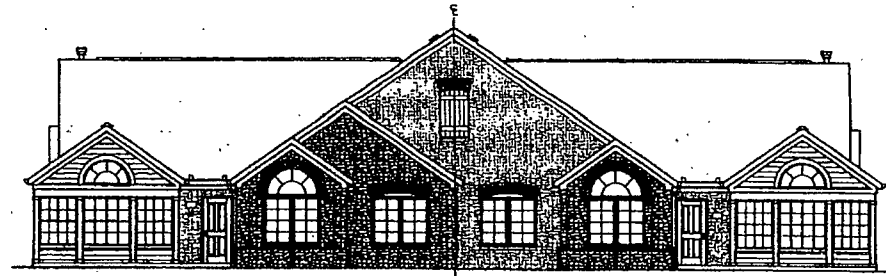
MICHAEL J. FITZPATRICK,
ARCHITECT
185 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614-465-7596

BUILDING # 4

UNITS # 874, 876, 878, 880

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

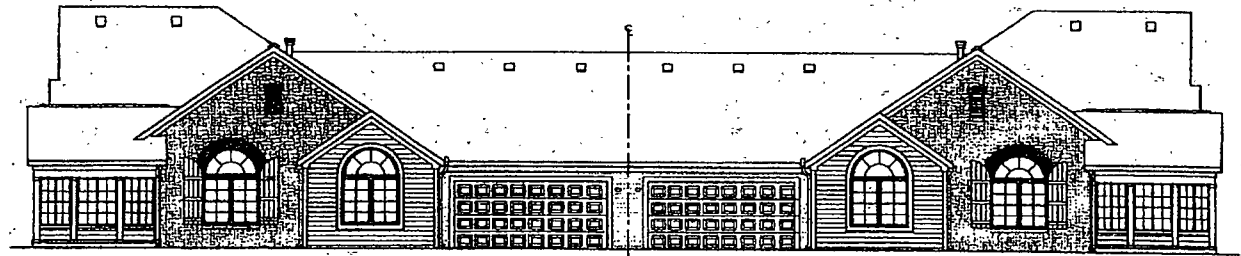
BK08852PG0192



UNIT: 880
CANTERBURY

END ELEVATION

UNIT: 878
CANTERBURY



UNIT: 878
CANTERBURY

SIDE ELEVATION

UNIT: 876
CANTERBURY



EXTERIOR ELEVATIONS
2 of 2

FANCKHAUSER PROPERTY GROUP
300 East John St., Suite 128
Harrisburg, PA 17103
Ph. (717) 622-4924

MICHAEL J. FITZPATRICK,
ARCHITECT
143 NORTH EIGHTH ST.
COLUMBUS OHIO 43218

BUILDING # 4 - UNITS # 874, 876, 878, 880

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

BK08852PG0193

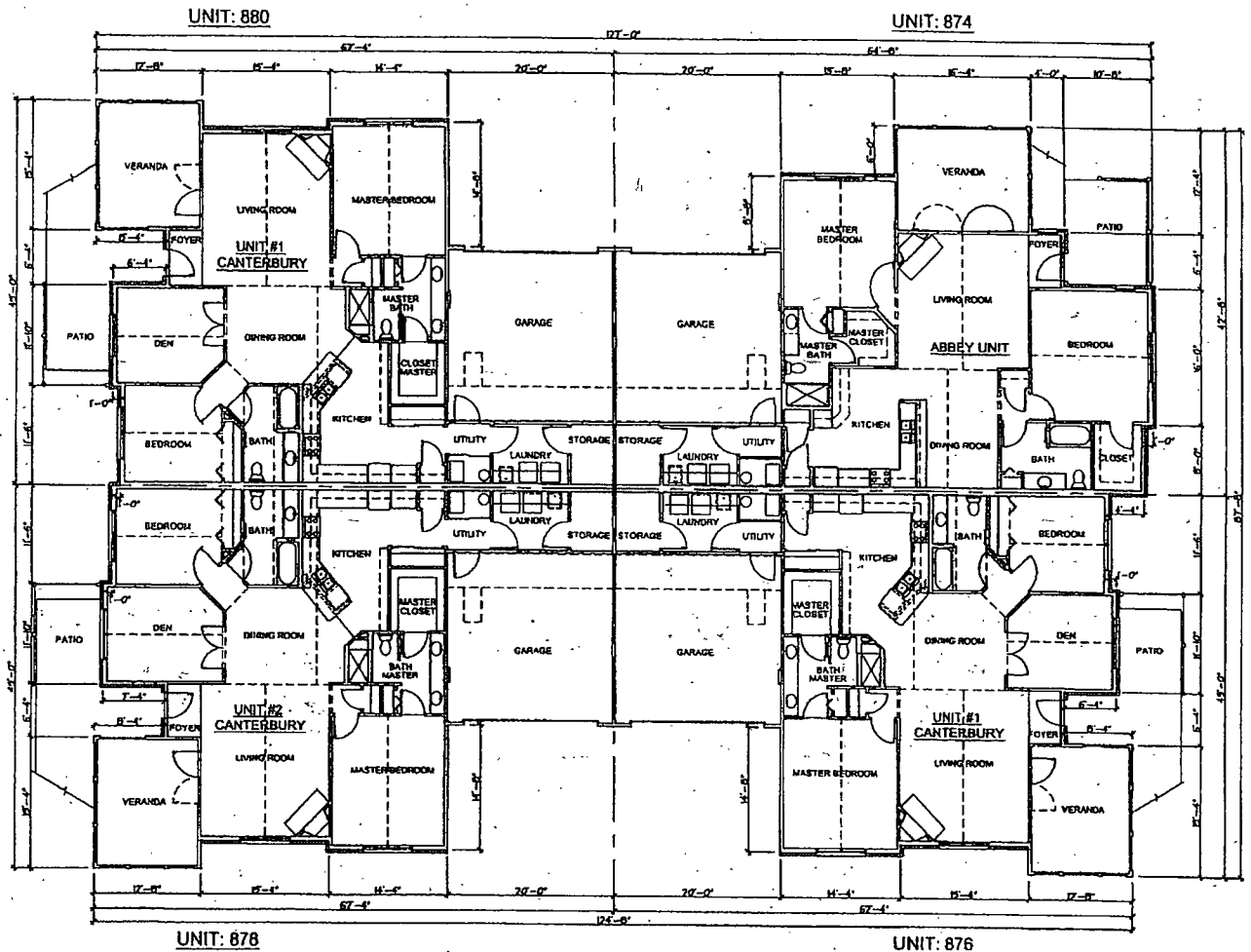
DATA:

ABBEY UNIT:	
LIVING SPACE:	1515 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT #1 WHEN ADJACENT TO ABBEY UNIT:	
LIVING SPACE:	1872 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:	1895 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	409 SQ. FT.
TOTAL:	2293 SQ. FT.



FANKHAUSER PROPERTY GROUP
300 East Jann St. Suite 128
Raleigh, NC 27603
PH: 770.652.4524

MICHAEL J. FITZPATRICK
ARCHITECT
100 NORTH FIFTH ST
COLUMBUS OHIO 43215
614.486.7380

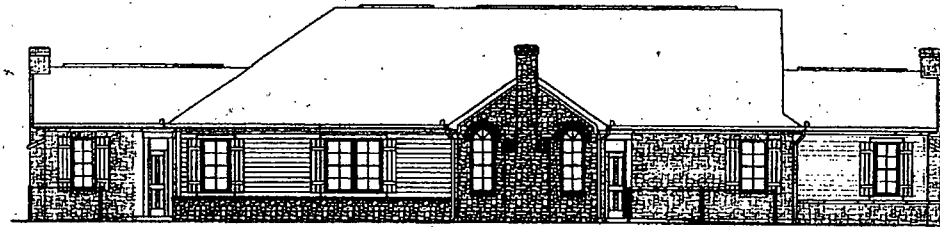


BUILDING # 4

UNITS # 874, 876, 878, 880

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

RR852PG0194



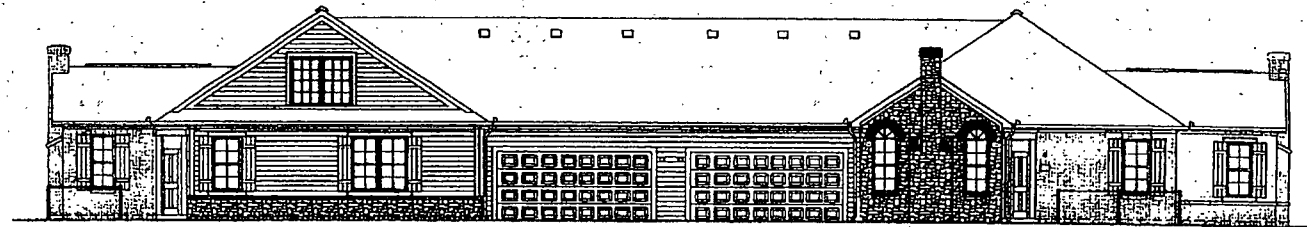
UNIT: 750, 746

END ELEVATION

UNIT: 748, 744

VILLA

CHATEAU



UNIT: 744, 748

SIDE ELEVATION

UNIT: 750, 746

CHATEAU

VILLA



EXTERIOR ELEVATIONS

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

MICHAEL J. FITZPATRICK
ARCHITECT
122 NORTH PINE ST
COLUMBUS, OHIO 43215
614 461 7488

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

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

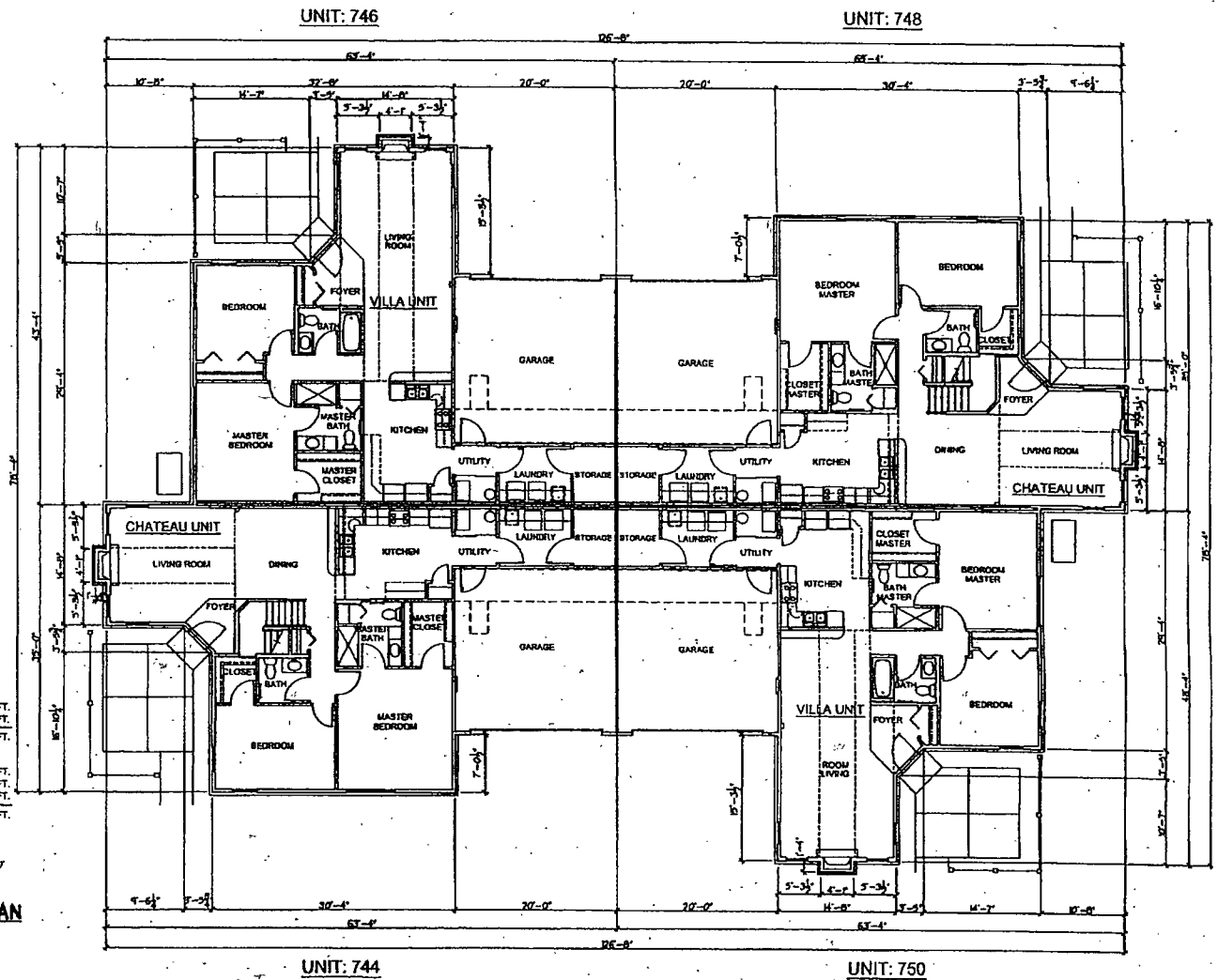
BK08852PG0195

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' 1' 5' 10'

FIRST FLOOR PLAN



FANHOUSER PROPERTY GROUP
300 East John St., Suite 124
Martinsburg, W.V. 26105
PH: (206) 622-4524

MICHAEL J. FITZPATRICK,
ARCHITECT
143 NORTH FIFTH ST
COLUMBUS OHIO 43215
614.487.1690

BUILDING # 17

UNITS # 744, 746, 748, 750

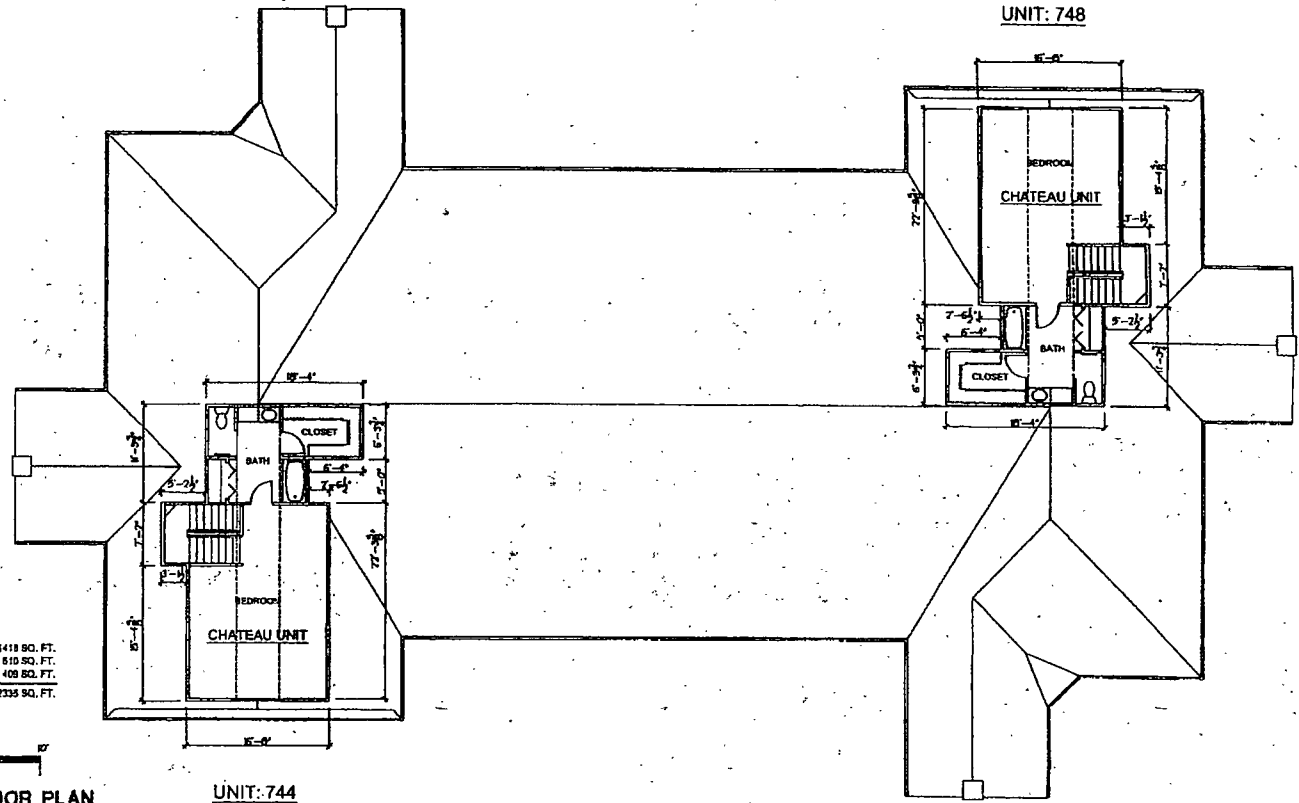
Stonecrest Villas of Tega Cay
Tega Cay, York County, South Carolina

BK08852PG0196

DATA
CHATEAU UNIT:
FIRST FLOOR LIVING SPACE: 1418 SQ. FT.
SECOND FLOOR LIVING SPACE: 810 SQ. FT.
GARAGE: 408 SQ. FT.
TOTAL: 2335 SQ. FT.



SECOND FLOOR PLAN



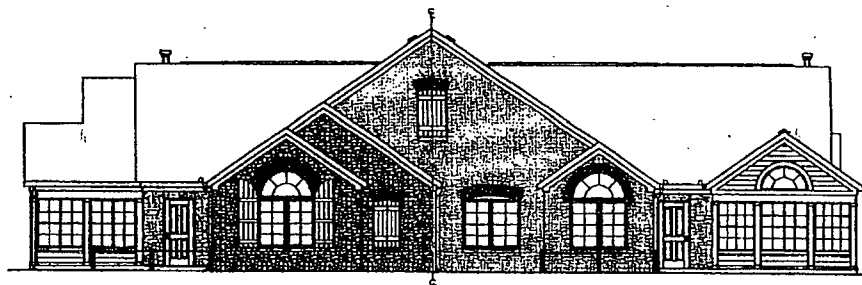
FANOWUSER PROPERTY GROUP
300 E991 JOHN ST., SUITE 120
MATTHEWS, NC 28105
PH: (704) 821-4524

MICHAEL J. FITZPATRICK
ARCHITECT
143 NORTH FIFTH ST
COLUMBUS, OHIO 43215
614.464.1594

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

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

BK08852PG0197



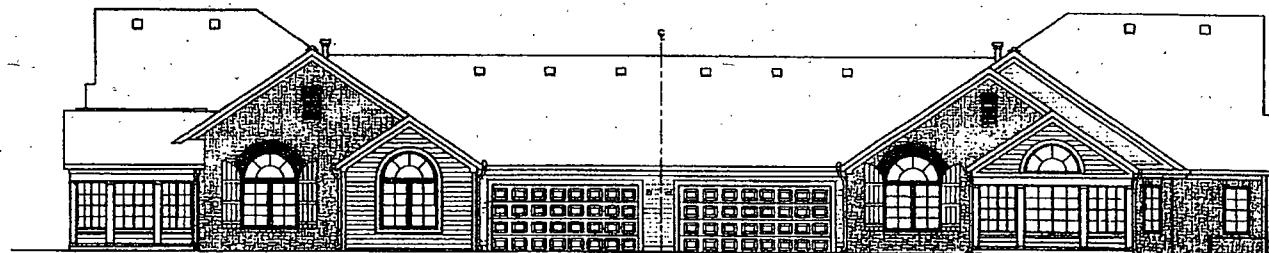
UNIT: 724, 728

END ELEVATION

UNIT: 730, 726

CANTERBURY

ABBEY



UNIT: 726, 730

SIDE ELEVATION

UNIT: 724, 728

ABBEY

CANTERBURY



EXTERIOR ELEVATIONS

FANKHAUSER PROPERTY GROUP
389 East John St., Suite 126
Matthews, NC 28108
PH: (704) 822-4524

MICHAEL J. FITZPATRICK,
ARCHITECT
143 NORTH FIFTH ST.
COLUMBUS, OHIO 43215
614.465.7380

BUILDING # 18

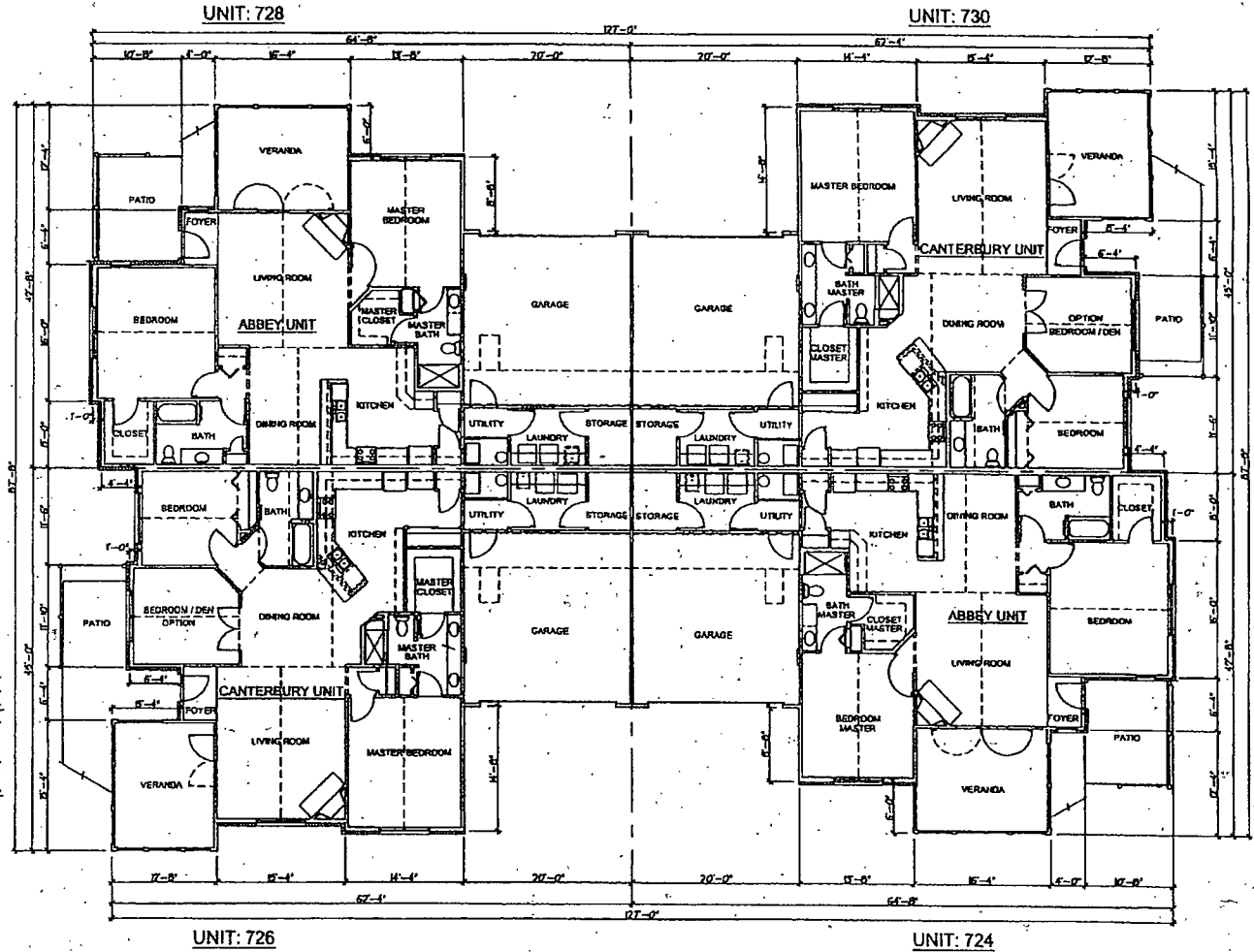
UNITS # 724, 726, 728, 730

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

BK08852PG0198

DATA:	
ABBEY UNIT:	
LIVING SPACE:	1818 SQ. FT.
VERANDA:	200 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2127 SQ. FT.
CANTERBURY UNIT:	
LIVING SPACE:	1672 SQ. FT.
VERANDA:	189 SQ. FT.
GARAGE:	408 SQ. FT.
TOTAL:	2270 SQ. FT.

