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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

RECEIVED
OCT 11 2013

Consolidated case no. 2013-000-327

SC Court of Appeals

Juontonio Pinckney, et al. Appellants,

v.

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

And

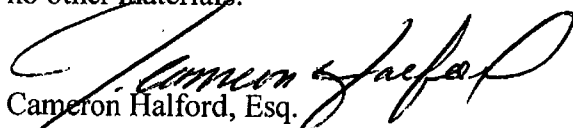
Stonecrest Villas of Tega Cay Owners' Association, Inc. Respondent

SUPPLEMENTAL RECORD ON APPEAL

Volume II

000249-000496

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


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constructed in a workmanlike manner and would have with no construction defects, design defects, and would not leak or suffer water intrusion.

5. That the products, residences and community sold to Plaintiffs as an Epcon development are not fit for the ordinary purposes for use due to water leakage, water intrusion, and Defendants' failures to remedy the same.
6. Plaintiffs are informed and believe that they are entitled to all actual and punitive damages arising from Defendants' breach of Implied Warranties of Merchantability due to condominium components being unfit for its intended use.

FOR A TENTH CAUSE OF ACTION

[AS AGAINST ALL DEFENDANTS AND EPCON COMMUNITES, INC.]

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants, jointly and severally, at the time of contracting with each respective Plaintiff had reason to know the Plaintiffs were purchasing an Epcon product constructed by Fankhauser and FPG, Inc. which would serve as each Plaintiffs' primary residence and home.
3. Plaintiffs relied on Defendants' representations and skill in selecting an Epcon product which was to be constructed by FPG, Inc. and Brock L. Fankhauser.
4. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the homes and property being purchased would be fit to serve as a restricted community and home which would not leak or suffer from water intrusion issues due to construction defect or design defect.
5. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the Stonecrest HOA would pursuant to restrictive covenants and bylaws preserve, protect and maintain Plaintiffs' properties.
6. That the condition of the condominiums is such that they leak water and that the condition of the HOA is such that the HOA, by and through Brock L. Fankhauser (and post July, 2010 through its board of directors) has been unwilling or incapable of protecting, repairing or preserving Plaintiffs' properties.
7. Plaintiffs are informed and believe the Epcon property they were sold, including the Stonecrest condominiums and Stonecrest HOA, is unfit for intended use as sold to Plaintiffs by Defendants as the Plaintiffs' condominiums suffer from water intrusion wherein the HOA is either unwilling or incapable of preserving Plaintiffs' properties and common areas.

8. That said misrepresentations, failures, and omissions to act constitute breach of implied warranties of fitness for a particular purpose under South Carolina law concerning the product and community model sold to Plaintiffs by Defendants.
9. Plaintiffs are informed and believe that they are entitled to award of all actual, compensatory, and punitive damages as against Defendants, jointly and severally because the residences and property do not conform to the implied warranties of fitness for which Defendants, at the time of contracting, were aware of.

FOR AN ELEVENTH CAUSE OF ACTION
[AS AGAINST DEFENDANTS BROCK L. FANKHAUSER AND
FANKHAUSER PROPERTY GROUP, INC.
(CONSTRUCTION DEFECT)

1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. Defendant Fankhauser Property Group, Inc. by and through Brock L. Fankhauser constructed the Epcon community known as Stonecrest Villas of Tega Cay, which construction encompasses the residences of the Plaintiffs, respectively.
3. Defendants Fankhauser Property Group, Inc. and Brock L. Fankhauser constructed said condominiums with a stone masonry veneer exterior.
4. Plaintiffs are informed and believe that Defendants Brock L. Fankhauser and Fankhauswer Property Group, Inc.'s construction practices resulted in condominiums which have construction defects or design defects, and suffer from water intrusion and leaks.
5. Plaintiffs are informed and believe that Defendant Fankhauser Property Group, Inc. was careless, willful, wanton, and negligent in its supervision and oversight of construction practices, to wit:
 - a. By failing to install proper waterproofing, including a moisture barrier, concurrently with the stone masonry veneer on each building exterior directly contributing to water infiltration to the Plaintiffs' residences.
 - b. By improperly constructing brick masonry veneers at window sill structures to divert rain water properly and prevent water intrusion into Plaintiffs' residences.
 - c. By improperly sealing brick masonry veneer exterior walls to prevent water infiltration into Plaintiffs' residences.
 - d. By failing to install proper window flashing and internal drainage to prevent water infiltration into Plaintiffs' residences.

- e. By failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exteriors.
 - f. By failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exteriors.
 - g. By failing to provide a properly graded slope exterior foundation wall to each respective Plaintiffs' property to prevent surface water intrusion per code.
 - h. By failing to properly gutter the condominiums sold to Plaintiffs to properly divert rainwater away from the Plaintiffs' dwellings.
6. Plaintiffs are informed and believe that the construction practices employed by Defendants Fankhauser Property Group, Inc. and Brock L. Fankhauser were carried out in a negligent and un-workmanlike manner and constitute violations of building code.
7. As a direct and proximate result of the un-workmanlike construction practices Plaintiffs have repeatedly experienced water infiltration into their homes and have incurred actual and special damages exceeding \$7,500 to be proven at trial of this matter before a jury.
8. Plaintiffs are informed and believe that they are entitled to all attorney's fees and costs associated with the necessity of bringing this matter before the court.

FOR A TWELTH CAUSE OF ACTION

(AS TO ALL DEFENDANTS NAMED – EPCON, FANKHAUSER, FPG, INC. AND
STONECREST HOA)

[BREACH OF EXPRESS WARRANTIES]

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim. Plaintiffs are informed and believe that they were purchasing through Defendants an Epcon Communities, Inc. condominium home within an Epcon development.
2. Plaintiffs, including Vicari specifically, during the process of sale were shown Epcon model homes in North Carolina and South Carolina. Said models included model condominium homes in North Carolina Epcon developments known as Mt. Island Lake, Polo Club, Silver Oaks, Ridge Road Villas, Polo Club at Weddington. Plaintiffs were shown model homes in York County within the Stonecrest community.
3. Plaintiffs are informed and believe that Defendants jointly, by affirmative representation and display of multiples Epcon models and communities, voluntarily made Express Warranties to the Plaintiffs during the sale of each respective Plaintiff's Stonecrest condominium which were material to and formed the basis of each respective purchase an Epcon product constructed by Fankhauser and FPG, Inc.