FLOOR PLAN



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

MICHAEL J. FITZPATRICK,
ARCHITECT
188 NORTH PLYM ST.
COLUMBUS, OHIO 43215
614 499 7300

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>

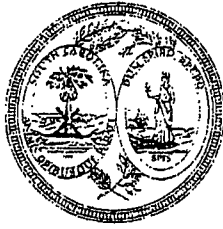
EXHIBIT E

ARTICLES OF INCORPORATION

- 35 -

BK08852PG0200

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

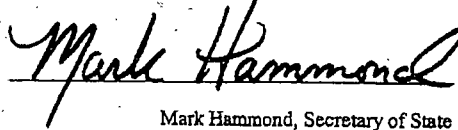
I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

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

Note: This certificate does not contain any representation concerning fees or taxes owed by the Corporation to the South Carolina Tax Commission or whether the Corporation has filed the annual reports with the Tax Commission. It is important to know whether the Corporation has paid all taxes due to the State of South Carolina, and has filed the annual reports, a certificate of compliance must be obtained from the Tax Commission.

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
STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNER
Filing Fee: \$25.00 ORIG



Mark Hammond

South Carolina Secretary of State

ED TO BE A TRUE COPY

BK08852PG0202

Stonecrest Villas of Tega Cay Condominium
Name of Corporation
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 B Fankhauser
Signature of incorporator

Signature of incorporator

Signature of incorporator

BK08852PG0203

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.

BK08852PG0204

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 Carolina Income Tax, or to the Federal State or Local Government for exclusively public purposes.

BK08852PG0205

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 benefitting 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 Enjoinment 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. Invalidity 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

Mary A Rochester

Witness

John Maxwell

Witness

BENEFICIARY:

FIRST CHARTER BANK, A NORTH CAROLINA
BANKING CORPORATION

BY:

Name: Eric Ford

Title: Vice President

STATE OF North Carolina

COUNTY Cabarrus

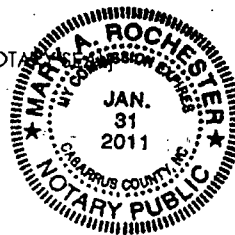
I, Mary A Rochester, a Notary Public of aforesaid County and State, certify that ERIC FORD, either being personally known to me or proven by satisfactory evidence (said evidence being a driver's license), personally appeared before me this day and acknowledged that he/she is vice president of First Charter 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

[NOTARY SEAL]



-49-
-87-

BK 08852 PG 0218 -61

Exhibit C

Moore Deposition Excerpts

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF COMMON PLEAS

16TH JUDICIAL CIRCUIT

CASE NO. 2010-CP-46-2326

Juontonio Pinckney, Josephine
Sciacca, Addie Smith and
James and Deborah Barone, et al.,

Plaintiffs,

vs.

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

Defendants.

(CAPTION CONTINUED)

DEPOSITION OF: JOE MARVIN MOORE

DATE: March 19, 2012

TIME: 9:08 a.m.

LOCATION: 735 Ledgestone Court
Tega Cay, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Susan M. Valsecchi, RPR, CRR
Certified Realtime Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

1 Fankhauser Property Group, Inc.,
2 Third-Party Plaintiff,

3 vs.

4 Architectural Alliance, Ltd., Exterior Expressions
5 of North Carolina, Inc., Al-Mega Construction,
6 Inc., Procar, Inc., Procar II, Inc., The
Southeastern Group, Inc., Lucas Lawn and Landscape,
Inc., and Jose Simenez, Individually and d/b/a M&L
Roofing, Inc. and/or MB Roofing Company,
Third-Party Defendants.

X

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

Third-Party Plaintiff,

9 vs.

10 Stonecrest Villas of Tega Cay, LLC and Epcon
11 Communities Franchising, Inc.,
Third-Party Defendants.

X

12 Exterior Expressions of North Carolina, Inc.,
13 Fourth-Party Plaintiff

14 vs.

15 Marcos Gonzalez,
Fourth-Party Defendant.

X

16 Procar, Inc., and Procar II, Inc.,
17 Fourth-Party Plaintiffs,

18 vs.

19 Marco Zertuche, David Carbajal, Victorina Cortez,
20 Balanos Construction Co., Balanos Framing, Inc.,
Ricardo Hernandez, and Silverio Cortez,
Fourth-Party Defendants.

X

21 Al-Mega Construction, Inc.
22 Fourth-Party Plaintiff,

23 vs.

24 Noe Perez, Juan Abundez Saucedo and Moises
Chavarra Hernandez,
25 Fourth-Party Defendants

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(INDEX AT REAR OF TRANSCRIPT)

1 construction problems out in this community?

2 A. The HOA didn't build the home, but it's
3 their responsibility to maintain the home; and I
4 don't believe that has happened.

5 Q. So what I'm trying to find out from you
6 is, I know you're saying that you fault them for
7 not repairing the homes, but why is it that you
8 fault them for not repairing the homes?

9 A. That's their mandate.

10 Q. And you know you are the HOA, correct?

11 A. 1/89th.

12 Q. 1/89th.

13 So now, if the HOA was to make a
14 special assessment of whatever Mr. Hall said -- for
15 example, if it was 6, 7, 10 million --

16 A. Right.

17 Q. -- then you're okay with that special
18 assessment and you paying whatever 1/89th of that
19 is?

20 A. Obviously, I'm not. I filed a lawsuit.

21 Q. So you don't want the special
22 assessment?

23 A. Why should I pay for someone else's
24 crap? I didn't -- I thought I was buying a luxury
25 ranch condo. I got a waterlogged tent. I got a

1 white elephant. I cannot sell it.

2 Q. Do you know if some of the Plaintiffs
3 would -- like Mr. Vesting -- would prefer, Let's
4 just pay 1/89th of whatever the costs would be,
5 would you agree with that position?

6 A. I have no clue what Mr. Vesting's
7 theory is, but I would not think that's my
8 responsibility.

9 Q. Do you think, based on you knowing a
10 lot of the people out here, that they would like a
11 special assessment of some enormous amount to fix
12 the construction problems?

13 A. They would hate it. They couldn't do
14 it.

15 Q. Is it fair to say a lot of the people
16 out here are retired, living on fixed incomes?

17 A. That would include me.

18 Q. Are you aware that the HOA has brought
19 a lawsuit to try to recover from various parties,
20 monies to fix and correct problems out here?

21 A. If you're asking me if I had heard, I
22 have heard.

23 Q. Do you fault the HOA for seeking to get
24 a recovery from various parties for the
25 construction problems in this community?

1 you and the HOA be?

2 A. I do not know.

3 Q. Do you know if the HOA has committed
4 any fraudulent acts, which you contend are
5 fraudulent acts?

6 A. Do I personally -- have I seen it?

7 Q. Sure.

8 A. I have not personally seen it. I do
9 not know.

10 Q. Do you know Mr. Moscovitz?

11 A. I know who he is, yes.

12 Q. Would you know him if you saw him walk
13 in?

14 A. Absolutely.

15 Q. And what about Dave Cook?

16 A. I know Dave Cook.

17 Q. And Ms. Iadanza?

18 A. I do.

19 Q. Do you have any -- well, let me ask
20 you, is this a volunteer position that they have,
21 or are they paid?

22 A. I would not think they would be paid.

23 Q. Do you fault any of those three
24 individuals for anything they have done as board
25 members for the HOA?

1 A. I don't know anything that they've
2 done. I think they're in the middle of a
3 maelstrom, can't escape from it.

4 Q. It's hard to know if something is
5 hidden from you, but do you believe something has
6 been hidden from you by any board member from the
7 HOA?

8 A. I don't know about the board member,
9 but I do know that the berm situation and the money
10 paid to Stone Development, that those things were
11 not disclosed to me personally.

12 Q. Have you -- I know you said, I think,
13 sometime in February you were in a meeting and you
14 got a copy of the 2012 budget, correct?

15 A. Yes, I'm sure I did.

16 Q. I know the 2012 budget is out.

17 A. Sure, sure.

18 Q. Now, some of this, with the master
19 association, is that what you're talking about?

20 A. That would be correct.

21 Q. Fees paid to them.

22 On the 2012 budget, did you look at
23 that closely enough to see what the master
24 association -- the approximate amount would be
25 under them?

Exhibit D

Sciacca Deposition Excerpts

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF COMMON PLEAS

16TH JUDICIAL CIRCUIT

CASE NO. 2010-CP-46-2326

Juontonio Pinckney, Josephine
Sciacca, Addie Smith and
James and Deborah Barone, et al.,

Plaintiffs,

vs.

Epcon Communities, Inc., Epcon
Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser
Property Group, Inc., and Stonecrest
Villas of Tega Cay Homeowner's
Association, Inc.,

Defendants.

(CAPTION CONTINUED)

DEPOSITION OF: JOSEPHINE ANNA SCIACCA

DATE: March 15, 2012

TIME: 9:11 a.m.

LOCATION: 735 Ledgestone Court
Tega Cay, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Susan M. Valsecchi, RPR, CRR
Certified Realtime Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Fankhauser Property Group, Inc.,
2 Third-Party Plaintiff,

3 vs.

4 Architectural Alliance, Ltd., Exterior Expressions
5 of North Carolina, Inc., Al-Mega Construction,
6 Inc., Procar, Inc., Procar II, Inc., The
Southeastern Group, Inc., Lucas Lawn and Landscape,
Inc., and Jose Simenez, Individually and d/b/a M&L
Roofing, Inc. and/or MB Roofing Company,
Third-Party Defendants.

X

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

Third-Party Plaintiff,

9 vs.

10 Stonecrest Villas of Tega Cay, LLC and Epcon
11 Communities Franchising, Inc.,
Third-Party Defendants.

X

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13 Fourth-Party Plaintiff

14 vs.

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Fourth-Party Defendant.

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17 Fourth-Party Plaintiffs,

18 vs.

19 Marco Zertuche, David Carbajal, Victorina Cortez,
20 Balanos Construction Co., Balanos Framing, Inc.,
Ricardo Hernandez, and Silverio Cortez,
Fourth-Party Defendants.

X

21 Al-Mega Construction, Inc.
22 Fourth-Party Plaintiff,

23 vs.

24 Noe Perez, Juan Abundez Saucedo and Moises
Chavarra Hernandez,
25 Fourth-Party Defendants

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gmahon@martineauking.com

(INDEX AT REAR OF TRANSCRIPT)

1 problems.

2 Q. Understood.

3 But I'm saying, if someone made a
4 motion at your next homeowners meeting to do a
5 special assessment where everybody in the
6 association was going to have to pay \$250,000, a
7 one-time special assessment, and that was going to
8 fix everything out here, how would you vote?

9 A. I wouldn't vote for it.

10 Q. Okay. So would it be fair to say that
11 in your estimation, that nobody would vote for
12 that?

13 A. I can't answer for anybody else. Only
14 for myself.

15 Q. Okay. But you would vote no?

16 A. That's correct.

17 Q. And if everybody votes like you, it's
18 not going to pass, correct?

19 A. I guess not.

20 Q. And therefore, there would not be the
21 money to fix all of these problems?

22 A. I guess not.

23 Q. So the only option at that point, then,
24 is to sue the people that really were responsible
25 for the problems, correct?

1 MS. NICHOLS: Object to the form.

2 BY MR. STRICKLAND:

3 Q. You still answer.

4 A. I'm sorry, yes.

5 Q. And in your mind, who is
6 responsible -- primarily responsible -- for all of
7 these defects out here?

8 A. The builder who built these houses, the
9 HOA, who neglected to fulfill their part of the
10 bargain.

11 We pay dues. And for our dues, for the
12 amount of money that they get for our dues, they're
13 supposed to maintain the community that they're
14 responsible for.

15 We maintain -- we are responsible for
16 paying. They are responsible for fixing and
17 maintaining. So they are responsible, the
18 developer is responsible.

19 Q. All right. Now, let's follow that
20 logic a little further.

21 You say the homeowners association is
22 responsible for the problems out here, even though
23 they didn't build anything and even though they
24 didn't develop anything. That's your story?

25 A. Well, they took on the responsibility

Exhibit E
Order Denying Third-Party Plaintiff
Fankhauser Property Group Inc.'s and
Stonecrest Villas of Tega Cay LLC's
Motion to Amend Third-Party Complaint

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

✓ JUANTONIO PINCKNEY, ET AL.,)

Plaintiffs,)

v.)

EPCON COMMUNITIES, 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 NC,)
INC.; AL-MEGA CONSTRUCTION,)
INC.; PROCAR, INC.; PROCAR II, INC.;)
THE SOUTHEASTERN GROUP, INC.;)
LUCAS LAWN and LANDSCAPE, INC.;)
and JOSE SIMENEZ, Individually and)
d/b/a M&D ROOFING CO., LLC and/or)
✓ MB ROOFING COMPANY,)

Third-Party Defendants.)

IN THE CIRCUIT COURT

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

DAVID L. MATHIAS
C.C.P. & GS
YORK COUNTY, SC

2012 AUG 27 PM 3:52

FILED - RECEIVED

**ORDER DENYING THIRD-PARTY
PLAINTIFF FANKHAUSER
PROPERTY GROUP, INC.'S AND
STONECREST VILLAS OF TEGA
CAY, LLC'S MOTION TO AMEND
THIRD-PARTY COMPLAINT**

ORDER DENYING MOTION TO AMEND
Z:\TFD\15260043\PLEADINGS\ORDER1.doc

Joe H

STONECREST VILLAS OF TEGA CAY)
CONDOMINIUM OWNERS ASSN.,)
INC.,)

Third-Party Plaintiff,)

v.)

✓ STONECREST VILLAS OF TEGA CAY,)
LLC and EPCON COMMUNITIES)
FRANCHISING, INC.,)

Third-Party Defendants.)

EXTERIOR EXPRESSIONS OF NC,)
INC.,)

Fourth-Party Plaintiff,)

v.)

✓ MARCOS GONZALEZ,)

Fourth-Party Defendant.)

✓ PROCAR II, INC.,)

Fourth-Party Plaintiff.)

v.)

MARCO ZERTUCHE; DAVID)
CARBAJAL; VICTORINA CORTEZ,)
✓ BALANOS CONSTRUCTION CO.;)
✓ BALANOS FRAMING, INC.;)
✓ RICARDO HERNANDEZ; and,)
✓ SILVERIO CORTEZ,)

Fourth-Party Defendants.)

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AL-MEGA CONSTRUCTION, INC.,	)
	)
Fourth-Party Plaintiff,	)
	)
v.	)
NOE PEREZ, JUAN ABUNDEZ	)
SAUCEDO, and MOISESE CHAVARRA)	)
HERNANDEZ,	)
	)
Fourth-Party Defendants.	)

The parties herein appeared before the Court on July 30, 2012 to be heard on Third-Party Plaintiff Fankhauser Property Group, Inc. and Stonecrest Villas of Tega Cay, LLC's motion to amend the Third-Party Complaint to assert claims by Stonecrest Villas of Tega Cay, LLC against the current third-party defendants and to add a new third-party defendant, Gale Insulation of the Carolinas, Inc. Fankhauser Property Group, Inc. (hereinafter "FPG") and Stonecrest Villas of Tega Cay, LLC were represented by Graham P. Powell.

Third-Party Defendants, Procar, Inc. and Procar II, Inc. represented by Thomas F. Dougall; Exterior Expressions of North Carolina, Inc. represented by Christy E. Mahon; Al-Mega Construction, Inc. represented by Tracy T. Vann; Lucas Lawn and Landscape represented by Payton D. Hoover; and The Southeastern Group, Inc. represented by Alison D. Watkins appeared in opposition to the motion to amend the pleadings.

This case arises out of alleged construction defects at the Stonecrest Villas of Tega Cay ("Stonecrest Villas") condominium development in Tega Cay, South Carolina. Stonecrest Villas of Tega Cay, LLC was the original owner of the property on which the

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subject condominium development was constructed. Brock Fankhauser is the sole member of Stonecrest Villas of Tega Cay, LLC. Stonecrest Villas of Tega Cay, LLC contracted with Third-Party Defendants Exterior Expressions of North Carolina, Inc., Al-Mega Construction, Inc., Procar, Inc., Procar II, Inc., The Southeastern Group, Inc., and Lucas Lawn and Landscape, Inc. to perform various scopes of work at the Stonecrest Villas condominium development. Stonecrest Villas of Tega Cay, LLC then hired FPG as the general contractor to oversee construction at Stonecrest Villas. Brock Fankhauser is the sole officer of FPG.

Plaintiff Juontonio Pinckney originally filed this lawsuit in York County on June 2, 2010. Plaintiff named Brock Fankhauser, FPG, and Stonecrest Villas of Tega Cay Home Owner's Association, Inc. as defendants (collectively "First Party Defendants"). Subsequently, other Stonecrest Villas homeowners filed similar actions against the same defendants. On motion of the parties, the Court consolidated these actions into the current case. Additional fourth-party claims, multiple cross-claims, a great amount of discovery and many depositions have followed in the almost two years since the lawsuit was originally filed.

On July 8, 2010, Brock Fankhauser, as the sole member of Stonecrest Villas of Tega Cay, LLC, assigned Stonecrest Villas of Tega Cay, LLC's contractual rights with all Third-Party Defendants to FPG. Brock Fankhauser, as the sole officer of FPG, accepted the assignment. Four days later, on July 12, 2010, FPG filed claims against the subcontractors as Third-Party Defendants to this lawsuit.

On May 17, 2012, almost two years after commencement of this lawsuit, FPG

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through Brock Fankhauser reversed the prior assignment of contractual rights it received from Stonecrest Villas of Tega Cay, LLC, reassigning those contractual rights back to Stonecrest Villas of Tega Cay, LLC through Brock Fankhauser.

On June 6, 2012, FPG filed a Motion to Amend its Third-Party Complaint. The proposed amendment also intends to add Stonecrest Villas of Tega Cay, LLC as a new Third-Party Plaintiff. In its Amended Complaint, Stonecrest Villas of Tega Cay, LLC is now asserting claims against the Third-Party Defendants that were previously assigned to FPG. Importantly, prior to filing its Amended Complaint, Stonecrest Villas of Tega Cay, LLC has never asserted any claims against these Third-Party Defendants in the two years since the lawsuit has been filed and FPG has been a party to the lawsuit.

"A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . [o]therwise a party may amend his pleading only by leave of court or by written consent of the adverse party." S.C. R. Civ. P. 15(a). "[L]eave shall be freely given when justice so requires and does not prejudice any other party." Id.

"[A] motion to amend is addressed to the sound discretion of the trial judge." *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 109, 431 S.E.2d 587, 590 (1993). "Amendments to pleadings may be properly denied where 'there are circumstances such as inexcusable delay, or the taking of the adverse party by surprise, or the like, which might justify a refusal to amend.'" *Dunbar v. Carlson*, 341 S.C. 261, 270, 533 S.E.2d 913, 918 (S.C. Ct. App. 2000) (citing *Braudie v. Richland County*, 217 S.C. 57, 59-60, 59 S.E.2d 548, 549 (1950)).

FPG and Stonecrest Villas of Tega Cay, LLC provided no explanation for the

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original assignment of rights or the purported reversal of the assignment at this late date. While the court is cognizant of the liberality afforded to parties under S.C. R. Civ. P. 15(a) and the argument of FPG and Stonecrest Villas of Tega Cay, LLC that this is a simple realignment of the parties, I find that the subcontractors in opposition to the motion have demonstrated actual prejudice should the motion be granted. I find that allowing the amendment would necessitate additional discovery at a late stage of the proceedings that would not be required if the motion is denied.

I further find that this unique situation regarding the back and forth maneuvers by FPG and Stonecrest Villas of Tega Cay, LLC could and very well may give rise to additional legal questions that would require more of the parties' and the Court's time and energy that is better spent moving this case to resolution with the parties and claims aligned as they are and have been for quite some time. Allowing the amendment may provide more opportunity for these related entities to yet again rethink their strategy, "re-re-swap" the assignments and cause yet more confusion as to what is, without such distractions, already a complex legal exercise.

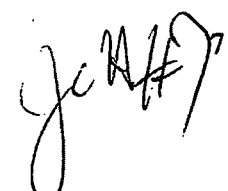
I also find that allowing Stonecrest Villas of Tega Cay, LLC to now assert the claims it has reclaimed would be futile. The record is clear that Brock Fankhauser's menagerie of entities knew of water intrusion problems as early as the late spring or summer of 2008. This is clear from the emails and worksheets reviewed by the Court. The emails that originate from Brock Fankhauser show he has at least five email addresses including one which appears to be a Stonecrest address and one which appears to be an Epcon address. While the Court recognizes that the statute of

limitations is an affirmative defense that is generally an issue for a jury and that the burden of proof is on the subcontractors, the subcontractors opposing the motion to amend have made it clear they would raise this issue if the amendment were allowed.

South Carolina courts have previously considered whether a party should be allowed to amend its pleadings to assert new claims against a defendant after the expiration of the statute of limitations. See *Coral Gables, Inc. v. Palmetto Brick Co.*, 183 S.C. 478, 191 S.E. 337, 341 (1937). In *Coral Gables*, the court stated that while it is permissible for a party to amend its pleadings to assert new claims against a defendant, it should never be allowed when doing so would "debar the defendant of the privilege of pleading the statute of limitations." *Id.* at 478, 191 S.E.2d at 341 ("The court will not do a useless and a futile thing, by allowing an opportunity for setting up a new cause of action by amendment, which is barred by the statute of limitations.").

Because the claims being made by Stonecrest Villas of Tega Cay, LLC fall outside of the three year statute of limitations, it would be futile for the Court to allow FPG and Stonecrest Villas of Tega Cay, LLC to amend their complaint. The Court finds that to allow Stonecrest Villas of Tega Cay, LLC to start this carousel would serve no purpose and be counterproductive to the ends of justice being timely realized.

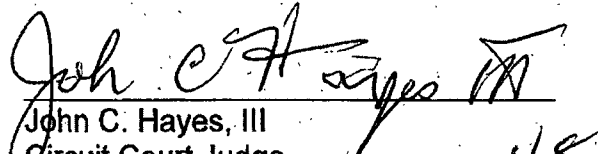
Even though none of the current parties object to the addition of Gale Insulation of the Carolinas as a new party defendant, for the foregoing reasons I further deny the amendment to add this new party. This would merely create yet another set of litigants that would have to square off from square one and unleash a new round of pleadings, discovery, and motions which would be duplicative, expensive, time consuming, and

A handwritten signature in black ink, appearing to be 'jc' followed by a stylized flourish.

most probably would result in an unnecessary delay of these proceedings.

Accordingly, for the foregoing reasons the Court hereby denies the motion by Fankhauser Property Group, Inc. and Stonecrest Villas of Tega Cay, LLC to amend the third-party pleadings in this matter.

IT IS SO ORDERED.


John C. Hayes, III
Circuit Court Judge

August 8th, 2012

York, South Carolina

Exhibit F

**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)**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

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

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)

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.

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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.

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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

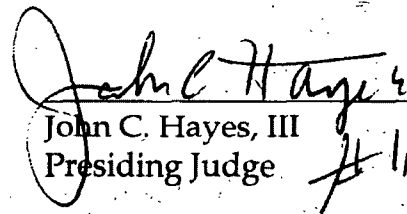

John C. Hayes, III
Presiding Judge #11

Exhibit G

**Order Re: Stonecrest Villas of Tega Cay
Condominium Owners' Motion for
Partial Summary Judgment and Plaintiffs
Motion for Summary Judgment
(Fiduciary Duty Issue)**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2012 AUG 27 PM 3:49

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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

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

Juontonio Pinckney, et al.,

ORDER

Plaintiffs,

vs.

Brock L. Fankhauser, et al.,

Defendants.

Re: Stonecrest Villas of Tega Cay
Condominium Owners' Motion for
Partial Summary Judgment and
Plaintiffs Motion for Summary
Judgment (Fiduciary Duty Issue)

Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (COA) and Plaintiffs have both moved the Court for an Order granting them Summary Judgment on Plaintiffs' Third Cause of Action. This motion was heard July 30, 2012. Plaintiffs were represented by J. Cameron Hofford, Esq. and the COA by Matthew Gerald, Esq.

The issue of whether or not the COA stands in a fiduciary relationship with the condominium owners is a novel issue. Neither party was able to present to the Court any case which is dispositive of this issue. Therefore, I find the issue here present is novel and should be decided only upon a complete record. See Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (S. Ct. 1999) and Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 153 S.E.2d 184 (S. Ct. 1967).

While the presence of novel issues do not absolutely preclude the Court from granting a party relief at this stage of litigation, the posture of the parties and issues in this case dictate the need for a full record.

While not intended to be an exhaustive observation as to where the need for and the undersigned's desire for a full record is the fact that for part of the COA's existence same was

controlled by the developer. The developer had a fiduciary duty to deliver common elements in good order or provide financing for bringing the common elements into good order. *See* Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corporation, 349 S.C. 251, 562 S.E.2d 633 (S. Ct. 2002).

As the Court finds that a full record needs to be developed on the fiduciary relationship issue. Therefore, both Plaintiffs and Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.'s motions are denied.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

August 27th, 2012
York, South Carolina

Exhibit H
Order Re: Defendants Brock L.
Fankhauser, Fankhauser Property
Group, Inc., and Stonecrest Villas of Tega
Cay, LLC's Motion for
Summary Judgment

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Epcor Communities, Inc.,
Epcor 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 Simentez,
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.

v.

Stonecrest Villas of Tega Cay, LLC,

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, LLC's
Motion for Summary Judgment

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CLERK OF COURT
YORK COUNTY, SC

[Handwritten signature]

Exterior Expressions of North Carolina,	)
Inc.	)
	)
Fourth-Party Plaintiff,	)
	)
v.	)
	)
Marcos Gonzalez,	)
	)
Fourth-Party Defendant.	)

Defendants Brock L. Fankhouser (BLF); Fankhouser Property Group, Inc. (FPG) and Stoncrest Villas of Tega Cay, LLC (The LLC) have moved for summary judgment. The motions were heard by the undersigned on December 19, 2012. Appearances are of record. The standard for granting a Motion for Summary Judgment need not be set forth in this Order.

Initially, summary judgment is granted to BLF, FPG, and the LLC as to all causes of action set forth in Plaintiffs' Amended Complaint as to Juontonio Pinckney and David Musgrave as the record reflects neither holds title to any property in Stoncrest Villas of Tega Cay - (SCVTC).

Herein below, the undersigned will address the moving Defendants' motions individually in the light most favorable to Plaintiffs.

Initially, since Plaintiffs have placed reliance on it, the Court will address the issues of Third-Party beneficiaries (Franchise Agreement), amalgamation and, though perhaps not necessary, piercing the corporate veil.

This Court has earlier held the Plaintiffs are not Third-Party beneficiaries of the subject Franchise Agreement.

Plaintiffs argue that the cluster of EPCON entities, Brock Fankhouser, individually, and Mr. Brock Fankhouser controlled entities are jointly and severally liable under what can best be

Jeff #2

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.C. 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

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 443, 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. Miccheli, 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 EPU. 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.

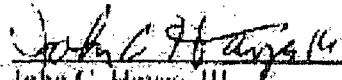
Defendant's motions as to the Plaintiffs' Eleventh Cause of Action is denied. The

get #7

Plaintiffs' Eleventh cause is captioned as "Breuch 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 Juontonio 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

Exhibit I

Moscowitz Deposition Excerpts

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF COMMON PLEAS

16TH JUDICIAL CIRCUIT

CASE NO. 2010-CP-46-2326

Juontonio Pinckney, Josephine
Sciaccia, Addie Smith and
James and Deborah Barone, et al.,

Plaintiffs,

vs.

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

Defendants.

(CAPTION CONTINUED)

30(b)(6)

DEPOSITION OF: LOUIS C. MOSCOWITZ

DATE: March 12, 2013

TIME: 9:00 a.m.

LOCATION: 735 Ledgestone Court
Tega Cay, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Susan M. Valsecchi, RPR, CRR
Certified Realtime Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

1 Fankhauser Property Group, Inc.,
Third-Party Plaintiff,
2 vs.
3 Architectural Alliance, Ltd., Exterior Expressions
of North Carolina, Inc., Al-Mega Construction,
4 Inc., Procar, Inc., Procar II, Inc., The
Southeastern Group, Inc., Lucas Lawn and Landscape,
5 Inc., and Jose Simenez, Individually and d/b/a M&L
Roofing, Inc. and/or MB Roofing Company,
6 Third-Party Defendants. X

7 Stonecrest Villas of Tega Cay Condominium Owners
-Association, Inc.,
8 Third-Party Plaintiff,
9 vs.
10 Stonecrest Villas of Tega Cay, LLC and Epcon
Communities Franchising, Inc.,
11 Third-Party Defendants. X

12 Exterior Expressions of North Carolina, Inc.,
Fourth-Party Plaintiff
13
14 vs.
15 Marcos Gonzalez,
Fourth-Party Defendant. X

16 Procar, Inc., and Procar II, Inc.,
Fourth-Party Plaintiffs,
17
18 vs.
19 Marco Zertuche, David Carbajal, Victorina Cortez,
Balanos Construction Co., Balanos Framing, Inc.,
20 Marco Zertuche, David Carbajal, Victorina Cortez,
Ricardo Hernandez, and Silverio Cortez,
Fourth-Party Defendants. X

21 Al-Mega Construction, Inc.
22 Fourth-Party Plaintiff,
23 vs.
24 Noe Perez, Juan Abundez Saucedo and Moises
Chavarra Hernandez,
25 Fourth-Party Defendants.

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 JUONTONIO PINCKNEY, JOSEPHINE SCIACCA,
4 ADDIE SMITH AND JAMES AND DEBORAH

5 BARONE, ET AL.:

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7 BY: J. CAMERON HALFORD

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9 Fort Mill, SC 29708

10 (803) 547-6618

11 cam@fortmillllaw.com

12 kwilliams@fortmillllaw.com

13 ATTORNEYS FOR THE DEFENDANT

14 BROCK L. FANKHAUSER, FANKHAUSER

15 PROPERTY GROUP, INC., AND STONECREST

16 VILLAS OF TEGA CAY, LLC:

17 WALL, TEMPLETON & HALDRUP, P.A.

18 BY: GRAHAM P. POWELL

19 145 King Street, Suite 300

20 Charleston, SC 29401

21 (843) 329-9500

22 graham.powell@walltempleton.com

23 sandra.schultz@walltempleton.com

24 cynthia.dillard@walltempleton.com

25 ATTORNEYS FOR THE DEFENDANT

STONECREST VILLAS OF TEGA CAY

HOMEOWNERS ASSOCIATION, INC.:

BARNES, ALFORD, STORK & JOHNSON, LLP

BY: CURTIS W. DOWLING

1613 Main Street

Columbia, SC 29201

(803) 799-1111

curtis@basjlaw.com

leigh@basjlaw.com

ALSO PRESENT:

PAULETTE A. IADANZA

(INDEX AT REAR OF TRANSCRIPT)

1 showed a number of people complaining of water
2 intrusion in year 2009. Do you recall that?

3 MR. POWELL: Object to form.

4 THE WITNESS: I don't remember. You
5 might have said something like that. I'm sorry.
6 Oh, 2009, yes, I'm sorry.

7 BY MR. HALFORD:

8 Q. I wasn't referring to 2008.

9 In 2009 there are several complaints of
10 water intrusion.

11 A. Yes, there's quite a few, in November
12 of 2009, yes.

13 Q. And you don't remember the number, but
14 you said it was over 20?

15 A. Over 20.

16 Q. And these complaints are being filed
17 with your board. Who is telling you about it? Are
18 the homeowners going to Henderson, or are they
19 coming to the board?

20 A. Both.

21 Q. Is the board still sending this money
22 to the master association?

23 A. Well, we haven't paid them. In those
24 three years, we paid based on billings, based on
25 budget. And then in 2011, we didn't pay them, nor

1 2012. And we're trying to resolve the original
2 overpayments.

3 Q. Who came up with the term overpayment?

4 A. Me.

5 Q. And how did you determine it was an
6 overpayment? You said this master --

7 A. I compared budget with that, against
8 the actual expenses.

9 Q. So what creates the necessity of paying
10 the association this money?

11 A. The master deed for the master
12 association.

13 Q. And this is the same master deed that
14 you didn't get a copy of?

15 A. That's correct.

16 Q. Did you ever ask Brock why?

17 A. I believe that Larry McCarty did.

18 Q. Do you have any understanding of -- I
19 can tell you that none of my Plaintiffs reported
20 getting a copy. But do you have any understanding
21 of why that was not disclosed?

22 A. I believe Mr. Fankhauser said at a
23 meeting that it was filed -- filed in the book, and
24 it was public record.

25 Q. I agree with you. Were you at this,

COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, *et al.*,

Plaintiffs,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTEENTH JUDICIAL CIRCUIT
) Consolidated Case No.: 2010-CP-46-2326

)
)
) PLAINTIFF MEMORANDUM IN
) OPPOSITION TO DEFENDANT
) STONECREST COA
) MOTION FOR SUMMARY
) JUDGMENT AS TO PLAINTIFFS'
) CLAIMS

FILED-RECEIVED
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C.C.P. & G.S.
YORK COUNTY, SC

Plaintiffs submit this memorandum of law in opposition to the motions for summary judgment by Defendant Stonecrest Villas of Tega Cay Owners' Association, Inc. ("COA"). Defendant has asserted that the COA is entitled to summary judgment as to Plaintiffs claims against the COA as to counts Three through Fifteen of the Amended Consolidated Complaint (*excluding count seven*).¹ Plaintiffs' memorandum in opposition is predicated on SCRCP 56, the Rule 30(b)(6) Deposition testimony of COA designees, affidavits of record, and exhibits filed or produced of record in this case. For the following reasons, the COA's motions should be respectfully denied. The defenses raised by the COA effectively ignore the pre-July 1, 2010 amalgamation of Brock L. Fankhauser and operations of the COA entity in view of §33-31-842(b)(2)(c) of business judgment rule.

¹ Causes of action asserted by Plaintiffs against the COA are third (breach of fiduciary duty), fourth (breach of contract), fifth (breach of contract accompanied by fraudulent acts), sixth (fraud and misrepresentation), eighth (conversion), ninth (civil conspiracy), tenth (breach of express warranty), eleventh (breach of implied warranty of merchantability), twelfth (breach of implied warranty of fitness for a particular purpose), fourteenth (breach of express warranties) and fifteenth (unfair trade practices act violation). *By agreement, Plaintiffs Seventh (equitable action for accounting) has been resolved as set forth in the court's March 4, 2013 Order.*

I. Summary Judgment Standard

"Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Toomer v. Norfolk S. Ry. Co., 544 S.E.2d 634, 635 (S.C. Ct. App. 2001) (citing SCRCP 56(c); Mosteller v. County of Lexington, 520 S.E.2d 620 (S.C. 1999); Young v. South Carolina Dep't of Corrections, 511 S.E. 2d 413 (S.C. Ct. App. 1999)). "*It is not appropriate, however, where further inquiry into the facts of the case is desirable to clarify the application of law.*" Id. (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation, 523 S.E.2d 795 (S.Ct. App. 1999)). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." Id. (citing Young, 511 S.E.2d at 415). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla of evidence* in order to withstand a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., Inc., 673 S.E.2d 801, 803 (S.C. 2009).

II. Law and Analysis

1. **Genuine issues of material fact exist as to the COA entity's operations under the master deed and bylaws before, during and after Brock L. Fankhauser's resignation making summary judgment improper.**

The Defendant's arguments seeks to inextricably *de-link* and segment this case into *pre-Fankhauser* and *post-Fankhauser* operation and control of the COA board. The Plaintiffs and Defendant agree that Fankhauser resigned control of the COA executive board July 1, 2010. The Plaintiffs and Defendants likewise agree that the common elements were not in good repair as of July 1, 2010. However, as set forth below the COA's reliance on the business judgment rule as an absolute defense is misguided in view of the amalgamation of Fankhauser and the COA board thru

July 1, 2010.

The defense places great emphasis on the board's discretion to not levy un-wanted expensive assessments. Indeed, the post July 1, 2010 board was empowered with *discretionary* authority to levy or impose special assessments, and chose not to do in lieu of litigation. The same discretion, however, is not found with regard to the duty to *promptly repair* the common elements per paragraph 13.1 of the master deed. The obligation to repair is set forth by affirmative language. It is clear and unambiguous. The inquiry becomes what did the Fankhauser-controlled COA know and do prior to July 1, 2010. Did it act in Fankhauser's self interest or in bad faith given information readily available to Fankhauser and the COA ? Exhibit #1 illustrates dates and informational report(s) received by the COA and Fankhauser. The same were received by persons who later are appointed to the board, including board member Iadanza. The deposition of Fankhauser appointed board member Paulette Iadanza confirms that she too received the insurance forensic reports, and she too contributed financially to a legal fund for attorney John Peterson. At page 176 -177, Iadanza testifies as follows regarding reports issued to Fankhauser and the COA: Exhibit #7(C).

Question: You mentioned earlier there was a December 18, 2009 report. You were aware of that report, correct ?

Answer: Yes.

Question: You were aware of that report before you became a board Member; weren't you ?

Answer: Yes, yes.

Question: How about the Building Diagnostics Report that was referenced in January 14, 2010; were you aware of that report too ?

Answer: Yes, I believe so.

Question: And whether or not you were aware of the Peterson consultation that everybody contributed money to---you heard Mr. Moscovitz testify to that ?

Mr. Powell: Object to the Form.

Answer: I did, but I would like to say that I contributed money, and it didn't have anything to do with the transition

committee which met with Mr. Peterson on the transition issue.

As early as year 2007 Fankhauser is notified of problems with Gonzalez unit 709. Exhibit #1(g). Ultimately, Gonzalez has to write direct to the father of Brock Fankhauser, and Epcon owner Philip Fankhauser, concerning FPG failures to address defects in Gonzalez's tile flooring. Exhibit #1(g). The false assurances of the COA begin in this case, in fact, much earlier than year 2008. They begin in year 2007 with the Gonzalez unit 709. At the relevant time, Brock Fankhauser is the Epcon franchisee, sole owner and controlling interest of the COA, FPG, Inc., and Stonecrest, LLC.

To date, under Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725 S.E.2d 112 (S.Ct. 2012) the court has recognized amalgamation as to Brock L. Fankhauser and defendant entities in the case. ³Viewing all facts and inferences in a light most favorable to Plaintiffs, the court should deny summary judgment based upon Fankhauser's amalgamation with, *if not full control of*, the COA thru July 1, 2010. Control occurred past the ending of year 2008 Declarant Control period until Fankhauser's resignation. Long after resignation Fankhauser yet exerts influence as the COA "President" according to public filings with York County. Exhibit #2. Public consents recorded reflect Fankhauser as "President" of the COA effective with the Eighth Amendment to the master deed. The testimony of board member Moscovitz at Page 68 is illustrative as to the filings that occur October 11, 2011: (Exhibit #3).

68

Question:

Answer:

Question:

Answer:

Question:

Answer:

Mr. Moscovitz, is Mr. Fankhauser serving on the board of directors?

No, he wasn't.

Who is ? As of the date of October 2011, were you on the board ?

Yes, I was.

Who was on the board with you ?

Paulette Iadanza and David Cook.

Question: And that document does not appear to be signed by you ?
 Answer: **No, it does not.**
 Question: Was a vote taken to permit this to occur ?
 Answer: **I'm not aware of any.**
 Question: You are aware of the master deed in the community, correct ?
 Answer: **Yes, I am.**
 Question: In fact, earlier in today's testimony you testified about a declarant Control period and a 75-percent figure ?
 Answer: **I believe so, yes.**
 Question: Would you agree with me that as of October, 2011 that 75 percent of this community had been sold ?
 Answer: **yes.**
 Question: but you would agree with me that your signature does not appear On this document ?
 Answer: **No, it doesn't.**
 Question: How about Ms. Iadanza's signature ?
 Answer: **There's nobody - - only Brock Fankhauser.**

The COA, therefore, understandably seeks to omit any implication of Fankhauser's influence and/or amalgamation in view of duties and obligations imposed by the master deed and bylaws as to common elements. The reliance on the business judgment rule absent review of subsection (c) of §33-31-842(b)(2) becomes obvious. As cited by Defendants, "[T]he business judgment rule precludes judicial review of actions taken by corporate governing board absent a showing of a lack of good faith, fraud, self-dealing(emphasis) or unconscionable conduct." Dockside Ass'n, Inc. v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987).

Under the mere scintilla standard, however, Plaintiffs have challenged and have produced documentary evidence of Fankhauser bad faith, fraud, *self-interest*, and self-dealing while acting as "President" and controlling officer of the COA. Until resignation, he controls the very entity responsible for common elements which COA and FPG insurance carrier forensic reports illustrate as problematic in terms of alleged design or construction flaws causing water intrusion. Yet, in May

2010 Fankhauser commences "test" repairs *different than* those being proposed by his carrier with the assistance of the board. Board member Iadanza permits her residence to serve as the "test case". Exhibit #1(a). *"Now remember, the only reason we are contemplating a scope of repair different than that proposed by my insurance carriers is that said scope of repair may be impossible to achieve, both logistically and financially."* Exhibit #1(A). At this point claims have been filed with insurance carriers, and investigations as not only the cause but proper scope of repair are pending. At minimum, on May 4, 2010 FPG's own expert Rick Moore identifies that the problems have likely been ongoing "since the time of construction" and are "systemic". Exhibit #4.

At the time of the Exhibit #1(a) (June 1, 2010 email) announcement to the community, Fankhauser is the COA controlling officer, general contractor, developer/seller, and the insured *with knowledge*. He is in receipt of no less than two (2) forensic reports from insurance carriers and one (1) South Carolina attorney opinion that advises of a developer's fiduciary duties. Exhibit #1(d).

The Defendant's reliance upon the business judgment rule as an absolute defense is therefore made clear and ignores, entirely, amalgamation after written notice of design problems. Further, subsection (c) to §33-31-842(b)(2) is illustrative of why Defendants seek the "default" position of the court as to deference under the business judgment rule so as to evade Fankhauser's influence. This section states:

.... § 33-31-842(b)(2)(c) of this code section permits an officer with discretionary authority to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by legal counsel, public accountants, or other persons as to matters the officer reasonably believes to be reliable and competent in the matters presented. *However, subsection (c) of the statute makes clear that an officer is not acting in good faith if the officer has knowledge concerning the matter in question (e.g., water intrusion, possible design flaws, and an attorney opinion as to a developer's fiduciary duties) that makes reliance otherwise permitted by (b) unwarranted. Id.*

The official comment to the Model Business Corporation Act Section 8.2 makes clear that under prevailing South Carolina law corporate officers owe a duty of good faith, *fidelity*, honesty, and *fair dealing as to the corporation*. More than a scintilla of evidence exists to make summary judgment on this cause of action improper in view of amalgamation and declared purposes of Fankhauser's June 1, 2010 announcement. Exhibit #1(a). As of the date of December 18, 2009 and January 14, 2009 Brock L. Fankhauser (*whether individually or the COA board*), has absolute written notice of likely causes of water intrusion, not the least of which are design allegations. He likewise has the legal opinion of John Peterson of January 14, 2010. Exhibit # 1d. The scintilla standard likewise would include documentary evidence in Exhibit #1(f), written by Fankhauser while he was board President and voting control of the COA.

Particular emphasis seems to be placed on the newly elected COA board determination not to impose special assessments, a *discretionary* function. Section 5.13(b), Bylaws. Certainly, the power and duty to levy assessments is discretion covered by the bylaws. The duty to repair is not, and is set forth by affirmative master deed language that is not ambiguous. Section 13.(1), Master Deed. Instead of mobilizing repairs to address water intrusion, Fankhauser *twice commences test repairs* at board member Iadanza's unit for the purposes set forth in Exhibit #1(a). On no less than four (4) distinct occasions before resignation, the COA thru Fankhauser (as well as appointed board members) have written reports by insurance carries for the COA and FPG regarding the severity of deficiencies in construction. He likewise has written notice of fiduciary duties owed by a developer advising *against* transition. On March 12 the Rule 30(b)(6) deposition of designees of the COA board of directors. The deposition confirms that the existing board is aware of the Master Deed and its provisions requiring prompt repair of common elements pursuant to Section 13.1 of the Master

Deed.

Deposition testimony confirms that no plaintiffs have failed to pay monthly assessments. Louis Moscovitz's deposition testimony confirms that despite wide spread notice of water intrusion noted in multiple homes in year 2009, assessments nonetheless are paid over to a master association. At the relevant time, Brock Fankhauser is the developer and COA President. Fankhauser resigns the board effective July 1, 2010. Until said time, it is not disputed Brock L. Fankhauser is the controlling interest, President of the COA, owner of FPG, Inc. (contractor) and Stonecrest, LLC (developer/seller). The documents attached as Exhibit #1(A) through #1 (G) are illustrative of the Fankhauser's *knowledge* while serving as the COA board President during "test case" repairs.