17/23
JW

4. Plaintiffs are informed and believe that all Defendants named by voluntary affirmation and/or promises, developer, builder, construction company, and HOA to purchasers, represented to Plaintiffs that the Stonecrest Villas condominium being purchased by each respective Plaintiff was an Epcon Communities, Inc. product free of defects and properly preserved and maintained by restrictive covenants and HOA bylaws through an HOA board.
5. Plaintiffs are informed and believe that the condominiums were improperly constructed in a un-workmanlike manner and were free not of defects and/or design flaws, resulting in each residence sold to Plaintiffs suffering from water infiltration.
6. Plaintiffs are informed and believe that the HOA Stonecrest Villas Owners Association of Tega Cay, Inc. was under a duty and pursuant to restrictive covenants and bylaws to maintain and enforce maintenance as to condominium exteriors and common areas to preserve, protect and maintain owners' properties, yet has failed to protect and preserve Plaintiffs' properties despite repeated pleas and demand.
7. That Defendants Brock L. Fankhauswer, Fankhauswer Property Group, Inc., Stonecrest HOA and Epcon Communities, Inc. jointly utilized sample and/or model condominium homes by express affirmative display which became part of the basis of the bargain to reach respective Plaintiff purchaser. That the whole of the condominiums as purchased by Plaintiffs respectively failed to conform to the sample or model homes and were not fit for the ordinary purpose and reasonable expectations of the Plaintiffs.
8. That Defendants' displays and descriptions of the condominiums, community representations, exhibition and display of models, affirmative representation, by contract, covenants, restrictions, and bylaws formed the basis of and were material to the Plaintiffs' decisions to purchase a Stonecrest Villas condominium.
9. Plaintiffs are informed and believe that said representations were false or made in reckless disregard of Plaintiffs' rights as purchasers and owners of a Stonecrest property and that the Express Warranties made by Defendants jointly did not conform to Express Warranties made by Defendants that Plaintiffs were purchasing an Epcon Communities product and community.
10. Plaintiffs are informed and believe that each condominium property sold contained construction defects and/or design defects, including absence of moisture barriers, making the home not conform to the Epcon home they bargained and contracted for with Defendants.
11. That the water intrusion into Plaintiffs' residences, and the joint failure of all Defendants to act to protect Plaintiff's properties, is an affirmative breach of Express Warranty made by all Defendants to Plaintiffs.
12. That the Builder and HOA management has not confirmed to the representations and express warranties being made by Defendants to Plaintiffs as purchasers, to wit:

- a. Defendant Epcon Communities permitted and by affirmative representation and display of model condominiums representing to Plaintiffs that they were purchasing an Epcon product in terms of quality. Said representations were false.
 - b. Defendant Brock L. Fankhauser, as sole controlling officer and owner of Stonecrest Villas HOA, knowingly and deliberately retained control of the corporation board and Plaintiffs' assessments in violation of bylaws and restrictive covenants.
 - c. That Defendants by and through Brock Fankhauser utilized said montly assessments required of the Plaintiffs improperly and in violation of corporate bylaws and restrictive covenants, including development of adjacent commercial tracts and roadways.
 - d. Defendant Brock L. Fankhauser by affirmative false representations, for cash, seller to purchasers, sold to Plaintiffs defective condominium residences and repeatedly failed to honor express warranties that any defects would be repaired properly.
 - e. Defendant Brock L. Fankhauser knew, *or should have known*, of the construction and /or design defects existing in the products he sold Plaintiffs as an Epcon product, yet failed to repeatedly disclose the same to Plaintiffs as purchasers, specifically including Vicari and Williams, *supra*.
 - f. Defendant Fankhauser Property Group, Inc. by affirmative false representations to Plaintiffs, through Brock L. Fankhauser individually, repeatedly assured Plaintiffs that their residences would be repaired. Plaintiffs are informed and believe said representations to be materially false and dishonest in fact.
 - g. Defendant Stonecrest Owners Association of Tega Cay, Inc. by affirmative representations, by and through Brock L. Fankhauser and its existing executive board, by affirmative false representations to Plaintiffs, has arbitrarily refused to protect Plaintiff home owners to prevent further water intrusion, mold, and damages which continue to occur at Plaintiffs' residences.
 - h. Plaintiffs are informed and believe that Defendant Stonecrest Villas of Tega Cay HOA through its current builder-appointed board has acted arbitrarily to repair only those residences owned by board members, without rendering assistance whatsoever to Plaintiffs and others.
13. That Plaintiff's are informed and believe their residences suffer from construction defects or design defects which have caused Plaintiffs damages due to routine water intrusion into their homes wherein Defendants have failed to protect and preserve Plaintiffs' properties under duties imposed by bylaws and restrictive covenants.

14. That Defendants' joint affirmative failures, by acts and/or omissions to act, failed to protect Plaintiffs' properties and constitute breach of Express Warranty made by all Defendants to Plaintiffs as purchasers.
15. That said conduct has resulted in each respective Plaintiffs' condominium property, the Stonecrest community, and the HOA management not conforming to the affirmative representations and express warranties made by Defendants at the time of purchase, thereby damaging Plaintiffs.
16. Plaintiffs are informed and believe that they are entitled to an award of special damages, all actual, incidental and consequential damages as against Defendants for breach of said Express Warranties made by Defendants as sellers to Plaintiffs as purchasers.
17. That Plaintiffs have been forced to engage the services of an attorney to compel action by the Defendants, including the HOA. Plaintiffs are informed and believe that they are entitled to indemnification by the HOA, award of attorney's fees and costs should the court determine that an Express Warranty from Defendants to Plaintiffs has been breached.
18. Plaintiffs are informed and believe they are entitled to equitable relief as against the HOA, in the discretion of the court, against levy of dues and assessments for repairs and legal fees occasioned by the malfeasance and negligence of Defendants, including Fankhuaser individually, as controlling HOA board member.

FOR A THIRTEENTH CAUSE OF ACTION
[AS AGAINST ALL DEFENDANTS JOINTLY]
(UNFAIR TRADE PRACTICES ACT VIOLATION)

1. The above allegations are set forth and incorporated by reference as if repeated verbatim.
2. That Epcon Communities, Inc. expressly permits Defendants Fankhauser and FPG, Inc. to display and market products represented to be Epcon condominium homes within Epcon developments, including Stonecrest and other North Carolina communities.
3. That the relationships between Plaintiffs and Defendants Fankhauser, FPG, Inc. and Stonecrest HOA is characterized by privity of title, seller to purchasers, wherein Plaintiffs and others purchased for value Epcon condominium properties.
4. Plaintiffs are informed and believe they purchased from Defendants under a scheme which required owners to become payors of monthly assessments to Stonecrest HOA, imposed and enforced by restrictive covenants created by Defendants Fankhauser, FPG, Inc. and Stonecrest HOA pursuant to an Epcon Communities, Inc. development designs.
5. That the conduct of Defendants, jointly and severally, created false assurances to Plaintiffs that Defendants would act in Plaintiffs' best interest and with due regard of

Plaintiffs property preservation and property value and that the homes purchased by Plaintiffs would conform to representations made by these Defendants at the time of sale.