A. Plaintiffs claims for Breach of Fiduciary Duty.

Contrary to the position asserted by COA in memorandum, under South Carolina law the developers of a Planned Unit Development have expressly been found to be in a fiduciary relationship with unit purchasers. Goddard v. Fairways Development General Partnership, 310 S.C. 408, 426 S.E.2d 829 (Ct. App. 1993). Additionally, the court has previously held that the issue of equitable duty is both *novel* and *complex*. Viewing all facts and inferences in a light most favorable to the Plaintiffs, summary judgment should be denied. Notwithstanding the above, however, despite notice of water intrusion as early as year 2008 monthly assessments are paid by Plaintiffs. This court has previously found as follows: "*The record is clear that Brock L. Fankhauser's menagerie of entities knew of water intrusion problems as early as the late spring or summer of 2008.*" ²

The COA entity was part of Fankhauser's menagerie of interests, created under the Declarant's master deed. The declarant was Fankhauser entity Stonecrest, LLC. Plaintiffs respectfully assert that the amalgamation of the three entities prior to July 1, 2010 should expressly

be recognized by the court and that summary judgment should be denied. Viewing all facts and inferences in a light most favorable to Plaintiffs, genuine questions exist regarding the developer's amalgamation and exercise of equitable duties owed to Plaintiffs as owners and members of the association.

Further, through combined financial efforts of the COA and Fankhauser's LLC "Stonecrest Villas of Tega Cay, LLC" joint monies are paid over to a "master association" during year 2007 through 2010 during years where Plaintiffs' homes manifest water intrusion. While acting as the COA board, Fankhauser and Paulette Iadanza *twice* seek to retrofit Iadanza's personal residence. Exhibit #1(a). Monies now described as "overpayment" by the COA treasurer Moscovitz occur for years despite Plaintiffs complaining of water intrusion at their homes in years 2009 and 2010. Exhibit # 9. Irrespective of the business judgment of the existing board, viewing all facts and inferences in a light most favorable to Plaintiffs, or the Scintilla standard, Fankhauser—*rightly or wrongly*—paid over COA assessments to a master association after notice of water intrusion.² chose to begin less costly test case repairs for the purposes set forth in Exhibit #1(a), ignoring the need to repair Plaintiffs' units. Unit 709 Pinckney suffers repeated water intrusion beginning in November, 2009. Test case repairs nonetheless commence by FPG after receipt of no less than two (2) insurance carrier reports detailing the extent of the problems withing the building envelopes. As confirmed by Fankhauser's email to the community dated June 1, 2010 (Exhibit #1a), Fankhauser as the COA board has knowledge concerning the extent of alleged defects and/or design that makes the director's reliance upon subsection (b) of S.C. Code Ann. §33-31-842(b)(2) unwarranted, not the least of which are studies published by COA and FPG insurance carriers. Exhibit #1(b) and Exhibit #1 (c).

B. Plaintiff claims for Breach of Contract and Breach of Contract Accompanied by Fraudulent Act.

Defendants seek to persuade the court that there exists no "offer", and that the master deed and bylaws are not "contracts" in the "legal sense". Plaintiffs have identified the master deed (and payments under master deed), its alleged breach (failure to repair, not just administer or maintain), and resulting damages (homes damaged by reoccurring water infiltration). Defendant seeks to ignore amalgamation in order to effectively *pidgeon-hole* Plaintiffs' claims under the Franchise Agreement, singularly. The court has rejected that Plaintiffs were intended third party beneficiaries of the Epcon Franchise Agreement. While the COA entity was not a party to the franchise agreement, Brock L. Fankhauser through his entity Stonecrest, LLC (developer) was. At the relevant time, Fankhauser was the sole owner and control of the COA. Fankhauser's entity Stonecrest, LLC contracted to sell units to Plaintiffs, inclusive of Musgrave. Contracts and checks in this case evidence that David Musgrave contracted to purchase from Stonecrest, LLC. Exhibit #5. Irrespective of how the Musgraves wished to have title conveyed at closing, David Musgrave was a "purchaser" and was in contractual privity with Fankhauser and Stonecrest, LLC as evidenced by contracts produced in this lawsuit. David Musgrave's signature appears on both checks and contracts. Exhibit #5(a) and #5(b).

Defendants nonetheless seek to persuade the court that neither the bylaws nor the master deed constitute "contracts" in the "legal sense"(sic), essentially alleging no "offer". To date, it is undisputed that buyers purchased within a regime that has accepted dues and assessments paid by Plaintiffs under the master deed. The purchase of a Stonecrest condominium involved *take-it or leave-it* *adhesion* of a master deed, none of which Plaintiffs had the ability to negotiate and all of which impose obligations of repair for the COA. Any ambiguities should be resolved as against the Declarant, who arguably was amalgamated with Fankhauser and the COA. Under the *Scintilla*

standard the issue is whether the amalgamation of Fankhauser menagerie of entities, including the COA, legally and in good faith observed contractual obligations with regard to use of owners' assessments, making summary judgment improper. Viewing all facts and inferences in a light most favorable to Plaintiffs, their homes remain unrepaired and assessments totaling \$55,000 were paid over to a master association during years water intrusion occur to numerous Plaintiffs.

The COA Rule 30(b)(6) depositions confirm that no Plaintiff has failed to pay assessments to the Association. The obligation of the COA to administer and maintain common-elements is expressly set forth in the Master Deed as the "valuable consideration" one would expect to fund the regime's ability to make repairs. Exhibit #6. The obligation is supported by consideration paid in the form of assessments accepted by the COA. Board member and treasurer Moscovitz confirms Plaintiffs' assertions of no funding for repairs if money is going to a master association. The master association was likewise not disclosed to board member Moscovitz. It is not referenced by the Master Deed. The obligation to administer and maintain common elements is, however. Section 13.1. Exhibit #6. Moscovitz's testimony at Page 56 acknowledges that assessments are paid by Plaintiffs but yet the association "cant" maintain the common elements without funding:

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Question: Okay, but similar to you, the Plaintiffs would be paying assessments
For a reason. Isn't that right ?

Answer: Yes.

Question: And what would that reason be ?

Answer: *Their reason to pay the assessments would be to provide the Association with the money to maintain the common elements, including water and sewer services for everybody in the community.*

Question: In fact, when we were looking at the master deed a minute ago, section 5.4(a), I think, places the association as the responsible party for maintaining the common elements; doesn't it ?

Answer: Yes, it does.

Question: How is the association going to do that without funding ?

Answer: *It can't.*

Viewing all facts and inferences in a light most favorable to Plaintiffs, Moscowitz confirms assessments were paid over to a master association during years when water intrusion manifested damage to Plaintiffs' homes. The practice of paying a master association *continued* in years 2007 to year 2010. The newly *selected/appointed* board discontinued the practice in year 2010 through 2012 due to alleged "overpayments": Exhibit -9 (Moscowitz Affidavit). Plaintiffs homes are not repaired under the master deed during year 2011 or 2012 while payments to a "master association" cease under the discretion of the new board.

The mere scintilla standard becomes whether Plaintiffs' have alleged assessments paid to Fankhauser controlled entities Stonecrest, LLC and/or the COA "Stonecrest Villas of Tega Cay Owners' Association, Inc." were paid for a *specific purpose or duty* imposed by the Master Deed and whether the specific purpose was is abrogated or ignored by the COA. No "master association" is identified for any purchaser by the master deed. The affirmative obligation of repair is expressly set forth. Section 13.1, Master Deed. At no time have Plaintiffs' homes been repaired irrespective of the COA board's payment or non-payment to a "master association" and irrespective of the \$2.62 million settlement reached with subcontractors. Viewing all inferences in a light most favorable to Plaintiffs, monies were paid over during water intrusion years to a "master association" before, during, and after Fankhauser's resignation July 1, 2010.

Prior to resignation, documents received by or written directly to the COA and/or Fankhauser by insurance carriers and attorneys illustrate why subsection (c) of the business judgment rule should prohibit absolute court "hands off" under the guise of the board's business judgment. Prior to July 1, 2010 Fankhauser is in absolute control. He has absolute receipt of writing documents illustrating

defects regarding (a) water intrusion (b) possible construction defects or design flaws; and (c) attorney opinions as to fiduciary duties owed as a developer, and (d) the possibility of forthcoming suits. Plaintiffs provided statutory notice and right to cure to the developer and the COA in February, 2010.

C. Plaintiffs claims vs. COA for fraud and misrepresentation.

Viewing all facts and inferences in a light most favorable to the Plaintiffs, genuine issues of material fact remain concerning Plaintiffs' sixth cause of action for Fraud and Misrepresentation. Specifically these claims related to the COA operating thru Fankhauser control in violation of the master deed and bylaws during times identified by the attachments under Exhibit #1(a)-(g). The requisite showing Plaintiffs must make is accurately set forth by Defendants' memorandum, page 18. While previously addressed by the court in the context of Plaintiffs' claims vs. the Epcon companies, Plaintiffs have demonstrated more than a Scintilla of evidence concerning all nine (9) elements, especially in view of amalgamation between Fankhauser and the COA.

At all relevant times cited by exhibits attached under Exhibits #1(a) through #1(g) , Fankhauser owned and controlled the COA. In addition he was sole owner, insured, franchisee, and operator of FPG and Stonecrest, LLC. Viewing the Scintilla standard, the actionable promise made by Fankhauser (at the time controlling COA interest) to at least one owner is succinctly set forth in Exhibit #1(g) attached and incorporated by reference. Viewing the evidence and all inferences in a light most favorable to Plaintiffs, summary judgment should be denied.

1.) -A Representation- Master Deed Section 13.1. All twelve (12) Plaintiff families purchased under the Master Deed which creates the COA for the purposes set forth therein as to maintenance and repairs and identifies no other entity except the COA as responsible for the duty to administer and maintain common elements. Section 13.1, Master Deed.

2.) Its Falsity- Failure to Promptly Repair, Administer or Maintain. It is not disputed that Plaintiffs' homes and others in the Stonecrest Community suffer from water intrusion. **Exhibit #1 (f).** In year 2009 Brock L. Fankhauser in response to growing water intrusion complaints writes to the entire community as follows:

...The fact of the matter is our homes are not designed to prevent rainwater intrusion during extreme rainfalls (e.g, sideways rainfall at 2" per hour").

At the relevant time, unknown to purchasers, FPG is Epcon franchisee, and Fankhauser individually is likewise the *controlling interest* of the COA board for Stonecrest Villas of Tega Cay Owners' Association, Inc. Fankhauser's control extends long after expiration of the Declarant Control Period defined in the Master Deed. He is likewise the sole member of SV, LLC. In sworn deposition testimony, Brock L. Fankhauser acknowledges that his multiple roles as contractor, seller, and COA board president constituted a conflict of interest. [Brock L. Fankhauser deposition. Pg. 211 at lines 8-24].

3.) Its Materiality- All twelve (12) Plaintiff families purchased a *residential home* sold pursuant to the Master Deed. "Materiality" is defined by Webster's New World Law Dictionary, 2010 Wiley Publishing Inc., as "[o]f Evidence that is important or essential to an adjudication or determination; or "having logical connection to the matters under consideration". *Id.* Plaintiffs allege, *inter alia*, that the COA has failed to maintain and administer the common elements and their homes despite their payment of assessments. No other entity, other than the COA, is identified by the master deed as responsible for repairs.

4.) The Speaker's Knowledge of its Falsity. **Exhibit 1(f).** As early as March of 2007, Brock L. Fankhauser / FPG / SV, LLC is already experiencing disputes with owners related to quality workmanship. In response to flooring defects, Fankhauser acknowledges that the Gonzalez condominium 709 is not an example of *our* (sic) standards quality. **Exhibit 1(g).** The owner is so disturbed by the deficient workmanship that he contacts Brock's father and Epcon principal Philip Fankhauser. [Ismael Gonzalez Depo. P. 216 at 11-19; P. 217 at 6-25]. Fankhauser's email to Gonzalez, while in sole control of the COA board, is illustrative:

...While your home has not been an example of our standards of quality, it will be. So will the other 89 condominiums at Stonecrest Villas....Clearly, there are no excuses for our poor performance to date. *We will only commit to you that you should expect the same levels of workmanship and detail found in all of our other units including the models.* [emphasis supplied]. **Exhibit #1(g).**

5.) His Intent that it should be acted upon by the person. At closing, Plaintiffs receive warranty binders and copies of the Master Deed and association bylaws. Only the COA is identified as the entity responsible for maintenance and administration of common elements. Purchasers are required to pay monthly assessments under the master deed to no other entity other than the COA.

6. The hearer's ignorance of its falsity.

On May 28, 2010 Thea Vicari purchases Stonecrest condominium 830. [See Vicari affidavit]. At the time of contracting, her condominium is having window repairs done to address water intrusion. Despite false assurances, her condominium is never fully repaired by Fankhauser, the COA or otherwise after water intrusion manifests itself.

7.) Reliance on its truth – Monthly Assessments paid to Association.

Plaintiffs pay monthly assessments to the association under the master deed. Assessments are required pursuant to the master deed. The statement of purpose under the master deed sets forth the duties and obligations of the COA with regard to administering and maintaining the common elements.

8. His right to rely thereon- Only Stonecrest COA is identified as responsible for administering and maintaining common elements under master deed.

Stonecrest Villas in Tega Cay offered only condominiums subject to a master deed. The community features, *exclusively*, the COA as entity responsible for common elements. The condominiums were constructed pursuant to Epcon architectural designs, allegedly using the Epcon developmental system. FPG and SV, LLC were builders and sellers of condominiums specifically of the Epcon type, while Fankhauser controlled the board. As such, the entities held themselves out to prospective buyers as qualified to construct and maintain common elements. Viewing all pleaded facts as true, and viewing all inferences in a light most favorable to the Plaintiffs', genuine questions exist whether Plaintiffs were sold defective home designs where the COA would be incapable of repair of common elements per Section 13.1 of the Master Deed.

D. Plaintiffs Eighth (Civil Conspiracy) and Ninth (Conversion) causes of action.

"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) that causes special damages. Plaintiffs have alleged COA payment of assessments to a master association. "[T]he means of accomplishing the injury need not be unlawful. LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). The gravamen of the tort is the damage resulting to Plaintiff from the overt act done pursuant to the combination, not the agreement or combination per se. Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379, 382 (Ct. App. 2005). Plaintiffs allege that the COA,

through Fankhauser and the existing board, paid over monies to a master association during years where water intrusion was affecting Plaintiffs' homes. The affidavit of Moscovitz, Exhibit #9, confirms alleged "overpayment" to a master association including months after Brock L. Fankhauser resigns the board. "Overpayment" years are denoted from year 2007 to 2010. Id. Viewing all facts and inferences in a light most favorable to Plaintiffs, no "master association" is identified by master deed or bylaws, and summary judgment should be denied.

E. Plaintiffs Tenth & Fourteenth Causes of Action for Breach of Express Warranty.

Defendant's argument seeks over-reliance based upon the law of goods under Article 2 of the Uniform Commercial Code. Viewing the mere scintilla standard in a light most favorable to the Plaintiffs, the master deed imposes an affirmative obligation of repair. Section 13.1 Master Deed. The master deed explicitly sets forth the duties of the association under its board, whether *pre-Fankhauser* or *post-Fankhauser* control. To date, and despite a settlement reached with various Defendants, the COA is undetermined as to when repairs to the community's common-elements will begin. Exhibit #7. Page 21 and Page 84 of the deposition of board member Iadanza is illustrative as to the settlement that has been procured:

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Question: *Does the board currently have a time frame of when repairs will be Commenced?*

Answer: **No.**

Question: *Is it expected to be commenced by summertime?*

Answer: **Undetermined.**

Question: *When you say it's undetermined, have you relied on any documents to tell you that its undetermined, or when it will start?*

Answer: **No.**

Question: *You're aware of the settlement that's been approved by the court?*

Answer: **Yes.**

Question: And who determined the repair scope? Your affidavit lists a number of people that have been consulted. Who has determined ultimately the repair scope that's going to occur here at Stonecrest?

Answer: *It has not yet been determined.*

Question: The repair scope hasn't been determined?

Answer: *Correct.*

Question: Do you know who is going to serve as the general contractor?

Answer: *No, not selected.*

Question: So the general contractor has not been selected. But these figures were at least consulted in coming to the conclusions in your affidavit; is that correct?

Answer: *Yes.*

Viewing all facts and inferences in a light most favorable to Plaintiffs, the affirmative obligation of prompt repair is yet being ignored by the COA while homes remain unmarketable. The Defendant's over-reliance on the term "seller" becomes apparent and seeks to evade review of the failure of service and/or proper products being provided by the COA under the master deed, not the least of which is prompt repairs. Under the guise of *mission-accomplished* settlement, the COA yet has not determined the time in which repairs will commence, who will be the contractor, nor determined what the scope of repair will be despite the same being declared by the October 12, 2012 affidavit of Iadanza. Iadanza dep. at 84. The testimony is illustrative of a board empowered and funded to make repairs under the court-approved settlement. Months after procurement, the Plaintiffs have yet had no permanent resolution to water intrusion at their homes.

F. Plaintiffs Eleventh Cause of Action for Breach of Implied Warranty of Merchantability.

Viewing all facts and inferences in a light most favorable to the Plaintiffs, the COA confirms that over \$ 20,000 has been spent in affixing plastic tarps in the community. Moscowitz dep. at 63:11. This occurs after Brock Fankhauser resigns July 1, 2010. As the appointed board assumes its duties, tarps begin to be erected. This does not occur prior to July 1, 2010 while Fankhauser is in voting control of the board.

Deposition testimony of Paulette Iadanza confirms that continuing "water intrusion" makes the homes *not marketable*. Exhibit # 7(b) Genuine issues of material fact exist regarding operation of the COA before and after Fankhauser resigns with regard to Plaintiffs claims of breach of warranty of merchantability. To date the Plaintiffs' homes and common-elements remain in a state of disrepair and unmarketable. More than a scintilla of fact exists as to whether the residences are marketable. The testimony of Paulette Iadanza at 183 and 187 is illustrative: Exhibit #7(b).

Question: I'm just curious because it says delays in repairs is a major obstacle.

Answer: **Yes.**

Question: And these are the words that you choose ?

Question: It is your opinion today that, looking at the last sentence, these units aren't marketable ? You live here, Ms. Iadanza.

Answer: ***It's an obstacle to them being marketable. Yes, its an obstacle, The water intrusion. Yes, it is.***

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Question: And you did read and approve this affidavit, correct?

Answer: **Yes.**

Question: It does in fact reference 40 percent of the units in Stonecrest; does it not ?

Answer: **Yes.**

Question: Does that mean that 60 percent of the units in Stonecrest are actually Experiencing some form of water intrusion ?

Answer: **Yes.**

Defendants seek to evade the COA's responsibilities under Master Deed ignoring amalgamation and ignoring affirmative obligations under the master deed where the COA, *whether thru Fankhauser or its existing board*, was to not only repair but to *administer and maintain* the common elements, including marketability and value. Not until Fankhauser resigns July 1, 2010 are tarps placed over units hit hardest by water intrusion. At no time did a Fankhauser-controlled COA take similar steps to erect tarps. Following the example of Jim Barone's attempt at self-help, tarps begin being erected in the community after Fankhauser's resignation. Viewing all facts and inferences in a light most favorable to Plaintiffs, the temporary protection afforded by tarps did not occur under Brock L. Fankhauser's control. "Test case" repairs, nevertheless, did occur *twice* at Iadanza unit 727. Prior to July 1, 2010 board members also receive temporary carpet flooring and interior repairs denied to Plaintiffs, provided by FPG. At the relevant times, Fankhauser is the controlling interest of the COA, owner of FPG and member and controlling interest of development entity Stonecrest, LLC. FPG provides temporary repairs to soon-to-be board members, including Fankhauser board appointees. The same are denied to Plaintiffs and others.

G. Plaintiffs Twelfth Cause of Action for Breach of Fitness for a Particular Purpose.

The COA entity was created under the Master Deed expressly to administer and maintain common elements. Viewing amalgamation, under Brock L. Fankhauser the COA failed to carry out prompt repairs under the master deed or administer and maintain common elements. The COA under Fankhauser operated in violation of its bylaws under Fankhauser control until resignation July 1, 2010. The newly elected board nevertheless fails to promptly act to permanently repair water intrusion. Instead, tarps are erected at Plaintiffs' homes. As illustrated by the December 26, 2012

water intrusion report by Pinckney, water infiltration continues unabated. The COA takes the position that the COA is not responsible for *interior repairs*. Moscowitz depo at 63:11. Existing COA board members received FPG-funded temporary repairs at no cost, yet the Plaintiffs are denied interior remediation even in the form of temporary repairs. Viewing all facts and inferences in a light most favorable to the COA, Fankhauser's as COA President provides temporary flooring and interior repairs to Moscovitz and Iadanza, who assist the builder with the intentions declared by the developer in Exhibit #1(a).

As the appointed board assumes its role, the provision of plastic visqueen tarps are goods purchased and installed at the direction of new board. The tarps do not permanently resolve water intrusion nor enhance marketability of condominiums belonging to Plaintiffs and others. The tarps are erected as a direct response to water intrusion complaints, under direction of the COA board or its agents in response to facts known to by the COA, water intrusion. Viewing all facts and inferences in a light most favorable to Plaintiffs, the COA's provision of tarps did nothing to permanently resolve water intrusion damage involving foundations, and questions of fact exist whether the tarp placements were reasonable for the purpose they were being employed for.

H. Plaintiffs Fourteenth Cause of Action for Breach of Express Warranties:

Viewing all facts and inferences in a light most favorable to Plaintiffs, the provisions of the master deed are clear and unambiguous. The COA entity was created expressly for the purpose of administering and maintaining the common elements. Paragraph (13) of the master deed sets for the requirement of "repair" in the event of casualty. Section 13.1. The affirmative representation is the master deed and bylaws of the regime. Plaintiffs' homes, in fact the majority of the community, remain in a state of disrepair to date. The express representation, by way of master deed, was that the

COA would act promptly to administer and maintain common elements. As acknowledged in this case the COA is the entity directly responsible for repair of common elements. Despite reaching a settlement, no repairs have occurred. As set forth more fully above, the board member responsible for the October 12, 2012 testified both at a given start date is "undetermined" and that the remediation contractor "has not been selected". Iadanza depo. p. ____ at _____. Exhibit #7(a).

I. Plaintiffs Fifteenth Cause of Action for violation of the S.C. Unfair Trade Practices Act.

The provision of any *service*, including professional services, constitutes commerce within the meaning of the Act. Taylor v. Medicena, 324 S.C. 200, 479 S.E.2d 35 (1996) (citing S.C. Code Ann. § 39-5-20(a).) Pursuant to the master deed, the COA is not only obligated to administer and maintain common elements. It is likewise obligated to *promptly repair*. Monthly dues and assessments are paid to the association. Viewing these facts and inferences in a light most favorable to Plaintiffs, all *purchasers*, the implication of affect upon the public interest becomes evident. The COA would not be comprised of members without sales to the general public at large by and through Fankhauser's menageries of business entities. It is not disputed that Fankhauser is the controlling interest of the COA entity at the time of all twelve (12) contracts with Plaintiff purchasers and owners.

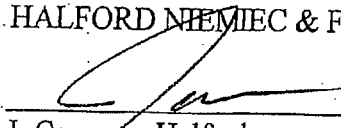
Buyers in Stonecrest were required to take subject to an adhesion contracts- the master deed and association bylaws. No Plaintiff has the opportunity to negotiate the terms of either. The amalgamation of Fankhauser - controlled interests results in twelve (12) buyers taking condominium properties subject to a master deed. The amalgamation of Fankhauser interests is undisclosed. A master association to which funds are paid from 2006-2010 is undisclosed. Viewing all facts and

inferences in a light most favorable to Plaintiffs, the COA entity was to administer, maintain and repair the common elements. Genuine questions of fact exist whether the COA entity could effectively carry out its purposes while laboring under undercapitalization or the conflict of interests posed by Fankhauser's control. Summary judgment should be respectfully denied.

III. Conclusion and Summary

For the foregoing reasons, Defendant's Motion for Summary Judgment should be denied. Viewing all facts and inferences in a light most favorable to the Plaintiffs', genuine issues of material fact exist regarding the operation of the COA and the COA's carrying out of its primary purposes under the master deed and bylaws *before, during, and after* resignation of Brock L. Fankhauser. Until July 1, 2010 Fankhauser is the controlling interest and owner of the COA nonprofit entity. The evidence and inferences in this case reveals amalgamation as between Fankhauser's business interests, inclusive of the COA, thru July 1, 2010. Fankhauser was the owner and operator of Stonecrest COA, Stonecrest Villas of Tega Cay, LLC and Fankhauser Property Group, Inc. As such he was the developer, seller, contractor, and person most responsible for obligations imposed by the master deed after notice of water intrusion. The evidence, and all inferences that can be derived from the evidence viewed in a light most favorable to Plaintiffs, demonstrates that the COA through Brock L. Fankhauser had written notice evidenced by Exhibits #1(a) through Exhibits #1(g). Prior to July 1, 2010 the COA cannot and should not be permitted to evade paragraph (c) exception of the business judgment rule and summary judgment should be denied due to the amalgamation of Fankhauser and the nonprofit property regime.

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803-547-6638 fax
cam@fortmilllaw.com

1. Causes of action asserted by Plaintiffs against the COA now exclude the Seventh Cause of Action (Equitable Accounting) as resolved by agreements documented by the court's March 4, 2013 Order.

² The court has previously found that : "*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.*" 8/27/2012 Order of the Court denying Third Party Plaintiff FPG and SVTC, LLC motion to amend.

3. Plaintiffs have alleged sufficient facts regarding their theory of amalgamation to support the Court's reliance on the theory in addressing the motions herein". Order, March 3, 2013 granting in part and denying in part summary judgment as to Fankhauser Property Group, Inc. et al.

CERTIFICATE OF MAILING

I hereby certify that on this 20 day of March, 2013, I served the foregoing **PLAINTIFF MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY COA STONECREST VILLAS OF TEGA CAY OWNERS' ASSOCIATION, INC.** by hand delivery / e-mail upon counsel for the above named Defendant, addressed as follows, with electronic copies being sent to the remaining parties. Hard copies being made available upon request from the office of the undersigned.

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Columbia, South Carolina 29202
E-Mail: curtis@basilaw.com
Attorney for Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.

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2013 MAR 20 AM 8:10
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YORK COUNTY, SC

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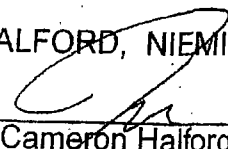
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803-547-6638 (fax).

March 19, 2013
Fort Mill, South Carolina

EXHIBIT 1-A

EXHIBIT 1-A

From: Brock L. Fankhauser [mailto:brock@fpgcharlotte.com]
Sent: Tuesday, June 01, 2010 10:22 AM
To: 'Juniece Isola'; 'Sharon Allen'; arcoriag@aol.com; 'Sandra Ball'; 'Carolyn Barnes'; 'Jim & Debbie Barone'; 'Debbie Barone'; 'Linda Barry'; mmbelanger@hotmail.com; 'Debra Childers Boyd'; 'Rob_Denise Boyer'; 'Jan Canupp'; 'Van_Rhonda Cloninger'; 'Anne Cole'; 'Dave Cook'; 'Dan Cotter'; 'Bill_Marie Croft'; 'Michael Crossin'; 'John_Jan Davis'; 'Ann DeJarnatt'; 'Ellen Elliott'; 'Kristi Feller'; 'Flo Filak'; 'Bob_Susan Foster'; 'John Foster'; jgarthw@aol.com; 'Joe & Joyce Gendreau'; 'Rocky_Mary Germani'; 'Izzy Gonzalez'; 'jim_jean Griffo'; 'Karen Grove'; 'Alise Guinn'; 'Curtis Guinn'; 'Carole Harris'; 'Cindy Howard'; 'Paulette Iadanza'; 'Richard_Sue Koster'; 'Jeff Lawson'; 'Natalie & Jeff Lawson'; 'Pat Linder'; 'Mike Linder'; 'Nora Longobardo'; 'Lee_Pat Marshall'; 'Tydus_Jackie Mathis'; 'Bob_Caroline McCarthy'; 'Larry McCarty'; 'David_Anna McCorkle'; 'Edward_Stacy Mercado'; calink@comporium.net; 'Joe Moore'; 'Sandra Moore'; jfmrrc@yahoo.com; 'Louis Moscovitz'; 'Loren_Judy Musgrave'; 'Jim & Doreen O'Connell'; 'Doreen & Jim O'Connell'; 'Juontonio Pinckney'; 'Bernard Roush'; 'Josephine Sciacca'; 'Joe_Cindy Shewmaker'; 'Jawad Shoaib'; 'Dale_Liz Sine'; 'Bill_Betty Small'; 'Ron Spezia'; 'Ruth Spezia'; 'Joe & Susan Stingone'; 'James_Ruth Studebaker'; 'Lee Triplett'; 'Tim Turner'; 'Helen Van Etten'; 'Lou & Leonard Vance'; 'Al & Edie Vesting'; 'Marc Ward'; 'Len_Carol Weissberger'; 'Bill_Faye Whitaker'; 'Troy_Nancy Williams'; 'Judith Willis'; 'Harry_Louise Wolfe'; 'Thomas_Linda Yaniszewski'; 'Kathi Allen'
Subject: RE: WATER INTRUSTION UTMST IMPORTANCE TO YOUR HEALTH AND INVESTMENT AT STONECREST VILLAS

1. I will not be attending this evening's meeting but as your association president I did want to interject my thoughts.

This type of meeting is likely to draw more negativity to a situation that needs resolution. It was my understanding that at our last group meeting, a committee of 10 members was going to take an active role in moving in that direction. The committee decided that the most important step was obtaining legal counsel (I'll explain why below) followed by a test case repair followed by an engineer's recommended scope of repair. We already have one engineer's scope of repair based on months of deconstructive testing and examination; something that wasn't included with your attached engineering report. In fact, there were several assumptions in the Engineering, Design & Testing (EDT) report that are faulty. Nonetheless, I asked EDT to perform a more in-depth analysis and scope of repair and they declined the work. Remember, the only reason that we are contemplating a scope of repair different than the one proposed by my insurance carrier is that said scope may be impossible to achieve – both logistically and financially. In the event we can have an alternative repair that assures each of us a complete fix, we need to explore that option.

Our association needs legal counsel for numerous reasons. One, this is a complicated case and involves a litany of issues that will need to be addressed in legal fashion. Two, there are numerous threatened lawsuits and in the likely event one (or more) shall move forward, your association will be involved and will need representation. When we come to a solution on how to move forward, our association will need the protection that comes in legal documents drafted by authorized by counsel. That's just how the system works.

As your association leader, I don't appreciate the comment that I am only looking out for my

interests. That assertion is false. Regardless of the emotion that may get injected into our discussions, this remains my top priority.

Brock L. Fankhauser

President

Fankhauser Property Group, Inc. , an EPCON Communities Developer

300 East John Street, Suite 126

Matthews, NC 28105

704.844.8711 o

704.844.0188 f

EXHIBIT 1-B

EXHIBIT 1-B

ENGINEERING DESIGN & TESTING Corp.
ENGINEERS / CONSULTANTS / LABORATORIES

CHARLOTTE DISTRICT OFFICE:
Post Office Box 668665
Charlotte, North Carolina 28266-8565

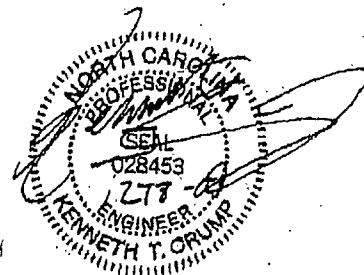
(704) 523-2520
Facsimile Transmission:
(704) 523-2597

DATE: December 18, 2009

REPORT TO: Mr. William F. Nunn, Jr.
William F. Nunn Company, Inc.
Post Office Box 876
Fort Mill, South Carolina 29716-0876

FROM: Kenneth T. Crump, P.E.

REFERENCE: Determine Cause or Moisture Intrusion
Insured: Stonecrest Villas of Tega Cay
D.o.L.: November 16, 2009
L.o.L.: Tega Cay, South Carolina
Philadelphia Insurance Claim Number: 432416
ED&T File Number: CLT8912-62105



Per your request, Engineering Design & Testing Corp. (ED&T) has conducted an investigation of the above referenced damage. It is understood that moisture damage has been reported at the Stonecrest Villas of Tega Cay community in Tega Cay, South Carolina. The purpose of this investigation has been to inspect the property in question, review the available information, and determine the cause of any moisture intrusion observed.

An on-site inspection was conducted on Wednesday, December 9, 2009. Mr. William F. Nunn, Jr. was present during the inspection and provided background information. The interior and exterior of the community clubhouse was examined. The interior moisture damages reported were examined in the clubhouse and one dwelling unit and several other units with reported moisture intrusion were examined from the exterior. Figures 1 - 30 contain photographic prints of the structures in question and the observed damage.

CORPORATE OFFICES: ENGINEERING DESIGN & TESTING Corp.
Post Office Box 8027/Columbia, South Carolina 29202/(803) 788-6975

DISTRICT OFFICES: Columbia, SC / Charlotte, NC / Houston, TX / Charleston, SC / Birmingham, AL
Kansas City, KS / Oakland, CA / Asheville, NC / Orlando, FL / Santa Rosa, CA
Hartford, CT / Cleveland, OH / Dallas-Fort Worth, TX

EXHIBIT 1-C

EXHIBIT 1-C

BUILDING DIAGNOSTICS GROUP



Stonecrest Villas of Tega Cay

Fankhauser Property Group, Inc
300 East John Street, Suite 126
Matthews, NC 28105

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Introduction:

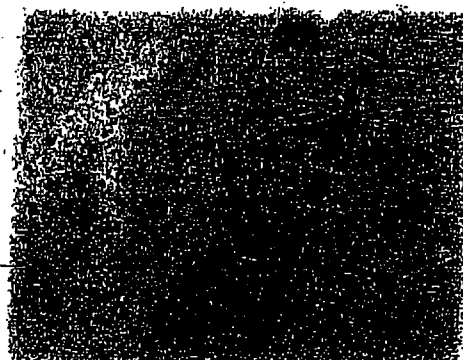
Building Diagnostics Group, Inc. (BDG) was retained by Fankhauser Property Group, Inc. to identify the cause(s) & origin(s) of water intrusions reported at several residences within the Stonecrest Villas of Tega Cay. All reported water intrusions were located in the same vicinity below fenestration (window) openings. Based on our initial client interview and visual observations, we developed a testing protocol to identify failure points. Each testing procedure was conducted in general accordance of the published standard(s): ASTM E2128 *Standard Guide for Evaluating Water Leakage of Building Walls* and AAMA 511-08 *Voluntary Guideline for Forensic Water Penetration Testing of Fenestration Products*.

Test Location: Unit 707 (front guest bedroom)

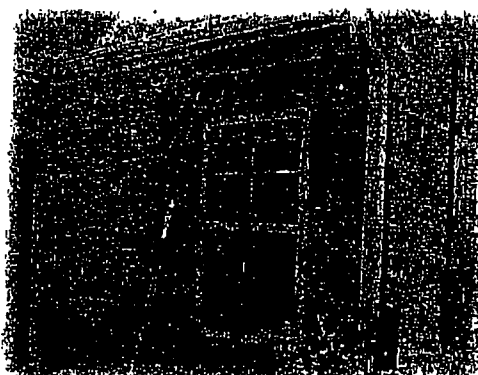
Based on our initial observations, we conducted our first water test on the wall assembly below the window located by the front entry door. This initial test was to check the brick facade at the sill plate. (See photos below) Water testing was performed at 5.5 U.S. gal/ft²-h using calibrated spray equipment. The test ran for approximately 45 minutes without any evidence of water intrusion in the reported areas. We then conducted a basic window water infiltration test without negative static pressure. Water was applied in a controlled manner using a calibrated spray rack system. Water was applied at 4.5 U.S. gal/ft²-h at 10psi for approximately 10 minutes before visible water began entering the building envelope.



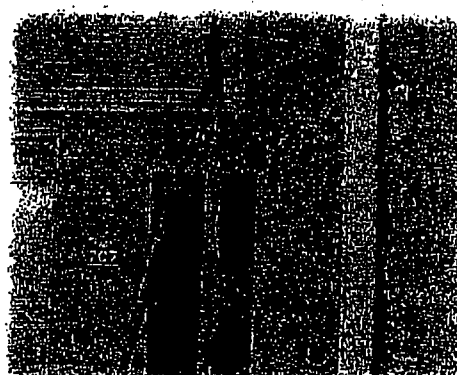
Horizontal spray test



Detailed photo of testing in progress



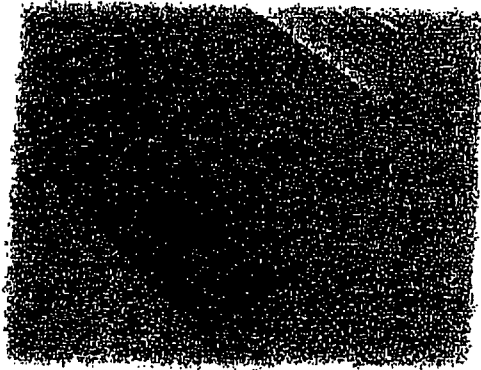
Spray rack testing in progress



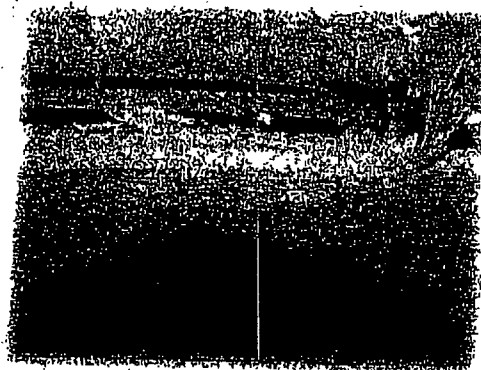
Spray rack testing in progress

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Once water entered the building envelope, we removed a section of drywall just below the window to identify the exact entry point. When we removed the wooden decorative window sill, we were able to see a void (daylight) in the lower right corner just below the window frame.



Water entering the building in guest bedroom



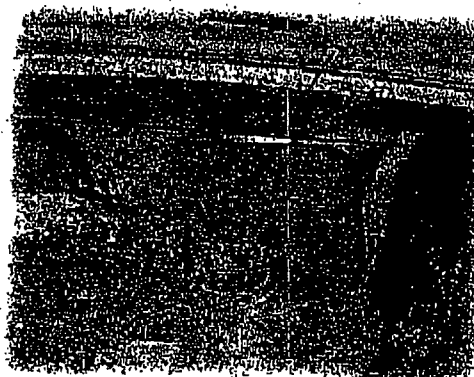
Void beneath window frame

We proceeded to disassemble the exterior cladding (stone/brick sill) to verify if standard industry flashing procedures found in the ASTM E2112 -- *Standard Practice for Installation of Exterior Windows, Doors, and Skylights* & AAMA *Standard Practice for Installation of Windows with a Mounting Flange in Stud Frame Construction* were followed. Both of these documents outline widely accepted installation practices used throughout the fenestration industry.

We then carefully removed the exterior cladding materials and found the window nailing fins damaged in several locations. The photo (bottom left) is the lower left corner of the window frame. This is the location of the void that was documented from the inside. We also found 6-10 mil plastic sheeting between the p&s & seal flashing tape (hereafter referred to as p&s) and 15 lb felt paper water barrier. In several areas, the p&s appeared to not be adhered properly to the OSB sheathing. In addition, the p&s did not fully cover the nailing fin.



Missing/damaged nailing fin



Red line is the height of the p&s as installed

The plastic sheeting found between the p&s and the 15 lb felt paper was a significant finding and will be discussed later in this report.

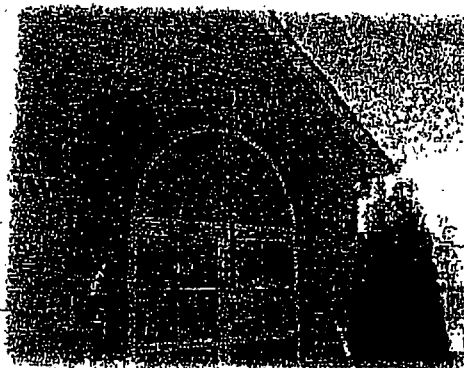
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Test Location: Half circle window located at the northern side of clubhouse (main room)

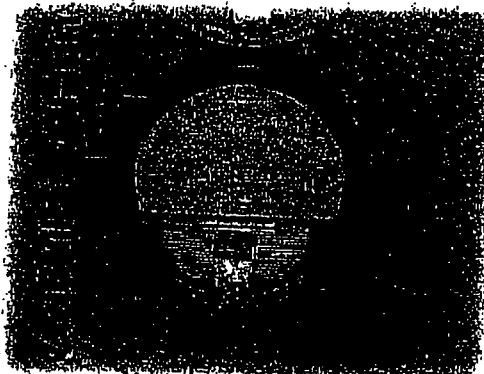
The next testing procedure was performed on the northern window at the clubhouse. We removed the drywall around the window framing and constructed a chamber to perform static testing per the AAMA 511-08 *Voluntary Guideline for Forensic Water Penetration Testing of Fenestration Products* standard, which references the ASTM E2128-01a *Standard Guide for Evaluating Water Leakage of Building Walls* for forensic water-testing procedures to identify water infiltrations of various building components. This testing methodology was to specifically test the window installation as well as the window assembly. Following standard procedures, we attached a vinyl-covered chamber to the inside face of the window framing. A vacuum machine was attached to the chamber to create static pressure. Testing was performed at approximately 2.08 psf (4 inches of water) of static pressure. Typically when testing an installed window, the static pressure is $2/3^{rd}$ of the original manufacturer's design pressure. 2.1 psf is below the design pressure for this testing specimen. Water pressure was documented at less than 5psi on the spray rack gauge or approximately 2.475 U.S. gal/ft²-h from our calibrated system. Note: The spray rack equipment is calibrated to operate at 12psi to meet the standard industry testing pressure of 5.5 U.S. gal/ft²-h. The water supply in the area did not provide sufficient pressure to meet the standard testing pressure.



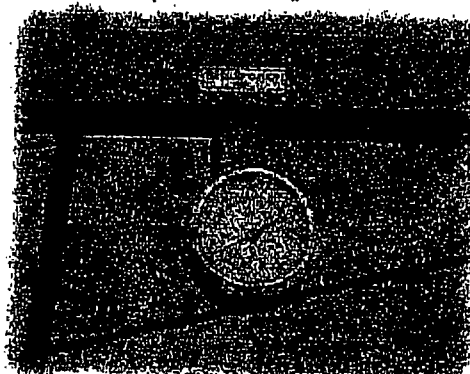
Photo of interior chamber system



Testing in progress



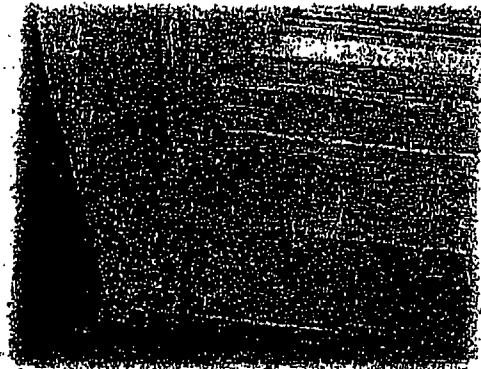
4 inches of static pressure



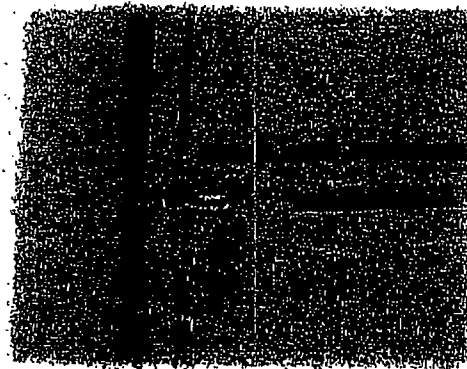
Less than 5psi water pressure

After approximately 10 minutes of testing, water began to appear at the base of the window sill framing, mull joints at the half circle (both sides), and from several areas around the nailing fin.

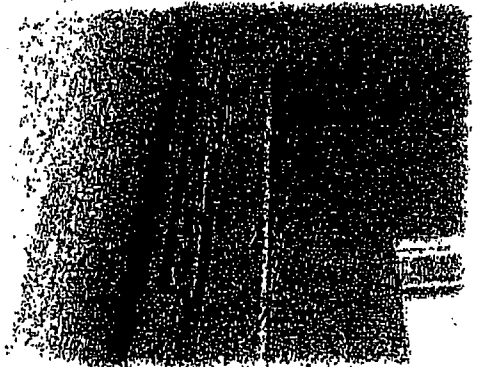
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Bottom left corner water from mulled half circle



Intrusion at mulled half circle (left)



Water running down interior window frame



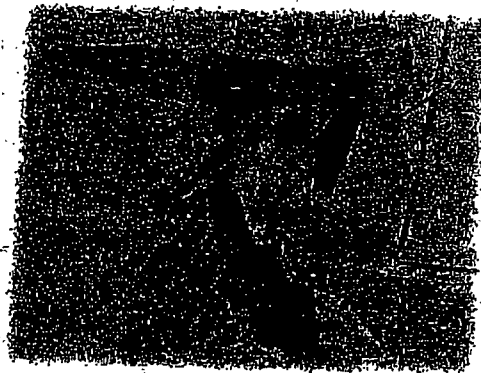
Visible crack in nailing fin with water intrusion

The test was stopped after approximately 15 minutes. Several gallons of water penetrated the building envelope during the test. Failures were documented at both ends of the mulled half circle, cracks in the nailing fin, and at the base of the wall (sill plate). The cracked nailing fins appear to be from fasteners from the installation of the wire lathe and/or 15lb felt paper. Numerous fasteners were visible penetrating the nailing fin from around the perimeter of the window frame. Since water was entering at these locations, it is our opinion that the p&s was not installed up to the window frame. This would expose the fasteners and the nailing fin to water penetrating the masonry wall system.