6. That said conduct is materially false, deceived Plaintiffs, and constitutes methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.
7. That Defendants, jointly and severally, knew or should have known, of the necessity to act vigilently to protect owners' properties from water intrusion and other damages, yet Defendants deliberately failed to act whereby Plaintiffs and others have continued to experience water intrusion, HOA and builder inaction, procrastination, leaks, interior damages, and mold growth.
8. Plaintiffs have collectively suffered an ascertainable loss of money, property damages, diminution in property value, and special damages legally and proximately caused by Defendants' deceptive and unfair trade practices, to wit:
 - a. By Defendants, through Epcon, falsely advertising, pricing, and offering for sale Epcon Communities, Inc. model homes and community, yet selling Plaintiffs condominiums which suffer from construction defects or design flaws and which leak water and which are not representative of Epcon models.
 - b. By creating a Owners Association (HOA) where Defendant Brock L. Fankhauser knew, or should have known, that a conflict of interest would exist between his duties to Plaintiffs as developer and that of HOA chairman, President and controlling interest wherein restrictive covenants and HOA bylaws were not enforced to adequately protect owners' properties from damages.
 - c. By Brock L. Fankhauser, FPG, Inc. and Stonecrest HOA board members engaging in self dealing and failure to protect Plaintiffs' interests, specifically in failing to protect Plaintiffs' properties, failing to protect common properties, and failing to enforce bylaws and restrictive covenants.
 - d. By falsely charging dues, assessments, and special assessments where the HOA, by and through Brock Fankhauser, failed to honor duties to preserve and protect properties as required by HOA bylaws and restrictive covenants.
 - e. By Brock L. Fankhauser willfully and knowingly applying monthly property assessments for development of adjacent commercial tracts and roads instead of properly capitalizing HOA reserves and acting promptly to remedy defects existing in the residences of the Plaintiffs and others with similar defects.
 - f. By permitting HOA undercapitalization by and through Brock L. Fankhauser and self dealing of board members wherein the HOA is undercapitalized, incapable, or unwilling to serve the Plaintiff owners to prevent further damage and water intrusion, proper maintenance, repair, or preservation of Plaintiffs' property value.

- g. By violation of the duties imposed by restrictive covenants created by Defendants where Defendants knew, or should have known, of the need to act promptly to prevent Plaintiffs and others from further water intrusion and property damages despite requiring Plaintiffs to pay, and accepting from Plaintiffs, monthly assessments
 - h. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties including Breach of Express Warranties and Breach of Implied Warranties, as set forth *supra*.
- 9. That Defendants' conduct, jointly and severally, affects the public interests at large; the same conduct has occurred with numerous Stonecrest owners; has been and is being repeated; and is capable of further repetition as evidenced by the Vicari and Williams transactions. As such, it affects commerce within York County, South Carolina.
 - 10. That Plaintiffs' actual, incidental, special, and consequential damages suffered by Plaintiffs and others would not have occurred but for the Defendants' unfair and deceptive acts and practices, which should be legally deterred.
 - 11. Plaintiffs respectively are informed and believe that they are entitled to an award of actual, punitive, and *trebled* damages pursuant to South Carolina Code Ann. 39-5-140(a), *et. seq.*, together with costs and attorneys fees associated with prosecuting this action against Defendants.

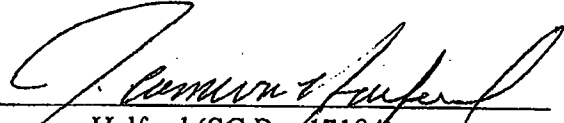
WHEREFORE, Plaintiffs would pray for the following relief from this court:

- 1. For trial by jury of the matters set forth in this Amended Consolidated Complaint.
- 2. For judgment as against Defendants Brock L. Fankhauser, Fankhauswer Property Group, Inc. (FPG, Inc.), and Stonecrest HOA pursuant to Plaintiffs' First through Thirteenth causes of action, *supra*.
- 3. For an award of all actual and punitive damages as against Defendants in the discretion of the court and jury.
- 4. For an award of any incidental or special damages as may be proven specifically by each of the Plaintiffs individually.
- 5. For an award of *trebled* damages pursuant to the UTPA in South Carolina, S.C. Code Ann. 39-5-140(a) to deter future such conduct by Defendants.
- 6. For an award of all attorneys fees and costs associated with bringing this matter before the court.

7. For such other and further relief, *legal or equitable*, as the court deems just and proper under the circumstances, including the right to temporary or permanent injunctive as may be required to prohibit further inequitable conduct by Defendants.

Respectfully submitted,

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October 28, 2010

The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, SC 29745

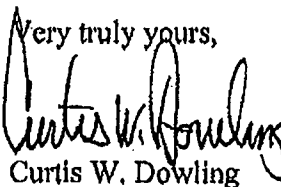
Re: Juontonio Pinckney, et al v. Brock L. Frankauser, Frankhauser Property
Group, Inc. and Stonecrest Villas of Tega Cay Homeowners
Association, Inc.
Civil Action No. 2010-CP-46-2326
BASJ File No. 76.18798
Client File No. 482181

Dear Mr. Hamilton:

Please find enclosed for filing with your office an original and one copy of a
Summons and Answer, Cross-Claim and Third-Party Complaint of Defendant Stonecrest
Villas of Tega Cay Homeowners Association, Inc. for the above-cited action. Please file
the originals and return clocked-in copies to me in the self addressed stamped envelope
provided for your convenience.

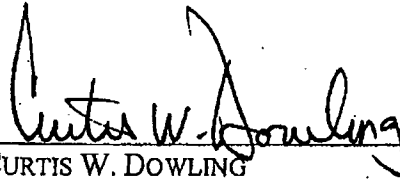
By copy of this letter, I am serving the above documents upon all counsel of
record.

With best regards, I am

Very truly yours,

Curtis W. Dowling

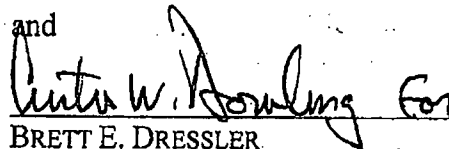
CWD/djr
Enclosures

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(Cross-Claims and Third-Party Complaint)

October 28, 2010

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

TO: THIRD-PARTY DEFENDANT STONECREST VILLAS OF TEGA CAY, LLC, AND EPCON COMMUNITIES FRANCHISING, INC., ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers at their offices, Barnes, Alford, Stork & Johnson, LLP, 1613 Main Street, Post Office Box 8448, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, the Third-Party Plaintiff Stonecrest Villas of Tega Cay Home Owners Association, Inc. in this action will apply to the Court for the relief demanded in the Third-Party Complaint and will seek a default judgment against you.

This the 28 day of October, 2010.

4. As to paragraph 3, it is admitted that at one time, Fankhauser did serve in the capacities stated in the Amended Complaint. Additionally, the correct identity of the Defendant is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (See footnote 4).⁵

5. Paragraph 4 is admitted.

6. Paragraph 5 is admitted, subject to the qualifications set forth above.

7. Paragraph 6 is admitted, upon information and belief.

8. As to paragraph 7, it is admitted Stonecrest Villas of Tega Cay is a community developed, marketed and constructed as an Epcon Community by and through Defendants Fankhauser, FPG, Inc. and Epcon Communities Franchising, Inc. The remaining allegations of paragraph 7 are denied.

9. Paragraph 8 calls for a legal opinion and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant is denied.

10. Paragraph 9 is denied as to this Defendant.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

11. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

12. As to paragraph 2, Defendant admits only that certain payments are to be paid by members as set forth in the Bylaws.

⁵ Upon information and belief, Defendant Brock E. Fankhauser's last day as President of the Association was June 30, 2010.

13. As to paragraph 3, while it is admitted that certain rights and duties exist between the parties, it is denied that a fiduciary relationship exists between the Plaintiffs and this Defendant.

14. Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 are denied as to this Defendant.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Contract)

15. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

16. Paragraph 2 is admitted, upon information and belief.

17. Paragraphs 3, 4 and 5 are denied as to this Defendant.

18. As to paragraph 6, Defendant denies that the Plaintiffs are entitled to any recovery against this Defendant.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Acts)

19. Paragraphs 1, 2 and 3 are denied as to this Defendant.

20. As to paragraph 4, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding what Fankhauser told the Plaintiff. Defendant denies having express knowledge of the defects.

21. As to paragraph 5, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations.

22. As to paragraph 6, Defendant has and will continue to take steps to identify the cause of the water intrusion so an appropriate repair can be identified and undertaken.

23. As to paragraph 7, admits that flooring has been removed from the Moscowitz and Iadanza units, and admits upon information and belief that flooring has been removed from the Sciacca and Pinckney units. Defendant further admits that the flooring has not been replaced in the Moscowitz or Iadanza units, and upon information and belief, the flooring has not been replaced in the Sciacca or Pinckney units.

24. Paragraphs 8, 9, 10 and 11 are denied as to this Defendant.

25. As to paragraph 12, Defendant lacks knowledge or information sufficient to form a belief as to what representations were made to Plaintiffs by parties other than this Defendant. As to this Defendant, denied.

26. Paragraphs 13, 14 and 15 are denied as to this Defendant.

27. As to paragraph 16, Defendant denies that the Plaintiffs are entitled to any recovery against this Defendant.

AS TO THE FOURTH CAUSE OF ACTION
(Fraud and Misrepresentation)

28. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

29. As to paragraph 2, it is admitted only that this Defendant operated a horizontal property regime. The remaining allegations are denied as to this Defendant.

30. Paragraph 3 is admitted.

31. As to paragraph 4, it is admitted that Brock L. Fankhauser, by and through Stonecrest Villas of Tega Cay, LLC, formed Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., the stated purpose of which is to administer, operate and manage the Common Elements.

32. As to paragraph 5, it is admitted that Plaintiffs have paid assessments as required by the Bylaws. It is admitted that the cause of the water intrusion has not been identified and therefore no fix or repair has been undertaken.

33. Paragraphs 6 and 7 are denied as to this Defendant.

34. As to paragraph 8, this Defendant reserves the right to levy a special assessment if necessary to administer, operate and manage the Common Elements, though it has not done so at this time. The remaining allegations of paragraph 8 are denied as to this Defendant.

35. As to paragraph 9, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE FIFTH CAUSE OF ACTION
(Equitable Action for Accounting)

36. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

37. Paragraph 2 is denied as to this Defendant.

38. The allegations of paragraph 3 set forth a legal conclusion which does not require an answer from this Defendant.

39. As to paragraph 4, it is admitted that Plaintiffs seek the court to require Defendants, including this Defendant, to render an accounting.

AS TO THE SIXTH CAUSE OF ACTION
(Conversion)

40. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

41. The allegations of paragraph 2 are admitted.

42. As to paragraph 3, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

43. Paragraph 4 is admitted, upon information and belief.

44. As to paragraph 5, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

45. Paragraphs 6, 7, 8 and 9 are admitted, upon information and belief.

46. As to paragraph 10, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

47. As to paragraph 11, Defendant denies that Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

48. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

49. Paragraph 2 is denied as to this Defendant.

50. As to paragraph 3, admitted upon information and belief.

51. Paragraph 4 is denied as to this Defendant. Defendant specifically denies that any present board members have acted maliciously and in conscious disregard of Plaintiffs' rights by permitting financial mismanagement of reserves and assessments.

52. Paragraphs 5, 6, 7 and 8 are denied as to this Defendant.

53. As to paragraph 9, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE EIGHTH CAUSE OF ACTION**(Breach of Express Warranty)**

54. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

55. Paragraphs 2 and 3 are denied as to this Defendant.

56. As to paragraph 4, Defendant lacks knowledge or information as to what representations were made by parties other than this Defendant to Plaintiff Vicari. This Defendant denies making any representations to Plaintiff Vicari.

57. Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 are denied as to this Defendant.

58. As to paragraph 13, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE NINTH CAUSE OF ACTION**(Breach of Implied Warranty of Merchantability)**

59. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

60. Paragraph 2 is denied as to this Defendant.

61. Paragraph 3 is admitted, upon information and belief.

62. Paragraphs 4 and 5 are denied as to this Defendant.

63. As to paragraph 6, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant

AS TO THE TENTH CAUSE OF ACTION**(Breach of Implied Warranty of Fitness for a Particular Purpose)**

64. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

65. Paragraph 2 is denied as to this Defendant.

66. As to paragraph 3, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted.

67. Paragraph 4 is denied as to this Defendant.

68. Paragraph 5 sets forth a legal conclusion that does not require an answer from this Defendant. To the extent that an answer is required, the liability of this Defendant is denied.

69. As to paragraphs 6 and 7, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed. The remaining allegations in paragraphs 6 and 7 are denied as to this Defendant.

70. Paragraph 8 sets forth a legal conclusion that does not require an answer from this Defendant. To the extent that an answer is required, the liability of this Defendant is denied.

71. As to paragraph 9, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE ELEVENTH CAUSE OF ACTION
(Construction Defect)

72. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

73. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Fankhauser and FPG are denied.

AS TO THE TWELTH CAUSE OF ACTION
(Breach of Express Warranties)

74. Defendant realleges the allegations contained above in response to the first sentence of paragraph 1. As to the remaining allegations of paragraph 1, they are admitted upon information and belief.

75. As to paragraph 2, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations.

76. As to paragraphs 3 and 4, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding parties other than this Defendant. Those allegations are denied as to this Defendant.

77. Paragraph 5 is admitted.

78. As to paragraph 6, Defendant admits that it is responsible for administering, operating and managing the Common Elements. Defendant further admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

79. Paragraphs 7, 8 and 9 are denied as to this Defendant.

80. Paragraph 10 is admitted upon information and belief.

81. Paragraph 11 is denied as to this Defendant.

82. As to paragraph 12, this Defendant denies making representations and express warranties to Plaintiffs. Defendant lacks information sufficient to form a belief as to the truth of the allegations regarding other parties' representations and express warranties to Plaintiffs. Defendant denies that it has arbitrarily refused to protect Plaintiffs from water intrusion, mold or damages. Defendant further denies that it has repaired residences owned by board members without rendering assistance to Plaintiffs.

83. Paragraphs 13 and 14 are denied as to this Defendant.

84. As to paragraph 15, this Defendant denies making representations and express warranties to Plaintiffs. Defendant lacks information sufficient to form a belief as to the truth of the allegations regarding other parties' representations and express warranties to Plaintiffs.

85. As to paragraphs 16, 17 and 18, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE THIRTEENTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation)

86. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

87. Paragraph 2 is admitted upon information and belief.

88. Paragraphs 3, 4, 5, 6, 7 and 8 are denied as to this Defendant. Defendant specifically denies any self dealing as alleged in paragraphs 8c and f.

89. Paragraph 9 is denied as to this Defendant.

90. Paragraph 10 is denied as to this Defendant.

91. As to paragraph 11, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE PRAYER FOR RELIEF

92. Defendant denies that the Plaintiffs are entitled to the relief requested in the prayer.

FOR A SECOND DEFENSE

(Rule 12(b)(6), SCRCP—Failure to State Facts)

93. With regard to some or all causes of action appearing in the Amended Complaint, the Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted and thus, those causes of action should be dismissed.