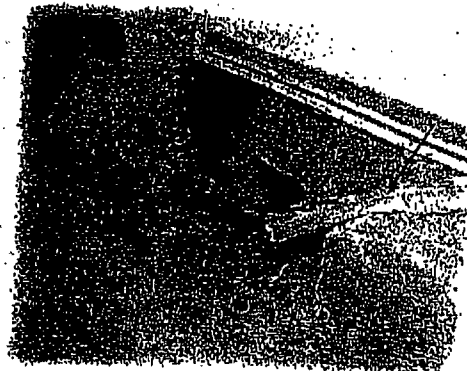
In addition to the static water testing, we disassembled the exterior stone masonry on the lower left hand corner of the same window. This was to visibly see the condition of the nailing fin and flashing details. We again found the 8-10 mil plastic sheeting located between the p&s and 15lb felt paper. See details on page 11. In addition, we also observed the p&s was not installed up against the window frame. This is consistent with the water infiltration observed during the static testing. The nailing fin in this location appeared to be intact.

We also noted that the wire lathe had substantial rust and had begun to deteriorate which would indicate a long-term exposure to water and/or moisture. See photos on the following page.

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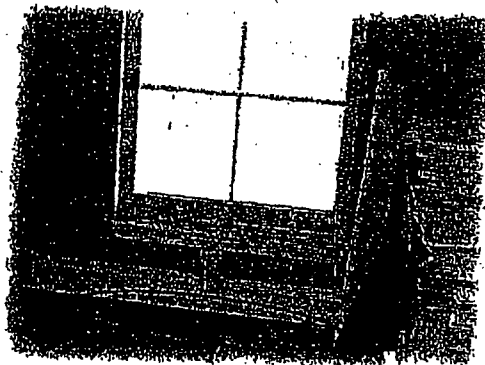
p&a installed approximately 1/4" from frame



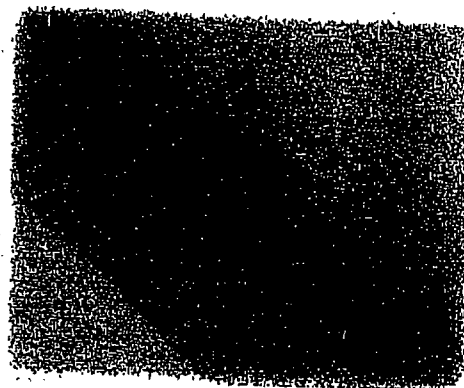
Plastic sheeling was found in this location

Test Location: Clubhouse office (NE corner/east window of office)

At this location, we first conducted a sill dam test as described in AAMA 511-08 *Voluntary Guideline for Forensic Water Penetration Testing of Fenestration Products* standard. This is a procedure that tests the welded joints of the window frame. A piece of tape was used to seal the weep holes at the base of the window frame. We then removed the window screen and filled the bottom sill with water to a depth of approximately .75 inch which is 3.90psf of static pressure within the sill assembly. After approximately 15 minutes, we inspected the base of the window and found no signs of water infiltration. We then reinstalled the window screen and positioned the spray rack system in the same location to apply water directly at the window/wall without static pressure. Water was applied at a rate of 12psi or 5.5 U.S. gal/ft²-h to the window/wall. After approximately 10 minutes of testing, water appeared from under the baseboard directly below the window/test location. Destructive testing was not performed at this location to identify the exact failure point.



Water entered at the bottom sill of wall



IR image of moisture at edge of carpet

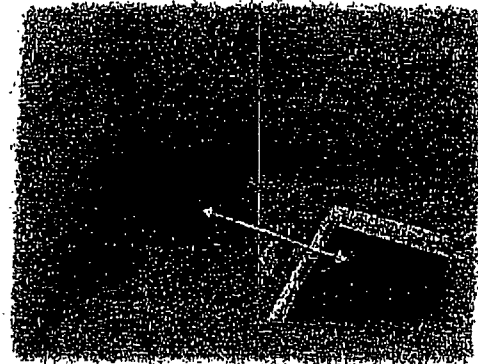
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Test Location: Clubhouse office (NE corner/northeast wall of clubhouse)

The following test was used to determine if water was penetrating the wall system and/or problems with the kick-out flashing detail that is used on many of the gable end roof details. We positioned the spray rack system just above the left gable roof. Water was applied at a rate of 5.5 U.S. gal/ft²-h for approximately 20 minutes before water appeared on the interior floor.



Wall testing in progress

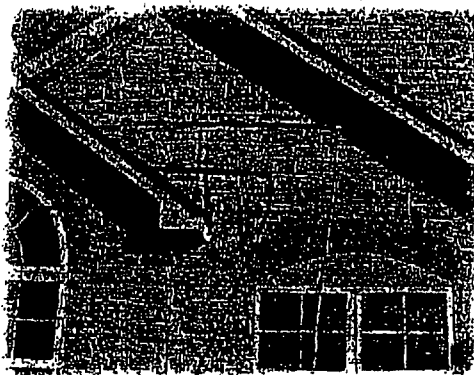


IR/digital image of water intrusion

It is our opinion that water is penetrating the wall via absorption through the stone/grout mortar masonry system. This is typical of this type of cladding system. However, this water is collecting between the 15lb felt paper and masonry system and traveling down to the sill plate and entering the building envelope at the base of the wall. It appears that there is an entry point at the base of the wall system or an improper lap in the 15lb felt paper. No destructive testing was performed at this location to verify this theory. Recommend destructive disassembly in this area to identify the actual failure point as well as to test of similar areas to quantify repair procedures.

Test Location: Unit 830 - west elevation

This testing was to determine if the same wall issues were present in the newer constructed units. We positioned the spray rack just above the gable roof detail to try to replicate the same results as the previous test. See photos below.



Spray rack positioned just above lower gable



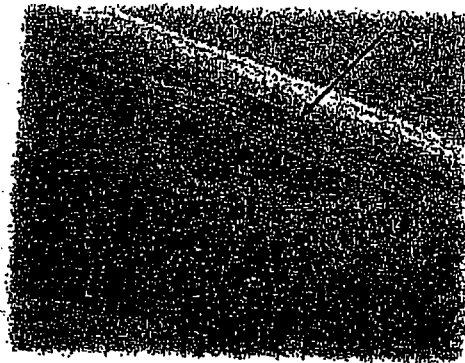
Testing in progress

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Testing was conducted with two (2) shorter spray rack down rods. Flow rate was approximately 20psi from the two (2) active nozzles. Water was applied at a rate of 5.0 U.S. gal/ft²-h in this configuration for approximately 15 minutes before water appeared on the interior floor. The intrusion did not replicate the previous test by penetration via the wall system. It appeared on the floor just below the left window. There was a slight breeze at this test location because of its western exposure and it appears that water overspray from the upper wall testing penetrated the window at an unknown location. No destructive testing was performed at this location.



Water entered just below the red arrow



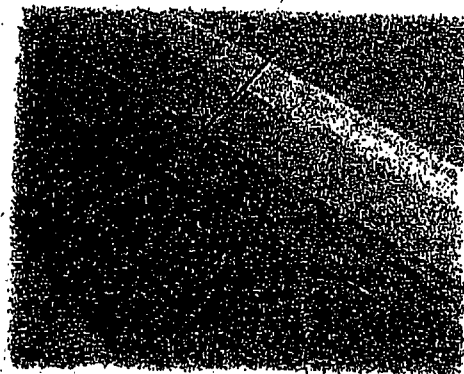
Visible water entering from under baseboard

Test Location: Unit 830 - west elevation

This area is just to the left of the test above in the same unit. We applied water using our typical spray rack configuration. Water was applied at 12psi at the spray nozzles (5.5 U.S. gal/ft²-h). Water appeared within three (3) minutes at the base of the right window. No destructive testing was performed at this location.



Testing in progress



Visible water entering from under baseboard

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Summary:

We identified five (5) separate conditions during our two (2) days onsite.

1. Windows installed with damaged nailing fins

In both areas we performed destructive testing, we found issues with damaged nailing fins. While these fins are designed for installation purposes, they are an important part of the entire flashing. Unit 707 had a large portion of the nailing fin missing and damaged. This prohibits a good seal when the p&s is applied to the fin and the sheathing. This condition is most likely intermittent and will be hard to quantify for repair estimates. Typically, window fins will get damaged during installation in cooler months as the vinyl fins are more brittle in colder conditions.

It is important to note that the manufacturer's installation data sheet specifically states that damaged windows should not be installed. This is also stated in the AAMA 2400-02 *Standard Practice for Installation of Windows with a Mounting Flange in Stud Frame Construction* written standard which is widely referenced within the glass & glazing/window installation industry.

2. Improper window installation and flashing techniques

Again, in both areas of destructive testing, we found p&s improperly adhered to the OSB as well as not butted up to the window frame. The recurrence of this condition is unknown and will be difficult to quantify for repair estimates.

3. Water infiltration through the exterior cladding system

This will require additional testing to determine the actual cause and origin. We recommend additional water penetration testing along with a complete disassembly of a wall with known infiltration issues.

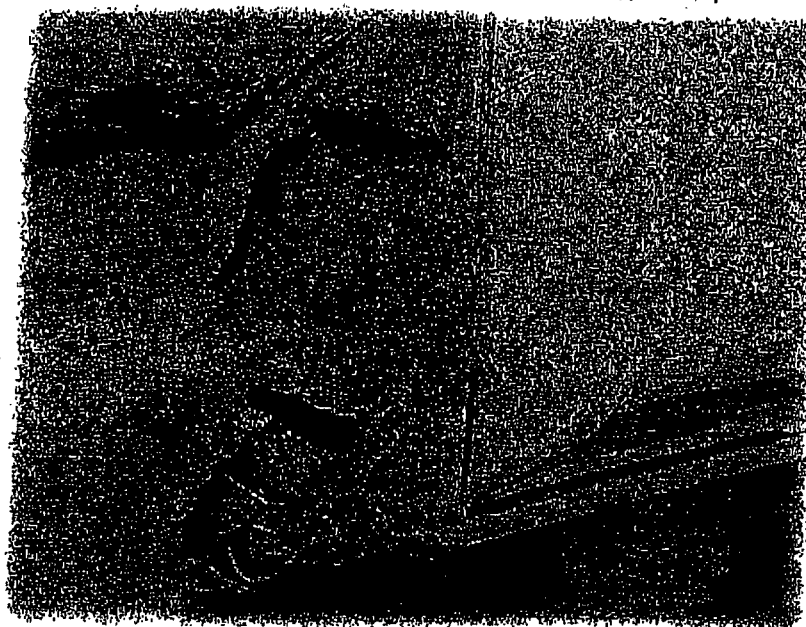
4. Water infiltration at the factory milled half circle window

This will require additional testing on similar windows to determine the extent of the window failure. The window that was tested in the clubhouse had a damaged mull cover on the left side and appeared to have some slight visible damage on the right side. This may be an isolated issue. However, it is not uncommon for factory milled windows of this size and configuration to have water penetration issues. We recommend additional static testing of at least two (2) other similar window configurations in other locations within this development.

5. Water infiltration via the plastic sheathing used to protect the windows during construction

We were able to replicate this condition in each test we conducted on or around a window assembly. Within both areas of destructive testing, we found 8-10 mil plastic sheathing behind the 15lb felt paper. We were informed that this sheathing was used to protect the windows during the installation of the masonry wall system. It appears from our visual observations that, after the windows and p&s were installed, the sheathing was mechanically fastened around the perimeter of the window fins using roofing nails with plastic tabs. The 15lb felt paper was then installed up to the edge to the window frame. After the stone masonry was complete, the plastic was trimmed at the outer face of the window frame. This is allowing water to bypass the 15lb felt paper water barrier and allowing a direct path to the OSB sheathing and sill plate. See details on the following page.

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Plastic sheeting completely wraps the window frame



p&s is behind plastic sheeting - 15lb felt paper was installed over the plastic sheeting

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Illustration of plastic sheeting condition

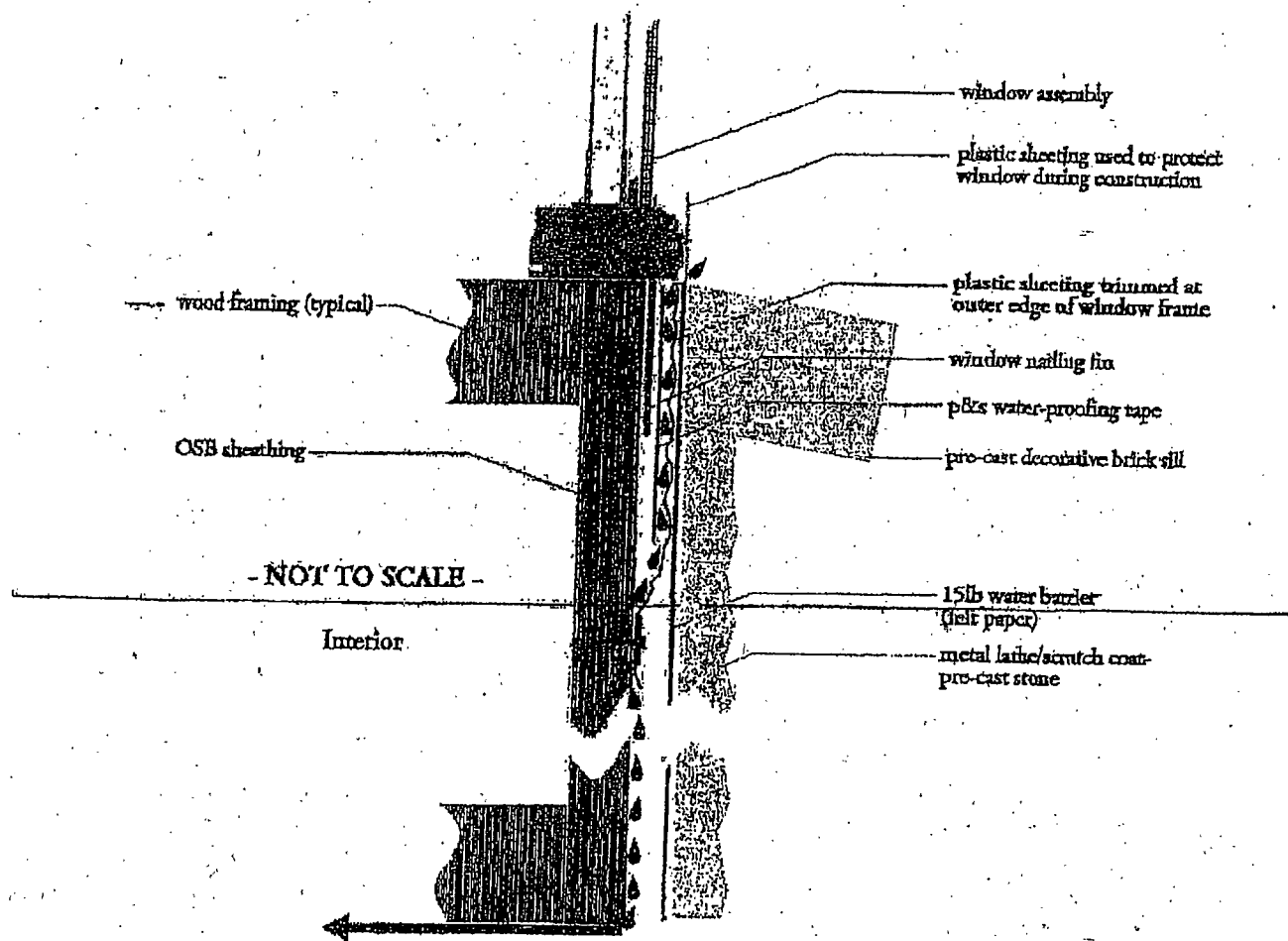


Illustration does not depict exact details. Materials are expanded to allow for detail.

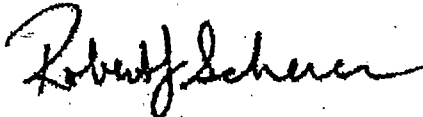
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While this condition was only observed in the two (2) areas of destructive testing, it is our opinion that it exists at every location we performed water testing. In every test, water appeared at the base of the wall just below the testing specimen which is consistent with the infiltration path of the water as illustrated on the previous page.

Recommend additional destructive testing in several locations to determine if, in fact, this condition is consistent throughout each phase of construction.

If we can be of any other assistance, please contact us at 404.946.9939.

Respectfully submitted:



Robert Scherer
Building Diagnostics Group, Inc.

About Building Diagnostics Group, Inc (BDG)

BDG specializes in forensic water infiltration cause & origin investigations throughout the entire United States. With over 8 years of construction experience as a State Certified Building Contractor (Florida) and 10 years experience as a Certified Glass & Glazing Contractor, Robert Scherer, President of BDG, has supervised and installed over 50,000 windows and sliding glass doors throughout South Florida. In 2000, he started a successful consulting firm that would eventually become Building Diagnostics Group, Inc. Robert has been called upon as an expert in over 50 litigation cases to date, with the majority of them involving water impact and cause & origin investigations resulting from the 2004/2005 active Florida, Georgia, and Louisiana hurricane season. Utilizing the latest high-tech equipment, BDG performs due diligence studies for some of the largest real estate development groups in the world. Robert holds numerous certifications and specialized training to specifically identify building failures. BDG is an active member of ASTM International and certified by AAMA as an Installation Master.



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EXHIBIT 1-D

EXHIBIT 1-D

PETERSON

LAW FIRM, P.A.

January 18, 2010

VIA OVERNIGHT DELIVERY

FILE COPY

Brock L. Fankhauser
President
Fankhauser Property Group, Inc., an EPCON Communities Developer
300 East John Street, Suite 126
Mathews, NC 28105

RE: Stonecrest Villas of Tega Cay Condominium Unit Owner's Association

Dear Mr. Fankhauser:

I recently met with the volunteer members of the transition committee for Stonecrest Villas of Tega Cay Condominium Unit Owner's Association (the "COA") in an effort to review and discuss your proposed Agreement and Mutual Release concerning the transfer of the common areas and other related matters.

As I understand the committee's role and legal authority, the committee will make a recommendation to the members of the COA (or its duly elected Board) as to whether and when and under what conditions to accept the transfer of both the common areas and the governing authority of the COA. As you probably are aware, there is legal authority in South Carolina that provides that a developer owes a fiduciary duty to the property owner's association and its members and should be expected to use good judgment and act in utmost good faith.^a It is the committee's position, as reinforced by South Carolina law, that a developer is responsible for transferring roads and common areas in good condition or to provide the association with sufficient funds to bring them up to standards by the date of transfer.^b

As I read the proposed agreement and mutual release, it does not provide for the completion or repair of the roads and common areas by the date of transfer. In addition, it does not provide the immediate funds to complete or repair the roads and common areas by the date of the transfer. Therefore, the committee, in its attempt to use good judgment and act in good faith in whatever decision they make, is unable to accept or recommend the Agreement and Mutual Release as currently drafted.

The committee members have the following additional specific concerns about the transfer and the agreements that will accompany it. First, the committee is not in a position to agree to or recommend that the COA release Stonecrest Villas of Tega Cay, LLC, as the developer, from anything at this stage.

^a *Concerned Dues West Residents, Inc. v. Georgia Pacific Corporation*, 562 S.E.2d 633 (2002); *Goddard v. Fairways Dev. Gen. Partn.*, 426 S.E.2d 828 (Ct. App. 1993).

^b *Concerned Dues West Residents, Inc.* at 562 S.E.2d 633 (2002)

1096 Assembly Drive, Suite 310
Fort Mill, SC 29708
(803) 548-2898 Fax (803) 548-4879

Brook L. Fankhauser
President

Fankhauser Property Group, Inc., an EPCON Communities Developer
Stonecrest Villas of Tega Cay, LLC

January 18, 2010

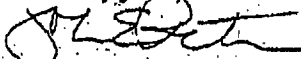
Page 2

There are simply too many unknowns at this point in time and a release of same would be irresponsible and not legally required. Second, many common areas, including those identified in Exhibit A1 to the proposed Agreement and Mutual Release, are seriously in disrepair or incomplete and potentially more costly to repair or complete as time passes. The escrow arrangement identified in the agreement does not protect the COA against this risk. Obvious examples include the final paving of the roads; the water intrusion involving window or other leaks to many residences; the erosion of land behind Buildings #11 and #12; and the encroachment of the earthen berm on to the property owned or controlled by Herman Stone (I am not aware of any signed encroachment agreement but would anticipate that such an agreement will be necessary going forward). The committee is also mindful of the legal authority that a developer or builder or both is liable for all damages proximately flowing from a breach (for construction or related defects), including damages for the continued deterioration of those areas.

The committee members believe that a responsible way to ensure that the common areas are finished and up to appropriate standards at the time they are transferred, as required by South Carolina law, is to enter into an agreement that includes, at a minimum, completion deadlines and monetary consequences for not meeting the deadlines. As a gesture of good faith, they request that you commit in writing, that the erosion repair, as set forth in Item 3 of Exhibit A1, be completed on or before February 15, 2010 (a two week extension, if necessary, up to and including March 1, 2010, in the event of unreasonable rainfall in the interim, could also be included). In addition, they request that the water intrusion defects be added to the repair/completion list in Exhibit A1 and addressed accordingly. Finally, they request that you commit in writing to complete (with a binding time schedule) all of the matters identified in Exhibit A1 (as amended), including, but not limited to, the work concerning the Streets, Curbs and Driveways set forth in Item 4 of Exhibit A1, as soon as possible but in no event later than June 1, 2010.

The committee members are interested in solving these issues amicably and in a timely way. They recognize, however, that there is nothing to stop individual homeowners or a similarly situated group of them, from bringing legal action against all of the relevant parties involved. To avoid such an occurrence, the committee members believe that immediate progress must be made. Please let me know if you have an interest in starting the process to solve these issues in the manner indicated. You or your attorney can reach me at (803) 548-2898. Thank you very much.