FOR A THIRD DEFENSE

(Attorney's Fees – Not Recoverable)

94. With regard to some or all of the causes of action appearing in the Amended Complaint, the Amended Complaint fails to state facts sufficient to constitute causes of action on which the recovery of attorney's fees are allowed.

FOR A FOURTH DEFENSE

(Improper Identify of the Defendant)

95. The Defendant is improperly identified in this action.

FOR A FIFTH DEFENSE

(Standing)

96. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs lack standing.

FOR A SIXTH DEFENSE

(Proximate Cause)

97. No acts or omissions on the part of this Defendant were the proximate cause or cause in fact of some or all damages allegedly suffered by the Plaintiffs (the existence of such damages being denied); therefore, the Plaintiffs' action is barred in whole or in part.

FOR A SEVENTH DEFENSE
(Alleged Damages Caused by Third-Party)

98. Some or all damages allegedly sustained by the Plaintiffs (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom this Defendant had no control or duty to control. The Defendant pleads the acts of another party or parties as a complete defense to all claims.

FOR AN EIGHTH DEFENSE
(Waiver)

99. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of waiver.

FOR A NINTH DEFENSE
(Estoppel)

100. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A TENTH DEFENSE
(Assumption of Risk)

101. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the Plaintiffs' assumption of risk.

FOR AN ELEVENTH DEFENSE
(Intervening Causes)

102. Some or all damages allegedly sustained by the Plaintiffs (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening causes which the Defendant pleads as a bar to this action.

FOR A TWELFTH DEFENSE

(Punitive Damages)

103. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and the Excessive Fines Clause of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the Defendant violates due process guarantees;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it can be argued that a standard governing the imposition of punitive damages exists, the standard is void for vagueness and ambiguity;
- f. The claim for punitive damages violates the equal protection and due process clauses of the United States Constitution, Article 1, Section 3 of the South Carolina Constitution, and the Excessive Fines Clause of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant and other factors which are constitutionally impermissible; and

g. The claim for punitive damages violates the Federal Doctrine of Separation of Powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A THIRTEENTH DEFENSE

(South Carolina Unfair Trade Practices Act Inapplicable)

104. The South Carolina Unfair Trade Practices Act is inapplicable to the allegations contained in the Amended Complaint directed at this Defendant.

FOR A FOURTEENTH DEFENSE

(Statute of Limitations)

105. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the statute of limitations as a complete defense to some or all of the Plaintiffs' claims.

FOR A FIFTEENTH DEFENSE

(Laches)

106. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the doctrine of laches as a complete defense to some or all of the Plaintiffs' claims.

FOR A SIXTEENTH DEFENSE

(Meeting of the Minds)

107. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the contracts terms did not include those allegedly breached by the Defendant nor did the duties require the Defendant to take any action that has not been taken or abstain from any action that has been taken because there was no meeting of the minds with regard to those contract terms or duties.

FOR A SEVENTEENTH DEFENSE

(Failure to Mitigate)

108. With regard to some or all causes of action appearing in the Amended Complaint for which the Plaintiffs seeks damages, the Plaintiffs' claims are barred in whole or in part because of the Plaintiffs' or their agents' failure to mitigate damages.

FOR A EIGHTEENTH DEFENSE

(Impossibility of Performance)

109. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the Defendant's performance of such duties was rendered impossible in a manner that excused performance.

FOR A NINETEENTH DEFENSE

(Plaintiff's Own Negligence)

110. The Plaintiffs' own negligence, gross negligence, recklessness, or willfulness contributed to their damages in a manner which should reduce or completely bar any award in this matter.

FOR A TWENTIETH DEFENSE

(Acquiescence)

111. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of acquiescence.

FOR A TWENTY-FIRST DEFENSE

(Frustration of Purpose)

112. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the Defendant's performance of such duties was discharged under the doctrine of frustration of purpose.

FOR A TWENTY-SECOND DEFENSE

(Course of Conduct)

113. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct was approved of by the Plaintiffs. The Plaintiffs are now barred from complaining about this course of conduct.

FOR A TWENTY-THIRD DEFENSE

(Election of Remedies)

114. The Plaintiffs will be subject to an election of remedies should they prevail on some or all of their causes of action.

FOR A TWENTY-FOURTH DEFENSE

(Defenses of other Defendants)

115. Defendant incorporates by reference any defenses pled by other Defendants which apply to Plaintiffs' claims against this Defendant and which are not inconsistent with this Defendant's other defenses stated herein.

FOR A TWENTY-FIFTH DEFENSE

(Economic Loss Rule)

116. With regard to some or all claims for damages appearing in the Amended Complaint, the Plaintiffs' claims are barred, in whole or in part, by the economic loss rule.

FOR A TWENTY-SIXTH DEFENSE

(Arbitration)

117. Defendant reserves all rights it may have to demand binding arbitration.

FOR A TWENTY-SEVENTH DEFENSE

(Additional Defenses)

118. Defendant places the Plaintiffs on notice that it will subsequently move to amend this Answer to assert other defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

FURTHER ANSWERING THE AMENDED COMPLAINT AND BY WAY OF CROSS-CLAIM AGAINST BROCK FANKHAUSER AND FANKHAUSER PROPERTY GROUP, INC. AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST STONECREST VILLAS OF TEGA CAY, LLC., AND EPCON COMMUNITIES FRANCHISING, INC.

(Factual Background)

1. The allegations of the above paragraphs are realleged to the extent they are relevant and not inconsistent with the allegations of the claims which follow.

2. Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., ("Association"), is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

3. Defendant Fankhauser Property Group, Inc. ("FPG"), is a corporation organized and existing under the laws of the State of North Carolina which is authorized to conduct business in the State of South Carolina, and was the general contractor for construction of the Stonecrest Villas at Tega Cay Condominium project (the "Project").

4. Third-Party Defendant Stonecrest Villas of Tega Cay, LLC ("Stonecrest"), upon information and belief, is the developer of the Project.

5. Third-Party Defendant Epcon Communities Franchising, Inc. is a

corporation organized and existing under the laws of the state of Ohio and is doing business in York County, South Carolina. Defendant Epcon is a commercial developer of single story, attached residential condominiums, including Stonecrest Villas at Tega Cay, which are offered for sale to purchasers through Defendant Brock L. Fankhauser and FPG, Inc.

6. Defendant Brock Fankhauser is a resident and citizen of Mecklenburg County, North Carolina, and is the owner, principal and president of Defendant FPG, and is the sole member of Defendant Stonecrest. At all relevant times herein, Defendant Fankhauser was the President of Defendant Association.

7. On February 26, 2007, Stonecrest, as Declarant, filed a Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime ("Master Deed") pursuant to the South Carolina Horizontal Property Act, recorded in Book 8852 at page 149 of the public registry of the York County Clerk of Court.

8. The Master Deed states that the Defendant Stonecrest deemed it desirable to create the Defendant Association which will be delegated and assigned the powers of maintaining and administering the common elements and facilities on the property.

9. Article V, Section 5.4(a) of the Master Deed states that the "Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner."

10. Article V, Section 5.1, of the Master Deed defines the Common Elements to include among other things, all portions of the Buildings (as defined in the Master

Deed) located outside the Units (as defined in the Master Deed), roofs, foundations, and exterior and interior load bearing walls.

11. The Project was constructed in or about 2007.

~~12. After the Project was completed, Third-Party Defendant Stonecrest~~
and/or Defendant FPG maintained control of the Defendant Association. Defendant Fankhauser was the president of the Defendant Association at all relevant times herein. Defendant Fankhauser resigned his position with the Association in June 2010 after this litigation was commenced.

13. Upon information and belief, in or about 2009, individual condominium unit owners within Stonecrest Villas of Tega Cay, including Plaintiffs herein, experienced water intrusion into their units. The neighborhood clubhouse also experienced water intrusion.

14. The Common Elements and other portions of the Project for which the Association is responsible for maintenance, repair and replacement are collectively referred to herein as the "Improvements."

15. The Improvements were developed and constructed by Third-Party Defendant Stonecrest and/or FPG, acting by and through its agents, representatives and employees, or acting through contractors and suppliers selected by said Defendants.

16. There exist defects and deficiencies in the workmanship and material used by the Third-Party Defendant/Defendants in the construction of the Improvements including, without limitation, defects and deficiencies in the workmanship and materials used in connection with the construction and installation, including but not limited to:

- a. Failing to install a proper waterproofing, including a moisture barrier, concurrently with the masonry veneer building exterior directly contributing to water infiltration into individual unit owners residences and the Common Elements;
- b. Improperly constructing brick masonry at window sill structures to divert rain water intrusion properly from the individual unit owners residences and the Common Elements;
- c. Improperly sealing brick masonry veneer exterior walls to prevent water infiltration into individual unit owners residences and the Common Elements;
- d. Failing to install proper flashing and internal drainage to prevent water infiltration into individual unit owners residences and the Common Elements;
- e. Failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exterior;
- f. Failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exterior;
- g. Failing to provide a proper slope around brick masonry ledges and wall transitions to deflect water flow away from individual unit owners residences and the Common Elements;
- h. Failing to properly grade and slope exterior foundation walls to prevent surface water intrusion per code; and
- i. Failing to properly gutter the condominiums to properly divert rainwater away from the individual unit owners residences and the Common Elements.

17. As a result of the deficiencies in the construction of the Project by Third-Party Defendants Stonecrest and FPG and the resulting damage, Defendant Association

has been sued as set forth in Plaintiffs' Amended Complaint which is incorporated by reference herein.

18. Defendant Association contends that the fault lies with Defendants FPG and Fankhauser and Third-Party Defendants Stonecrest and Epcon.

FOR A FIRST CAUSE OF ACTION
(Negligence as to Stonecrest, FPG and Fankhauser)

19. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

20. Defendant Fankhauser is the sole shareholder of Defendant FPG and the sole member of Third-Party Defendant Stonecrest. Defendants Fankhauser and FPG and Third-Party Defendant Stonecrest are collectively referred to as the "Fankhauser Defendants."

21. The Fankhauser Defendants were negligent as is more fully set forth in Paragraphs 16(a) through (i), supra.

22. The Fankhauser Defendants failed to properly oversee and supervise the construction of the Project by its agents, employees, and subcontractors which resulted in Project being constructed not in a good and workmanlike manner.

23. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks and by failing to employ construction practices and methods that conformed with project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

24. As a direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been sued by Plaintiff herein and other unit owners for the development and construction of the Project by the Fankhauser

Defendants, and faces liability for the work performed by or at the direction of the Fankhauser Defendants.

25. As direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been damaged in an amount greater than \$7,500.00, and is entitled to a judgment against the Fankhauser Defendants in an amount necessary to properly compensate Defendant Association for damage to the Common Elements and any amount it may be required to compensate Plaintiffs as a result of these Defendants' negligence.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnity – Fankhauser Defendants)

26. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

27. The Fankhauser Defendants were under a duty by virtue of the duties that they took on the Project as set forth herein to comply with the Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and to properly oversee and supervise its agents, employees, and subcontractors.

28. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and failing to properly oversee and supervise its agents, employees and subcontractors.

29. Defendant Association is entitled to equitable indemnity from the

Fankhauser Defendants, individually and severally, for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay the Plaintiff herein as result of the negligence of the Fankhauser Defendants.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Habitability and
Workmanlike Construction – Fankhauser Defendants)

30. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

31. The Improvements are being infiltrated by water caused by the defects in construction caused by the Fankhauser Defendants.

32. The Fankhauser Defendants impliedly warranted, for the benefit of the Association and all individual unit Owners, that the construction of the Project, including the Improvements which are a part thereof, the proper quality, care, adequacy, suitability, and workmanship of the labor and materials that they provided on the Project.

33. The Fankhauser Defendants have breached their obligations and duties under the implied warranties of habitability, quality and fitness. As a result of Defendants' breach of implied warranties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

34. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of warranty.

FOR A FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for Particular Purpose – Fankhauser Defendants)

35. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

36. Defendant Association is informed and believes that the Fankhauser Defendants' unworkmanlike construction resulted in the breach of an implied warranty of fitness for a particular purpose wherein the Improvements do not prevent water infiltration and seepage into individual units and/or the Common Elements.

37. As a direct and proximate result of the Fankhauser Defendants' unworkmanlike construction, Defendant has incurred economic and structural damages to the Improvements in amounts to be proven at trial of this matter exceeding \$7,500.

38. The Fankhauser Defendants, at the time of contracting, knew that Defendant Association would utilize the clubhouse for Association related activities and that individual unit owners would use their units as a family dwelling.

39. As a result of the Fankhauser Defendants' un-workmanlike construction, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements home are not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

40. The Fankhauser Defendants have breached their obligations and duties under the implied warranty of fitness for a particular purpose. As a result of Defendants' breach of implied warranty as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

41. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of warranty.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Fankhauser Defendants)

42. The allegations contained the foregoing paragraphs are incorporated by reference herein.

43. Defendant Fankhauser was the sole member and president of Third-Party Defendant Stonecrest and the sole shareholder and president of Defendant FPG. Defendants Stonecrest and FPG were under the total control of Defendant Fankhauser. Defendant Fankhauser was a member of the Board of Directors of the Association and owed a fiduciary duty to the Defendant Association.

44. Defendant Fankhauser was in control of the Association at all times relevant herein, and promoted the Association, and therefore, had a fiduciary duty to the Defendant Association.

45. Defendant Fankhauser had a fiduciary duty to Defendant Association due to the special relationship that existed between the two.

46. This duty required, among other things, that the Fankhauser Defendants act in the best interests of Defendant Association to ensure that all Common Areas and Improvements were constructed and turned over to the Association in a reasonable state of repair.

47. As a member of the Board of Directors, Defendant Fankhauser acted in his own interests in breach of his duties as a Board Member.

48. Defendant Fankhauser breached his duty by failing to ensure that the Improvements were turned over to Defendant Association in a good state of repair.

49. The Fankhauser Defendants breached their duties by failing to ensure that the Improvements were constructed in a good and workmanlike manner.

50. As a result of Defendants' breach of fiduciary duties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

51. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of fiduciary duty.

FOR A SIXTH CAUSE OF ACTION

(Unfair Trade Practices Act Violations – Fankhauser Defendants)

52. The allegations contained the foregoing paragraphs are incorporated by reference herein.

53. The Fankhauser Defendants owed Defendant Association certain fiduciary duties as hereinabove described, thereby creating a special relationship between the parties.