Sincerely yours,



John E. Peterson
Attorney at Law

CC: Members of the transition committee for Stonecrest Villas of Tega Cay Condominium Unit Owner's Association

EXHIBIT 1-E

EXHIBIT 1-E

From: Brock L. Fankhauser [mailto:brock@fpgcharlotte.com]

Sent: Tuesday, June 01, 2010 10:22 AM

To: 'Juniece Isola'; 'Sharon Allen'; arcoriag@aol.com; 'Sandra Ball'; 'Carolyn Barnes'; 'Jim & Debbie Barone'; 'Debbie Barone'; 'Linda Barry'; mmbelanger@hotmail.com; 'Debra Childers Boyd'; 'Rob_Denise Boyer'; 'Jan Canupp'; 'Van_Rhonda Cloninger'; 'Anne Cole'; 'Dave Cook'; 'Dan Cotter'; 'Bill_Marie Croft'; 'Michael Crossin'; 'John_Jan Davis'; 'Ann DeJarnatt'; 'Ellen Elliott'; 'Kristi Feller'; 'Flo Filak'; 'Bob_Susan Foster'; 'John Foster'; jgarthw@aol.com; 'Joe & Joyce Gendreau'; 'Rocky_Mary Germani'; 'Izzy Gonzalez'; 'jim_jean Griffo'; 'Karen Grove'; 'Alise Guinn'; 'Curtis Guinn'; 'Carole Harris'; 'Cindy Howard'; 'Paulette Iadanza'; 'Richard_Sue Koster'; 'Jeff Lawson'; 'Natalie & Jeff Lawson'; 'Pat Linder'; 'Mike Linder'; 'Nora Longobardo'; 'Lee_Pat Marshall'; 'Tydus_Jackie Mathis'; 'Bob_Caroline McCarthy'; 'Larry McCarty'; 'David_Anna McCorkle'; 'Edward_Stacy Mercado'; calink@comporium.net; 'Joe Moore'; 'Sandra Moore'; jfmrnc@yahoo.com; 'Louis Moscovitz'; 'Loren_Judy Musgrave'; 'Jim & Doreen O'Connell'; 'Doreen & Jim O'Connell'; 'Juontonio Pinckney'; 'Bernard Roush'; 'Josephine Sciacca'; 'Joë_Cindy Shewmaker'; 'Jawad Shoaib'; 'Dale_Liz Sine'; 'Bill_Betty Small'; 'Ron Spezia'; 'Ruth Spezia'; 'Joe & Susan Stingone'; 'James_Ruth Studebaker'; 'Lee Triplett'; 'Tim Turner'; 'Helen Van Etten'; 'Lou & Leonard Vance'; 'Al & Edie Vesting'; 'Marc Ward'; 'Len_Carol Weissberger'; 'Bill_Faye Whitaker'; 'Troy_Nancy Williams'; 'Judith Willis'; 'Harry_Louise Wolfe'; 'Thomas_Linda Yaniszewski'; 'Kathi Allen'

Subject: RE: WATER INTRUSTION UTMST IMPORTANCE TO YOUR HEALTH AND INVESTMENT AT STONECREST VILLAS

1. I will not be attending this evening's meeting but as your association president I did want to interject my thoughts.

This type of meeting is likely to draw more negativity to a situation that needs resolution. It was my understanding that at our last group meeting, a committee of 10 members was going to take an active role in moving in that direction. The committee decided that the most important step was obtaining legal counsel (I'll explain why below) followed by a test case repair followed by an engineer's recommended scope of repair. We already have one engineer's scope of repair based on months of deconstructive testing and examination; something that wasn't included with your attached engineering report. In fact, there were several assumptions in the Engineering, Design & Testing (EDT) report that are faulty. Nonetheless, I asked EDT to perform a more in-depth analysis and scope of repair and they declined the work. Remember, the only reason that we are contemplating a scope of repair different than the one proposed by my insurance carrier is that said scope may be impossible to achieve – both logistically and financially. In the event we can have an alternative repair that assures each of us a complete fix, we need to explore that option.

Our association needs legal counsel for numerous reasons. One, this is a complicated case and involves a litany of issues that will need to be addressed in legal fashion. Two, there are numerous threatened lawsuits and in the likely event one (or more) shall move forward, your association will be involved and will need representation. When we come to a solution on how to move forward, our association will need the protection that comes in legal documents drafted by authorized by counsel. That's just how the system works.

As your association leader, I don't appreciate the comment that I am only looking out for my

interests. That assertion is false. Regardless of the emotion that may get injected into our discussions, this remains my top priority.

Brock L. Fankhauser

President

Fankhauser Property Group, Inc. , an EPCON Communities Developer

300 East John Street, Suite 126

Matthews, NC 28105

704.844.8711 o

704.844.0188 f

From: Communications Stonecrestvilla [communications.stonecrestvillas@yahoo.com]
Sent: Thursday, September 04, 2008 2:53 PM

To: Distribution List

Cc: Brock Fankhauser; Marissa Harris

Dear Stonecrest Neighbors:

Now that hurricane season is upon us, I wanted to address our position as it pertains to water intrusion into your home.

While water entering your home would be considered unusual, it can occur during extreme weather events – including the record rain event two weeks ago. The fact of the matter is our homes are not designed to prevent rainwater intrusion during extreme rainfalls (e.g., sideways rainfall at 2" per hour).

The purpose of this notice is to inform you that you will be responsible for addressing any water that enters your home during a significant rain event. This may include wiping water from a window sill or, on the extreme end, calling a water cleanup company, if necessary, to dry water from carpet, drywall, etc.

If it is determined that the intrusion of water is caused by a construction defect, we will remedy the situation and reimburse you for any out-of-pocket expenses. The key, however, is treating the affected areas as soon as possible and removing all traces of moisture.

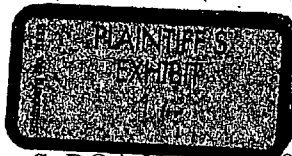
Thanks, in advance, for your time and consideration.

Brock L. Fankhauser

President

Fankhauser Property Group, Inc., an EPCON Communities Developer

300 East John Street, Suite 126



Becky

From: Brock L Fankhauser [brock@fpgcharlotte.com]
Sent: Thursday, March 29, 2007 12:59 PM
To: 'Izzy'
Cc: 'Val'; 'Izzy Work'; sales@fpgcharlotte.com; miles@fpgcharlotte.com; garrett@fpgcharlotte.com; alice@fpgcharlotte.com
Subject: RE: Our Feedback - Gonzalez, Unit 709, Stonecrest

First, I want you to know that we will make this right. While your new home has not been an example of our standards for quality, it will be. So will the other 89 condominiums at Stonecrest Villas.

I also want you to know that subsequent to our conversation on Sunday I informed Miles, Garrett and Alice (my new Director of Construction) our of meeting and the disappointment you expressed. For the last 3 1/2 days we have invested many hours to make sure this home meets our standards of quality control. I believe that by the time you have completed your New Home Orientation on Friday you will have seen immense progress.

Clearly, there are no excuses for our poor performance to date. We will only commit to you that you should expect the same levels of workmanship and detail found in all of our other units including the models.

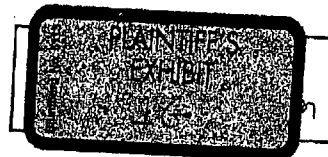
I appreciate your cooperation. It's not often that we have customers go to the extent of providing us with a detailed punch list - most of which is accurate.

While there may be a few items incomplete by tomorrow afternoon, the vast majority will be finished. I look forward to your comments following the Orientation. Until that time, I will remain in constant communication with my trusty staff and request periodic updates.

Believe me, your repeated communications are viewed as an aid. By now means is it a distraction or motivation not to perform. Quite the contrary.

I will be on site all weekend if you want to visit. Again, we will make this right!

Brock L. Fankhauser
 President
 Fankhauser Property Group, Inc., an EPCON Communities Developer
 300 East John Street, Suite 126
 Matthews, NC 28105
 704.844.8711 o
 704.844.0188 f
 www.epconcommunities.com



From: Izzy [mailto:izzygonzalez@comporium.net]
Sent: Wednesday, March 28, 2007 10:26 PM
To: brock@fpgcharlotte.com
Cc: Val; Izzy (Work); Stonecrest Villas; miles@fpgcharlotte.com
Subject: Our Feedback - Gonzalez, Unit 709, Stonecrest

Brock, we're not sure whether to laugh in amazement or cry in frustration! We stopped by the unit today to assess the progress of work to bring the unit up to the standards that we've seen in your other properties and the onsite model. I'm not sure that I can convey our reaction to the state of things just two days before our re-scheduled walk through date on Friday. The frustration is so much more poignant because we thought that things would rapidly improve after our conversation with you last Sunday.

It certainly appears that there has been a major change with regards to the quality of finish work to all of

11/12/2010

GONZALEZ SUPP000381

EXHIBIT 2

EXHIBIT 2

200900053252
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
03-03-2009 At 01:06 pm.
DEED 23.00
State Tax .00
County Tax .00
DR Vol 10597 Page 125 - 141

201100147410
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
10-11-2011 At 10:02 am.
DEED REECORD 23.00
State Tax .00
County Tax .00
DR Vol 12200 Page 211 - 227

**CORRECTION
EIGHTH AMENDMENT TO THE MASTER DEED**

OF

STONECREST VILLAS OF TEGA CAY

HORIZONTAL PROPERTY REGIME

FEBRUARY 24, 2009

**RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE**

DATE 10-11-11
TAX MAP NO. 644-7-1-81, 81, 82, 83
INITIALS SICK

**RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE**

DATE 3-3-09
TAX MAP NO. 644-1-1-28
INITIALS TS / NA

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

This Eighth Amendment to the Master Deed of Stonecrest Villas of Tega Cay HPR dated February 24, 2009 and recorded March 3, 2009 in Book 10597, Page 125 is being re-recorded to correct the Map No. from 9150 10 and the Phase Nos. RGA Vol from 106d 2, This the 30 day of Sept 2011. Julie B. Glenn (SEAL) Julie B. Glenn

EXHIBIT G

CONSENT OF CONDOMINIUM ASSOCIATION

TO EIGHTH AMENDMENT TO THE MASTER DEED OF
STONECREST VILLAS OF TEGA CAY HORIZONTAL PROPERTY REGIME

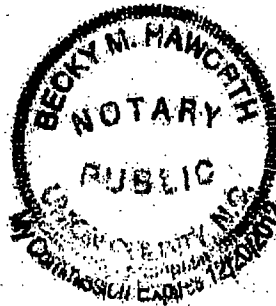
Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., for good and valuable consideration the receipt whereof is hereby acknowledged, does hereby agree and consent to and does on behalf of itself and all its present and future co-owners, accept all the benefits and all the duties, responsibilities, obligations and burdens imposed upon it and them by the provisions of the Seventh Amendment to the Master Deed together with all the Exhibits hereto and as set forth in the "Act".

STONECREST VILLAS OF TEGA CAY CONDOMINIUM
OWNERS ASSOCIATION, INC., A SOUTH CAROLINA
NON-PROFIT CORPORATION

BY: Brock L. Fankhauser
BROCK L. FANKHAUSER, PRESIDENT

Signed, Sealed and Delivered
In the presence of:

Doreen L. Hays
Witness
Alex M. MacDonald
Witness



STATE OF NORTH CAROLINA

COUNTY UNION

Personally appeared before me Doreen L. Hays (First Witness) and made oath that he/she saw the within named President sign, seal and as his act and deed, deliver the within written document, and that he/she with Alex M. MacDonald (Second Witness), witnessed the execution thereof.

Witness my hand and official seal this the 24 day of February, 2009.

Doreen L. Hays
First Witness

Sworn to before me this 24 day of February, 2009.

Becky M. Haworth
Notary Public

Print Name: Becky M. Haworth

My commission expires: 12/20/2012

[NOTARY SEAL]

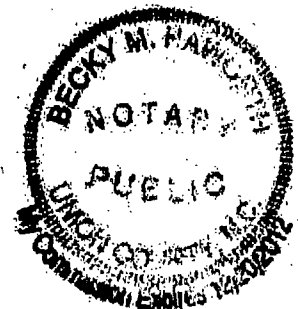


EXHIBIT 3

EXHIBIT 3

1 and it's a consent of the condominium association.

2 Okay?

3 As of the date this is filed,
4 Mr. Moscovitz, is Mr. Fankhauser serving on the
5 board of directors?

6 A. No, he wasn't.

7 Q. Who is? As of the date of October
8 2011, were you on the board?

9 A. Yes, I was.

10 Q. Who was on the board with you?

11 A. Dave Cook and Paulette Iadanza.

12 Q. And that document doesn't appear to be
13 signed by you?

14 A. No, it doesn't.

15 Q. Was a vote taken to permit this to
16 occur?

17 A. I'm not aware of any.

18 Q. You're aware of the master deed in the
19 community, correct?

20 A. Yes, I am.

21 Q. In fact, earlier in today's testimony,
22 you testified about a declarant control period and
23 a 75-percent figure?

24 A. I believe so, yes.

25 Q. Would you agree with me that as of

1 October of 2011, that 75 percent of this community
2 had been sold?

3 A. Yes.

4 Q. So as the association -- excuse me, let
5 me rephrase.

6 Under the master deed, shouldn't the
7 community have been consulted before an amendment?

8 MR. POWELL: Object to the form.

9 THE WITNESS: I don't know the answer
10 to that.

11 BY MR. HALFORD:

12 Q. But you would agree with me that your
13 signature does not appear on this document.

14 A. No, it doesn't.

15 Q. How about Ms. Iadanza's signature?

16 A. There's nobody -- only Brock
17 Fankhauser.

18 Q. Why is Brock Fankhauser signing a
19 document, when he's not on the board?

20 A. To the best of my knowledge, this
21 amendment was only adding more -- adding more units
22 into the association. I called it a supplement, he
23 called it an amendment. It doesn't change the
24 terms of the overall master deed or bylaws.

25 Q. But it permits more construction in

EXHIBIT 4

EXHIBIT 4

What Is The Problem?

Numerous unit owners within the Stonecrest Villas community are experiencing, or have reported, moisture intrusion since approximately November 2009.

Our investigation indicates that moisture intrusion and resulting damage is *systemic* and likely has been *ongoing* from construction.

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5-A

EXHIBIT 5-A

P. DAVID MUSGRAVE 12-01 56-7033/2422 10100
1414 E. SECOND ST. 5126X0977
DAYTON, OH 45403
DATE 12.15.06
Stoucrest Wilks on
PAID TO THE ORDER OF Tega City \$ 5000
FIVE THOUSAND & NO/100 DOLLARS
Wright Patt.
MEAT deposit
124 22794081 563800399 10100

DEPOSIT TICKET

PURSER & GLENN, PLLC
ATTORNEYS AT LAW - TRUST ACCOUNT
278 EAST W. FARRIS BLVD. SUITE 200
CHARLOTTE, NC 28213

BR&T

DATE	CURRENCY	COIN	DOLLARS	CENTS
3/5/07				
Musgrave 78,000.00				
TOTAL FROM OTHER SIDE				
PLEASE RE-ENTER TOTAL HERE 78,000.00				

Musgrave

13 2285658220052000701602053

Wright-Patt
CREDIT UNION, INC.
P.O. Box 286, Fairborn, OH 45324-0286

CASHIER'S CHECK

No. 00251364

557940
2422

** Seventy-Eight Thousand and 00/100 DOLLARS **

03/01/07

PAY EXACTLY 78,000 dols 00 cts

\$78,000.00

TO THE ORDER OF

PURSER & GLENN, PLLC
RE: P. DAVID MUSGRAVE
1414 E SECOND
DAYTON OH 45403-1023

THIS CHECK VOID 90 DAYS AFTER DATE

Carol Summers
AUTHORIZED SIGNATURE
Edward V. Brumfield
AUTHORIZED SIGNATURE

00251364 242279408 9997964827

EXHIBIT 5-B

EXHIBIT 5-B



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 SC limited liability company

By: Louise Hume 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

EXHIBIT 6

EXHIBIT 6

1 represent who have refused to pay their
2 assessments, do you?

3 A. I don't have anything more current than
4 January.

5 Q. Okay. But, similar to you, the
6 Plaintiffs would be paying assessments for a
7 reason. Isn't that right?

8 A. Yes.

9 Q. And what would that reason be?

10 A. Their reason to pay the assessments
11 would be to provide the association with the money
12 to maintain the common elements, including water
13 and sewer services for everybody in the community.

14 Q. In fact, when we were looking at the
15 master deed a minute ago, Section 5.4 (a), I think
16 it places the association as the responsible party
17 for maintaining the common elements; doesn't it?

18 A. Yes, it does.

19 Q. How is the association going to do that
20 without funding?

21 A. It can't.

22 Q. But it does have funding.

23 You stated that you pay your dues and
24 assessments, correct?

25 MR. POWELL: Object to the form.

EXHIBIT 7-A

EXHIBIT 7-A

1 Q. Let's look at it. The point is, this
2 is data that you relied upon?

3 A. Some, yes. Some of it, yes.

4 Q. And who determined the repair scope?
5 Your affidavit lists a number of people that have
6 been consulted. Who has determined ultimately the
7 repair scope that's going to occur here at
8 Stonecrest?

9 A. It has not yet been determined.

10 Q. The repair scope hasn't been
11 determined?

12 A. Correct.

13 Q. Do you know who is going to serve as
14 the general contractor?

15 A. No, not selected.

16 Q. So the general contractor has not been
17 selected.

18 But these figures were at least
19 consulted in coming to the conclusions in your
20 affidavit; is that correct?

21 A. Yes.

22 Q. What about Mr. Whitley? Did you ever
23 review any of the work that he's done on this case?

24 A. Yes.

25 Q. And, Mr. Whitley, if I recall, he was

EXHIBIT 7-B

EXHIBIT 7-B

1 BY MR. HALFORD:

2 Q. But you do reference 'delay in repairs
3 is a major obstacle.

4 A. Yes.

5 Q. And these are words that you chose? Or
6 did your lawyer choose those words for you?

7 I'm just curious, because it says:
8 Delay in repairs is a major obstacle of making the
9 units marketable.

10 Is this your sworn statement?

11 A. Yes, this is my sworn statement. There
12 are many units in here that are for sale, and there
13 are others who have expressed that they would like
14 to sell, but it's not very easy to sell them now.

15 And fixing these units will remove a
16 major obstacle to making them marketable. They
17 will be ultimately much more marketable when they
18 don't leak.

19 Q. When they're fixed.

20 A. That's what this says. And I stand
21 behind that, yes.

22 Q. Okay. I just want to make sure I
23 understand your statement.

24 A. That's my statement.

25 Q. Is it your opinion today that, looking

1 at that last sentence, these units aren't
2 marketable?

3 You live here, Ms. Iadanaza.

4 A. It's an obstacle to them being
5 marketable. Yes, it is an obstacle, the water
6 intrusion. Yes, it is.

7 MR. HALFORD: I don't believe I have
8 anything else. I appreciate your time today. If
9 Mr. Powell has any questions, if you will answer
10 them.

11 EXAMINATION

12 BY MR. POWELL:

13 Q. Ms. -- it's Iadanaza --

14 A. Thank you.

15 Q. -- correct?

16 A. Yes.

17 Q. Okay. I just want to make sure I've
18 got the pronunciation right.

19 I'm going to be very brief.

20 Mr. Halford has gone over with you in
21 some amount of detail what I believe has been
22 marked both Exhibit 626 and 584, and that is simply
23 your affidavit that was filed on October the 12th
24 of 2012.

25 Throughout the questioning today, I

EXHIBIT 7-C

EXHIBIT 7-C

1 Q. -- and that you believe the settlement
2 is fair and reasonable.

3 The documents that we've discussed
4 today -- I have shown you some e-mails from Brock
5 Fankhauser that you said you received --

6 A. Yes.

7 Q. -- about water intrusion and protecting
8 your investment at Stonecrest. Do you remember
9 that one --

10 A. Yes.

11 MR. POWELL: Object to form.

12 BY MR. HALFORD:

13 Q. -- dated June 1st, 2010?

14 A. I don't know. I would have to see it
15 again to know that that's the date on it.

16 Q. I don't want to dig it out, because I
17 want to give these other lawyers some time.

18 A. Okay.

19 Q. You personally got an e-mail about
20 water intrusion at your unit, right?

21 A. Yes.

22 Q. And you mentioned earlier there was a
23 December 18th, 2009 report. You were aware of that
24 report, correct?

25 A. Yes.

1 Q. You were aware of that before you
2 became a board member; weren't you?

3 A. Yes, yes.

4 Q. How about the Building Diagnostics
5 report that we referenced in January 14th, 2010;
6 were you aware of that report too?

7 A. Yes, I believe so.

8 Q. And whether or not you were aware of
9 the Peterson consultation that everybody
10 contributed money to -- you heard Mr. Moscovitz
11 testify to that.

12 MR. POWELL: Object to the form.

13 THE WITNESS: I did, but I would like
14 to say that I contributed money, and it didn't have
15 anything to do with the transition committee which
16 met with Mr. Peterson on the transition issue.

17 That money was for a group of concerned
18 citizens to seek counsel with respect to what
19 needed to be done vis-a-vis water intrusion, not
20 transition. They are two separate issues. I did
21 not contribute to Peterson.

22 BY MR. HALFORD:

23 Q. I understand.

24 A. Okay.

25 Q. I saw a deposit --

EXHIBIT - 9

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Plnckney, 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

Louis Moscowitz Affidavit

The undersigned, being first duly sworn, deposes and says:

1. My name is Louis Moscowitz. I am over the age of 18. I have personal knowledge of the facts contained in this affidavit. I have never been convicted of a felony or a crime of dishonesty.

2. I am the treasurer of the Board of Directors for the Stonecrest Villas of Tega Cay Condominium Owners Association.

3. I am providing this affidavit in response to the Court's verbal order to verify the payments the COA has made to the Master Association.

4. The spreadsheet attached as Exhibit A demonstrates how the COA calculated the figure of an approximate \$55,000 overpayment. This amount represents a contention by the COA. To be clear, the COA paid the amounts the Master Association invoiced it. The COA did not pay more than the invoiced amount. The COA contends the invoiced amounts were too high based on the COA's analysis of the Master Deed pertaining to the Master Association as well as the Master Association's actual expenditures.

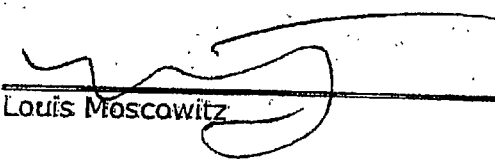
5. This affidavit verifies the accuracy of the figures stated in Exhibit A attached hereto. I hereby verify as accurate the figures in the following lines based upon my own personal knowledge: "Assessment



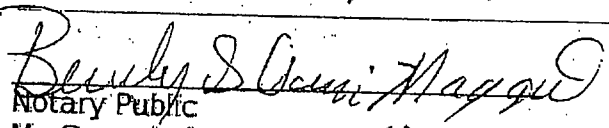
Billed to Stonecrest Villas" and "Assessment Paid/Billed." The "Assessment Billed to Stonecrest Villas" line represents the amount the Master Association billed to the COA. The "Assessment Paid/Billed" line represents the amount the COA paid to the Master Association, with the exception of 2011. The COA did not pay the Master Association in 2011. Otherwise, the the two amounts are the same because the COA only paid what the Master billed to it.

6. The remainder of the figures, including the Master Association's actual expenses, were derived from and with the assistance of counsel in reliance upon documents provided by the Master Association, which were all produced to the plaintiffs a year ago.