54. The conduct of the Fankhauser Defendants, jointly and severally, created false assurances to the Defendant Association that Defendants would act in the best interest of the Association, which assurances were false and constitute methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.

55. The Fankhauser Defendants, jointly and severally, knew or should have known, due to the existing privities and restrictive covenants and the necessity to take

immediate action to protect the Improvements, yet Defendants deliberately failed to act with diligence whereby the Association and individual unit owners continue to experience inaction, procrastination, further water intrusions, interior damages, and mold.

56. Defendant Association and others have suffered an ascertainable loss of money, property damages, diminution of property value and special damages proximately caused by Defendants' deceptive acts and practices which are pled upon information and belief to wit:

- a. By falsely advertising, pricing, offering for sale, falsely warranting, and falsely binding properties per restrictive covenants where the Association is undercapitalized, making it difficult to serve the Association's and owners'/residents' needs to prevent water intrusion, proper maintenance and/or proper diligence to preserve the Association's and owners' properties and property values.
- b. By creating an Owners Association where Defendant Fankhauser knew, or should have known, that a conflict of interest would exist between his duties as developer, contractor and that of HOA chairman and president to enforce covenants and adequately protect the Association's and owners' properties and interests.
- c. By falsely charging dues and assessments where Defendant Association, by and through Defendant Fankhauser, failed to honor duties to preserve and protect the Improvements as required by restrictive covenants.
- d. Upon information and belief, by willfully and knowingly applying property assessments for development of adjacent commercial tracts

instead of properly capitalizing Defendant Association and acting promptly to remedy defects existing in the Improvements and individual residences.

e. By violation of duties imposed by restrictive covenants where the Fankhauser Defendants knew, or should have known, of the need to act promptly to prevent Defendant Association and individual unit owners from further property damage.

f. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties.

57. The Fankhauser Defendants' conduct affects the public interest at large; the same conduct has occurred with at least four Stonecrest owners, has been repeated, and affects commerce at large within York County.

58. Damages and special damages suffered by Defendant Association and others would not have occurred but for the Fankhauser Defendants' unfair and deceptive acts and should be legally deterred.

59. Defendant Association is informed and believes that it is entitled to an award, of actual and trebled damages pursuant to South Carolina Code Ann. §39-5-140(a), *et seq*, together with any costs associated with prosecution of this action.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Express Warranties – Epcon)

60. The allegations contained the foregoing paragraphs are incorporated by reference herein.

61. Third-Party Defendant Epcon Communities has been building condominium communities for more than 20 years. Epcon represents itself to have a successful history of condominium development throughout the United States.

62. Third-Party Defendant Epcon Communities marketed and represented that Stonecrest Villas of Tega Cay was an Epcon Community and was an exceptional community.

63. Being part of an Epcon Community, Third-Party Defendant Epcon Communities represented and warranted that the construction in the community would result in buildings with zero defects and a high level of quality.

64. Third-Party Defendant Epcon Communities represented and warranted that Stonecrest Villas at Tega Cay was part of Epcon Communities QualityMark warranty program. The specific objectives of warranty program are:

- a. to produce a high quality product
- b. identify defects in the buildings at a time when it is appropriate for Epcon Communities' contractors and subcontractors to respond
- c. identify and correct deficiencies before occupancy occurs
- d. to ensure that the quality of the construction meets Epcon Communities' alleged standard of excellence.

65. Third-Party Defendant Epcon Communities represented and warranted that the construction would be thoroughly inspected, including mechanical, structural and cosmetic items.

66. Third-Party Defendant Epcon Communities represented and warranted that the construction would be maintenance free.

67. The clubhouse and common elements in Stonecrest Villas at Tega Cay were part of the construction that was warranted by Third-Party Defendant Epcon Communities.

68. Third-Party Defendant Epcon Communities breached its warranties in that, among other things:

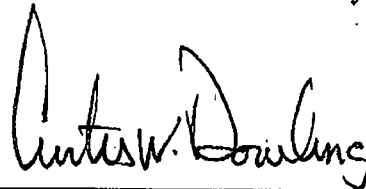
- a. Failed to construct Stonecrest Villas, including the clubhouse and common elements, in such a manner as to result in zero defects and a high level of quality;
- b. It failed to identify defects at a time when its contractors and subcontractors can address the defect before occupancy occurs;
- c. It failed to thoroughly inspect the construction, including mechanical, structural and cosmetic items;
- d. It failed to construct Stonecrest Villas, including the clubhouse and common elements in such a manner that it was maintenance free.

69. As a result of Third-Party Defendant Epcon Communities' breach of its warranties, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements are not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

70. Defendant Association is entitled to judgment against the Third-Party Defendant Epcon Communities for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breach of warranty.

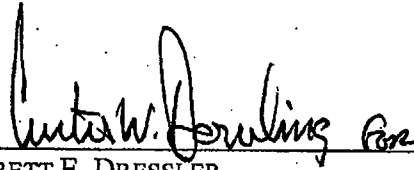
WHEREFORE, Defendant Association prays the Court that:

1. The Plaintiffs' Amended Complaint be dismissed with Prejudice;
2. It have and recover judgment against the Defendant Brock L. Fankhauser, Fankhauser Property Group, Inc., and Third Party Defendant Stonecrest Villas of Tega Cay, LLC, on Defendant Association's First through Sixth Causes of Action as set out hereinabove;
3. It have and recover judgment against the Third Party Defendant Epcon Communities Franchising, Inc., on Defendant Association's Seventh Cause of Action as set out hereinabove;
4. It be awarded actual, consequential, incidental, and punitive damages as against the Third-Party Defendants in the discretion of the court and jury;
5. It be awarded any special damages as may be proven by Defendant Association;
6. It receive a trial by jury of the matters alleged herein; and
7. It be awarded such other and further relief as the Court may deem just and proper.



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 Condominium Owners Association, Inc.

and



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Condominium Owners Association, Inc.
(Cross-Claims and Third-Party Complaint)

October 28, 2010

CERTIFICATE OF SERVICE

The undersigned employee of Barnes, Alford, Stork & Johnson, LLP certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

Answer, Cross-Claim and Third Party Complaint of Defendant Stonecrest Villas of Tega Cay HomeOwners Association, Inc.

PERSON(S) SERVED:

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and Stonecrest Villas of Tega Cay, LLC

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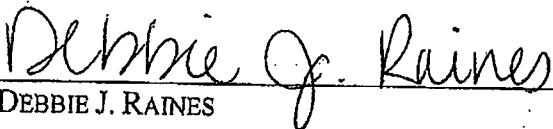
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Attorney for M&L Roofing Co., LLC, MB Roofing Company and Jose Simenez

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DEBBIE J. RAINES

October 28, 2010



Wall Templeton
ATTORNEYS

ROA000297

Graham P. Powell
Telephone: 843.329.9500 Ext. 204
Graham.Powell@WallTempleton.com

August 16, 2011

David Hamilton, Clerk of Court
York County Court of Common Pleas
P.O. Box 649
York, South Carolina 29475-0649

Re: *Juontonio Pinckney, et al. v. Brock L. Fankhauser, et al.*
Consolidated Case No.: 2010-CP-46-2326
Insured: Fankhauser Property Group, Inc.
Westfield Claim No.: TRA3453882-030107-A
State Auto Claim No.: FANK-2513196

Dear Mr. Hamilton:

Please find enclosed an original and one copy of Defendants Brock L. Fankhauser and Fankhauser Property Group, Inc.'s Answer to Plaintiffs' Second Amended Complaint, Defendant Brock L. Fankhauser's Cross Claim Against Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., and Defendant/Third-Party Plaintiff Fankhauser Property Group, Inc.'s Third-Party Complaint. Please file the original and return the file stamped copy to me in the envelope enclosed.