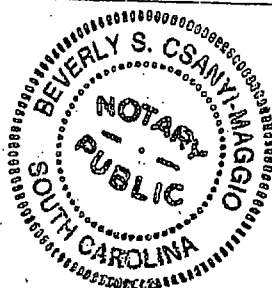
This the 28 day of September, 2012


Louis Moscovitz

Sworn to and subscribed before me,
This the 27 day of September, 2012.


Notary Public

My Commission Expires: 08-18-2019



**STONECREST MASTER ASSOCIATION
COMPARISON BUDGET VS ACTUAL ASSESSMENT RECONCILIATION
FOR SETTLEMENT PURPOSES ONLY**

BUDGETED ANNUAL EXPENSES
ACTUAL ANNUAL EXPENSES
BUDGET EXCESS

2007	2008	2009	2010	2011
165,000.00	160,700.00	152,575.00	44,125.00	39,500.00
31,975.62	30,986.58	38,718.77	33,135.52	44,161.51
\$133,024.38	\$79,713.42	\$113,856.23	\$10,989.48	\$4,661.51
21,346.43	29,303.42	28,785.30	8,661.30	7,835.94

ASSESSMENT BILLED TO
STONECREST VILLAS

ASSESSMENT BASED ON
ACTUAL EXPENSES INCURRED

2007	2008	2009	2010	2011
\$31,975.62	\$30,986.58	\$38,718.77	\$33,135.52	\$44,161.51
5,438.82	7,116.35	7,543.70	6,925.96	9,659.88
\$26,536.80	\$63,870.23	\$31,175.07	\$26,209.56	\$34,501.63

Total Expenses
Less Walmart

Net Without Walmart

Total Expense to be Shared

Correct Stonecrest Villas Multiplier

Corrected Annual Assessment

26,536.80	63,870.23	31,175.07	26,209.56	34,501.63
22.3369%	22.3369%	22.3369%	22.3369%	22.3369%
\$5,927.50	\$14,266.63	\$6,963.54	\$5,854.40	\$7,706.59

Assessment Paid/Billed
Corrected Assessment

Overpayments/Overbilling (2011)

21,346.43	29,303.42	28,785.30	8,661.30	7,835.02
5,927.50	14,266.63	6,963.54	5,854.40	7,706.59
\$15,418.93	\$15,036.79	\$21,821.76	\$2,806.90	\$128.43

**TOTAL OVERPAYMENTS
2007-2010**

\$55,084.37

Walmart contribution = Property Insurance + Landscaping+ Maintenance, & +Utilities
Times 22.6%, multiply result times 5%, then add both numbers together

State of South Carolina.,)
)
)
County of York.)

In the Common Pleas Court
of York

Case No.: 2010-CP-46-02326

Juontonio Pinckney.)

Plaintiff.,)

-vs-)

Brock L. Fankouser.,)
et al.,)

Defendants.)

Transcript of Record

Motion for Summary Judgment
On Cross-Claim for
Indemnification

December 19, 2012
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

A P P E A R A N C E S:

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ORIGINAL

I-N-D-E-X

WITNESS

BY:

PAGE NO.

No Witnesses were examined.

E-X-H-I-B-I-T-S

NO.

DESCRIPTION

ID.

EVD.

No Exhibits were received into the record.

1 (COURT IN SESSION WEDNESDAY, DECEMBER 19, 2012 AT 9:33
2 A.M..)

3 THE COURT: Thank you. Good morning, everybody take
4 your seats please. We got some motions, I think two, in
5 the Pinckney versus Fankhouser, et al. I think it's Mr.
6 Halford's motion for Summary Judgment and a motion by
7 Fankhouser and Fankhouser Property Group for summary
8 judgment. Are those --

9 MR. DRESSLER: There is one before that which is the
10 COA's Motion for Partial Summary Judgment on the settlement
11 essentially.

12 THE COURT: All right. That's right. Well let's hear
13 that one first then.

14 MR. DRESSLER: I might suggest mine will probably take
15 the least amount of time.

16 Before I begin, there is a matter of cleaning up an
17 administrative issue. I have with me, or I had it with me,
18 a proposed order for you to sign on the plaintiff's Rule 60
19 motion. If I may I'd like to - when I can find it bring it
20 to the bench for signature. Mr. Halford and I agreed on
21 the form of it.

22 THE COURT: Okay.

23 MR. DRESSLER: Your Honor, we're here today on the
24 COA's Motion for Partial Summary Judgment. This does not
25 implicate or attack the standing issue that you've already

1 ruled upon. I do want to point out as a matter of
2 procedure that I raised the standing issue I think
3 initially through a motion for judgment on the pleadings.
4 The plaintiff's then raised the standing issue on the
5 motion for summary judgment. You of course had ruled that
6 both parties have standing to assert essentially the same
7 damages. That obviously raises some contention.

8 THE COURT: I'm not happy about it but that's the way
9 I see it.

10 MR. DRESSLER: I understand. So the lawyers being as
11 crafty as we lawyers can be sometimes have tried to revise
12 a solution to resolving at least a huge chunk of this mess
13 while respecting - while respecting your ruling.

14 So what we have done is crafted a Mediate Settlement
15 Agreement, a part of it is in the record. I have a
16 complete copy which I'll tender to the court and ask that
17 it be filed stamped and made a part of the record for your
18 consideration. The Mediate Settlement Agreement includes
19 the COA, the defendant developer general contractor and
20 it's owner Mr. Fankhouser. It also includes all of the
21 third party and forth party defendants.

22 The collected consideration to be paid is a little
23 over 2.6 Million Dollars. I will tell you as a quick aside
24 that its - I'm hard pressed to think of another case in
25 which I've had to fight so hard to take 2.6 Million Dollars

1 from a bunch of insurance companies in a construction case.
2 And not withstanding that, the idea was that they would pay
3 us this money, but kind of in a interpleader sense if you
4 will. They are all concerned that unless there is some
5 final adjudication on the merits of this exterior damages
6 claim that essentially they're all going to be kind of left
7 out there having to fight against the plaintiffs where the
8 plaintiffs could bring suit against the subcontractor
9 because to date they haven't brought suit against the
10 subcontractors. So obviously they're not willing to pay a
11 penny until we get some finality to this.

12 So the summary judgment said, and what I am proposing,
13 is that if the COA has settled the case, which it has
14 subject to your ruling, then that ought to extinguish the
15 exterior damages claim as a matter of law. And so I
16 understand that both parties have standing, and candidly I
17 have not been able to find any case law that helps guide us
18 through this situation at this time, so I don't have any
19 particularly sage advice I'm afraid to admit, and I would
20 invite any of these other lawyers who might have some
21 advice for you to give it.

22 But it just strikes us that if both parties have
23 standing, and if all these defendants would prefer to do
24 business with the COA, presumably because the COA is the
25 one with the contractual obligation to repair all these

1 units, and presumably in your prior order you had said that
2 only one recovery can be had, and that recovery enures to
3 the benefit of the COA, then it just makes good common
4 sense the COA ought to be able to settle it. But of course
5 in the process we need a ruling from you that says the
6 settlement extinguishes the exterior damages claim.

7 The only point of clarification in this settlement is
8 that we have carved out a portion of the release. We are
9 not releasing the certain parties, we're not releasing them
10 from geo-technical soil - some soil issues, so this is
11 really designed to get at the building themselves but it
12 does include gravel underneath the buildings, it just
13 doesn't include the dirt. We'll have to deal with dirt on
14 another occasion.

15 I would - The last point I want to make, I have
16 submitted an affidavit, it's for the summary judgment. I
17 did that again quite candidly because the brain trust of
18 lawyers that are trying to consummate this transaction
19 thought that that would be a good idea. However, I would
20 caution the court into opening the door into an inquiry
21 into whether it's a good settlement or not. I will
22 candidly admit that it will probably be impossible for you
23 to admit, or for you to rule as a matter of law, that this
24 is the only settlement that can be had. I would love for
25 this neighborhood to get Five Million Dollars, Six Million

1 Dollars; I'd love for them to get another Four Hundred
2 Thousand Dollars, but the reality is with all the coverage
3 issues and causation issues and cost of litigation, that my
4 board feels that 2.6 Million Dollars is a reasonable
5 settlement. And so if your going to look into the
6 substance of the settlement then I would suggest that the
7 standard that you would look at is whether it's a
8 reasonable settlement under the circumstances. And while I
9 understand that, you know, Four Million Dollars would be a
10 reasonable settlement, Five Million Dollars would be a
11 reasonable under all the circumstances so too the 2.6.

12 But I don't think that that's really the issue. I
13 don't think that we should be getting into a factual
14 inquiry of what the money is intended to cover, what the
15 repairs are going to be. None of that's really at issue.
16 What is at issue are the damages, and whether I have the
17 right to settle the case. If I have the right to settle
18 the case, then I can settle it for a Hundred Thousand
19 Dollars. If we were in the state of North Carolina and
20 there was no insurance coverage on a case like this we
21 probably would be settling it for about a couple hundred
22 thousand dollars, but thank God we're in South Carolina and
23 we have much better law for plaintiff's on insurance. And
24 so to open the door to an inquiry as to whether it's a good
25 settlement or a bad settlement or what repairs are gonna be

1 made, I just think goes down a very dangerous path. And
2 one that is going to essentially necessarily mean that we
3 try this case with two sets of damages to a jury, and I
4 just think that that's gonna be bad for everybody. I
5 appreciate your time, Your Honor.

6 THE COURT: Thank you.

7 Mr. Halford, on behalf of the plaintiffs?

8 MR. HALFORD: Yes, sir. May it please the Court.

9 Your Honor, with regard - I've practiced my arguments
10 if I say under Rule 41 I think this court has some
11 discretion if you're gonna approve this settlement, and
12 again I'll be candid with the court, none of my plaintiffs
13 have direct claims against any subcontractor we are trying
14 here. Its six defendants but that class of defendants
15 didn't include the subcontractors. But I think under Rule
16 41 you can impose the terms, you don't have to take this as
17 a package deal as presented to you.

18 And the problem with the settlement here is that it
19 really is as I understand it I'm not even sure it's
20 properly before the court. I saw the motion withdrawn, I'm
21 not aware of it having been filed with a new motion to
22 approve this, I saw an email and we're here so I'll leave
23 that to Your Honor. However our problems with the
24 settlement is that they're seeking an adjudication on the
25 merits after two years and hundreds of thousands of dollars

1 which every time we look somewhere whether it be soils,
2 gravel, weather resistant barrier, every time we find a
3 problem we want to stick our head in the ground, and that's
4 what that board is doing. And he just told you we're gonna
5 carve out issues for further litigation. These are issues
6 that were pleaded by both parties in this case, by my
7 plaintiffs first and then by them, so that's the first
8 thing I would bring to the court's attention. If this
9 court does approve a settlement, and again my plaintiffs
10 don't have a problem with the release of the
11 subcontractors, I don't have standing in this thing, that
12 money needs to go to David Hamilton's office here at the
13 Clerk of Court of York County. He's bonded and licensed
14 and insured for that. But we've got a COA here whose over
15 paid a master association about Fifty Five Thousand
16 Dollars. In the last two years they have not paid the
17 master association. Now we seek to do repairs on top of a
18 re-roofing project for the entire community where our
19 expert found last week was a re-cladding of code
20 violations, and I will get into my summary judgment here in
21 a moment with Mr. Powell.

22 But deep down in this pack of persons offering
23 settlement, and I would compliment Mr. Dressler, he is
24 effectively sought joint and several contribution among
25 possible tort fees is release of EPCON, is release of FPG

1 and Brock Fankhouser, and these people bear the most
2 culpability in regard to architectural drawings and under
3 the actual construction for the problems that exist up
4 there. There are fifty-three condominium homes of eight or
5 nine that are suffering from water intrusion up there, so,
6 I cannot agree with you, I don't know how you can't look at
7 whether or not the settlement will be sufficient to fix the
8 homes or not, because if it's not, who bears that burden?

9 This is a age fifty-five plus community. A lot of
10 these people are retired or are on disability and they
11 can't afford that number one.

12 Number Two: You know its filed under a Rule 41 and
13 they're asking for summary judgment. They are asking this
14 court - this is the standing argument yet again before you
15 for the fourth time and your ruling as of the September
16 27th - I hope I'm getting the date right - this is the law
17 of this case now,, I don't think either one of us like it
18 necessarily but it's the court's ruling. So they're asking
19 you to make and now reverse that ruling.

20 And they are asking for the court's grace upon this
21 settlement and we all know what grace is; you know it's
22 defined as un- meritorious favor, that's what they're
23 asking for in the face of unknowns of such proportion that
24 I think the settlements unwise. I got no standing against
25 the subcontractors, plaintiff's have no intentions of

1 bringing suit against the subcontractors. I understand how
2 much work has gone into procuring a 2.6 Million Dollar
3 settlement, but the problem with it is they're seeking
4 adjudication on the merits where we've far surpassed
5 motions to dismiss and summary judgment in this case after
6 two years of litigation, hundreds of thousands of dollars
7 they want an adjudication on the merit that extinguishes
8 all damage claims. And if you look at that under summary
9 judgment standard even though it was filed under 41, they
10 just told you, they want to carve out subsurface claims for
11 future date of litigation. I think it's improper, I think
12 the court should reject the proposal. If the court does
13 approve the proposal I think you should do so under terms
14 and conditions imposed by this court. And that's my
15 position on that.

16 THE COURT: You're leaving me a little confused. I
17 thought at our last hearing you indicated you had no
18 objection to the settlement other than as long as it didn't
19 include the soil. Did I misunderstand you?

20 MR. HALFORD: Yes, sir. And we object to the general
21 contractor being released, to EPCON being released and
22 Brock Fankhouser. Again these are the parties, and we'll
23 get into what the experts say in just a moment. But again
24 they shouldn't be seeking an adjudication on the merits.
25 As to the damages, as to the common elements, and you're

1 right, we did say that about the soils, but I never said
2 anything about releasing FPG. I think they need to stay in
3 this case. And that's what we're focusing on here, Judge.
4 If you look at one of the prior orders in the pleading of
5 the case before this one there can only be one recovery.
6 So they are in essence seeking an adjudication on the
7 merits. Thank you.

8 THE COURT: So it's better to not get some money at
9 this stage than to get something?

10 MR. HALFORD: I would think it's better that the
11 damages should be left to the trier of fact in this case.

12 THE COURT: Okay. Yes, sir.

13 MR. DOUGALL: Your Honor, Mr. Dougall representing one
14 of the subcontractors, actually two of the subcontractors,
15 Procar and Procar II. The dilemma proposed by Mr.
16 Halford's argument is he basically wants twelve members of
17 a homeowners association to have a veto over what happens
18 every day in court. The people that own the exterior of
19 those buildings, the board of directors, and I sort of
20 disagree with Mr. Dressler under the business judgment
21 rule, which is well litigated in this state, has the right
22 as the owner of those elements of the property to settle
23 these claims. They can only get one recovery. They may
24 both have standing, but the people that ultimately own it
25 have reached a reasonable settlement under the

1 circumstances, and what Mr. Halford is asking is that you
2 totally disregard the business judgment rule and hold
3 everybody else hostage on a 2.6 Million Dollar settlement
4 which is more than fair and reasonable under these
5 circumstances, because twelve of the members of this
6 association don't like it.

7 That is just insane. It doesn't make any sense
8 whatsoever. You've got reasonable people who have spent
9 several days now mediating this, they've taken into account
10 everything other than there may be a soils issue out there;
11 that's been carved out. But as to the exterior envelopes of
12 these buildings themselves a reasonable settlement has been
13 reached and all we're asking is that the court look at
14 that, say that the homeowners association board has the
15 right to enter into that settlement and ninety percent of
16 this case is gone. If twelve individuals want to pursue
17 their claims for fraud and whatever else against other
18 parties that's fine, but they should not be allowed to keep
19 all of these other parties in it on the exterior envelope
20 issues just because they're not happy.

21 THE COURT: Any followup to that, Mr. Halford?

22 Briefly.

23 MR. HALFORD: Briefly. Well what Mr. Dougall has
24 argued is what I argued previously before the court,
25 ownership. Who holds the legal estate? And I did cite a

1 case in my brief, and I apologize to the court because I
2 missed it and I looked for a law case in Westlaw forever
3 and I know everybody else did too. But in terms of
4 equities here who really owns the exterior of these homes?
5 He just told you the board did. The free members that are
6 on that board, yes they own the exterior, so does every
7 member of this community as undivided joint tenants. So
8 who holds legal estate? In the case that I did cite in my
9 memorandum which is the Powers case, and I went into equity
10 as guidance for the court, states basically that he who
11 holds the legal estate and it's first entitlement priority,
12 and I'm not trying to beat that horse, I lost that in a
13 couple of hearings back, but the fusion of the two, putting
14 the two together, the persons that own the legal interest
15 is legal estate interest and who are first in priority in
16 time makes the settlement call.

17 THE COURT: Well what if there is a split in the -
18 maybe this goes back to my standing matter though - a split
19 in those holding legal - your clients and the COA, if all
20 of the homeowners own in common jointly but where there is
21 a split in determining - and I know you said priority and
22 you all did sue first - where do you come down as far as
23 your clients - Twelve, is that how many you have?

24 MR. HALFORD: Yes, sir.

25 THE COURT: Versus what, is it eighty-four units?

1 Your clients, twelve; your interest of twelve individual
2 homeowners as opposed to a group that represents not only
3 those twelve but the other seventy-two, where is the
4 fairness and equity in not - and I hate to use the word
5 holding hostage - but in not letting the people who have
6 the responsibility to see that this is fairly and
7 ultimately concluded, I'll put it like that, to the best of
8 satisfaction which nobody can get a hundred percent, we
9 understand that. How do you come down on those - the
10 balancing of those equities?

11 Use the term equity. Obviously you don't do math, you
12 don't say twelve as to seventy-two or twelve as to eighty-
13 four, you don't do that. But how does the court look at the
14 equity between two people with standing and one set of
15 damages as to who can control when it's resolved? I mean
16 it's got to be somebody. I'm very concerned about and hope
17 that the courts will - in case I have another one of these
18 cases - will give us some more guidance. But where there
19 is no guidance, do you have some sort of a load stone that
20 the court can go to resolve that dilemma? I'm not going to
21 call it a dispute because I don't think it's a dispute - it
22 may be - but it's more of a dilemma from the court's
23 standpoint.

24 MR. HALFORD: I don't know if I would call it a load
25 star, I searched forever and the case that I have cited in

1 my memorandum which is the Powers case basically what I've
2 said is the COA, here the nonprofit entity, owns no legal
3 interest, no legal estate interest. All of the people out
4 there in this community own the legal estate interest
5 including my twelve but I think that's how you decide who
6 owns it. And yes the board is in charge and under the
7 master deed is invested with the power to administer and
8 maintain the common elements. Its their job to fix it.
9 But at the same time he who seeks equity, Your Honor, must
10 do equity. These homes have been leaking all of a sudden
11 we have an emergency rush because the trial is going to be.
12 These homes were leaking for two years.

13 THE COURT: Let's don't - I understand all of that.

14 MR. HALFORD: I'm trying to be brief.

15 THE COURT: All right, let's move on to the next one
16 which is your motion for summary judgment?

17 MR. HALFORD: Yes, sir.

18 THE COURT: And I'll take it under advisement and look
19 at your proposed order. Do I have a copy of the proposed
20 order?

21 MR. DRESSLER: May I approach?

22 THE COURT: Please.

23 (DOCUMENTS RECEIVED UP BY THE COURT.)

24 THE COURT: Thank you.

25 MR. HALFORD: May it please the court.

1 Your Honor, this motion was brought for summary
2 judgment as to the two elements in the plaintiff's
3 complaint. One was the breach of duty. If you recall that
4 the developer transitioned this community on or about July
5 1, 2010 to the control of the board, or, I would argue
6 frankly to the control or to the owners in this community,
7 fifty-three of those eighty-nine homes suffering from water
8 intrusion. The court is well aware that under the Queens
9 Grand decision in this state the developer does owe the
10 duty to tender the common elements in a state of good
11 working order. We've had eight experts in this case now,
12 seven forensic reports, and while nobody nails a smoking
13 gun in one instance of what causes I will get to the
14 experts in just a minute, the precise cause of water
15 intrusion is fifty-three of these homes are suffering from
16 water intrusion.

17 THE COURT: Well let me just stop you there a minute.

18 I know this is cloudy sort of situation, but you only
19 represent twelve and you keep citing fifty-three but only
20 twelve, you only represent twelve of them. So to pulling
21 in the other forty-one without - I mean how do you speak
22 for the other forty-one?

23 MR. HALFORD: We can limit it to my twelve but they
24 are - their a community is a master deed condominium
25 community and it has common elements and the common

1 elements which I think I pointed out to Your Honor at the
2 last hearing include things like the walls, the flooring,
3 and a lot of these elements are suffering from water
4 intrusion. So the basis for our summary judgment motion is
5 there has been a transition of the community. I think its
6 fairly represented to the Court that the board now seeks to
7 pursue this settlement and at the time of transition of the
8 common elements weren't in good repair and haven't been
9 since, so the developer owed that duty. That's the Queens
10 Grand decision in South Carolina.

11 Clearly the builder did transition the community and
12 they fortunately had to grapple with this now for two
13 years. But being that he did owe the duty and these homes
14 are leaking water I don't think there is you know in
15 viewing all the facts and inferences in the light most
16 favorable to FPG I don't think there's any doubt that we
17 had a transition in the community and the common elements
18 in disrepair. It's beyond saying. And then I will with
19 the Court's permission I'll go ahead and move into the
20 construction defect side of my argument which is the
21 thirteenth.

22 THE COURT: All right.

23 MR. HALFORD: This was the thirteenth cause of action,
24 Your Honor, in the plaintiff's complaint. But the
25 construction defect, Your Honor, we've had eight experts in

1 this case, seven forensic reports, all that go into some
2 degree as to what is causing water intrusion. Specifically
3 I think the two to best sum it up is FPG's experts. You
4 don't have to take the plaintiff's word for it, you can
5 take their experts word for it. And he basically states
6 and follows up in both of these drawings, architectural
7 drawings, and the asphalt construction have a lack of water
8 management in the detail. By that I mean leaks, leaks
9 spring, weather resistant bearer behind the party plaintiff
10 - these are some of the things cited but Marshall Clark
11 whose deposition occurred on November the 27th summed it up
12 as basically a failure to provide water management detail.

13 My expert was deposed for two days last week, this is
14 the second man being deposed. He describes the problem as
15 the failure of the building envelope to provide a water
16 tight enclosure. Meaning all the components working
17 together whether you're looking at the gravel, the weather
18 resistant bearer, the hardy plank siding, all the elements
19 working together failed to provide a water tight bearer.
20 The envelope of these homes is compromised, and I'll don't
21 think any expert in the case argues that or disputes that.

22 So viewing all the facts and inferences in the light
23 most favorable to the defendants I think we have not one -
24 its not what is the precise construction defects, what is
25 the construction defects in this case? And we have a lot