By copy of this letter to counsel of record, I am serving them with the enclosed.

If you have any questions concerning the enclosed, please contact me.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Graham P. Powell

GPP/saa
Enclosures

cc J. Cameron Halford, Esquire
B.T. Michael Wilkes, Esquire
Melissa M. Nichols, Esquire
Curtis W. Dowling, Esquire
Brett S. Dressler, Esquire
Robert C. Dortch, Jr., Esquire

Stephanie Burton, Esquire
Scott D. Spivey, Esquire
Christy E. Mahon, Esquire
Tracy T. Vann, Esquire
Christi P. Cox, Esquire
Thomas F. Dougall, Esquire
Sarah Wetmore, Esquire
Payton D. Hoover, Esquire
Bonum S. Wilson, III, Esquire
D. Andrew Williams, Esquire
David C. Cleveland, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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

Juanonio Pinckney, *et al.*,

Plaintiffs,

vs.

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

Defendants.

Fankhauser Property Group, Inc.,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

vs.

Stonecrest Villas of Tega Cay, LLC,

Third-Party Defendant.

**DEFENDANTS BROCK L. FANKHAUSER
 and FANKHAUSER PROPERTY GROUP,
 INC.'S ANSWER TO PLAINTIFFS' SECOND
 AMENDED COMPLAINT, DEFENDANT BROCK
 L. FANKHAUSER'S CROSS CLAIM AGAINST
 DEFENDANT STONECREST VILLAS OF TEGA
 CAY CONDOMINIUM OWNERS ASSOCIATION,
 INC., and DEFENDANT/THIRD-PARTY
 PLAINTIFF FANKHAUSER PROPERTY
 GROUP, INC.'S THIRD-PARTY COMPLAINT**

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

Defendants Brock L. Fankhauser ("Fankhauser") and Fankhauser Property Group, Inc. ("FPG"), answering the Plaintiffs' Second Amended Complaint, and without waiver of their right to contest the improper amendment of parties and substantive allegations, would show unto this Honorable Court the following:

FOR A FIRST DEFENSE

1. All of the allegations contained in the Plaintiffs' Second Amended Complaint which are not specifically admitted, denied, or otherwise modified are denied and strict proof thereof demanded.
2. Answering Paragraph 1, as it pertains to jurisdiction, these Defendants are informed and believed that the allegations contained therein constitute conclusions of law requiring no response. To the extent that a response is required, the allegations contained therein are denied. These Defendants deny the remaining allegations contained in Paragraph 1.
3. These Defendants admit so much of the allegations of Paragraph 2 and its subparts identifying the owners of the respective properties set forth therein. These Defendants deny the remaining allegations of Paragraph 2 and demand strict proof thereof.
4. Answering Paragraph 3, these Defendants admit that Defendant Fankhauser is the owner, principal, president, and registered agent for Defendant FPG. To the extent that the allegations contained

in Paragraph 3 pertain to the Association, these Defendants admit that Defendant Fankhauser is the registered agent, but deny that he is the president. To the extent that the allegations contained in Paragraph 3 allege that Defendant Fankhauser does business in York County in his individual capacity, the allegations contained therein are denied and strict proof thereof demanded. The Defendants admit that Defendant Fankhauser is a resident of the State of North Carolina. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 3.

5. Answering Paragraph 4, these Defendants admit that Defendant Fankhauser Property Group, Inc., is a corporation that served as the general contractor for the construction of the project and that Defendant Brock L. Fankhauser is the sole shareholder of the corporation. These Defendants further admit that Defendant FPG is responsible for the construction of the Plaintiffs' homes. These Defendants deny all remaining or inconsistent allegations contained in Paragraph 4.

6. Answering Paragraph 5, these Defendants deny the allegations contained therein as stated, and aver that there exists a corporation organized and existing under South Carolina law known and designated as Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. ("Association"), and crave reference to the master deed of the Stonecrest Villas of Tega Cay Horizontal Property Regime filed with the Clerk of Court of York County, South Carolina for the terms and conditions governing same. Further answering, these Defendants aver that the master deed for the Association was filed pursuant to the South Carolina Horizontal Property Act by Stonecrest Villas of Tega Cay, LLC ("Stonecrest"), a South Carolina limited liability company. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 5.

7. These Defendants deny the allegations of Paragraphs 6 and 7 of Plaintiffs' Second Amended Complaint as stated.

8. Answering Paragraphs 8 and 9 of Plaintiffs' Second Amended Complaint, these Defendants are informed and believe that the allegations contained therein constitute conclusions of law requiring no response. To the extent that a response is required, the allegations of Paragraphs 8 and 9 of Plaintiffs' Second Amended Complaint are denied and strict proof thereof demanded.

ANSWERING THE FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty—Fankhauser, Fankhauser Property
Group, Inc., and Stonecrest COA)

9. Answering Paragraph 1 of the Plaintiffs' First Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 8 as if set forth herein.

10. Answering Paragraph 2 of the Plaintiffs' First Cause of Action, these Defendants admit that the Plaintiffs are responsible for payment of the regime fees in accordance with the Master Deed and Bylaws of the Association. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 2 of the Plaintiffs' First Cause of Action.

11. Answering Paragraphs 3 and 4 of the Plaintiffs' First Cause of Action, to the extent that they apply to these Defendants, these Defendants are informed and believe that the allegations contained therein constitute conclusions of law requiring no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

12. These Defendants deny the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Plaintiffs' First Cause of Action to the extent that they apply to these Defendants.

13. Answering Paragraphs 15, 16, and 17 of Plaintiffs' First Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for relief and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE SECOND CAUSE OF ACTION
**(Breach of Contract Fankhauser, Fankhauser Property
 Group, Inc., and Stonecrest COA)**

14. Answering Paragraph 1 of the Plaintiffs' Second Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 13 as if set forth herein.

15. These Defendants deny the allegations of Paragraphs 2, 3 and all its subparts, 4 and 5.

16. Answering Paragraph 6 of the Plaintiffs' Second Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for relief and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE THIRD CAUSE OF ACTION
**(Breach of Contract Accompanied By Fraudulent Acts-
 Fankhauser, Fankhauser Property Group, Inc.
 and Stonecrest COA)**

17. Answering Paragraph 1 of the Plaintiffs' Third Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 16 as if set forth herein.

18. These Defendants deny the allegations of Paragraphs 1, 2, 3, and 4 of Plaintiffs' Third Cause of Action to the extent that they apply to these Defendants.

19. Answering Paragraph 5 of Plaintiffs' Third Cause of Action, these Defendants admit that Plaintiff Vicari demanded rescission of the sale and that such rescission was denied by Brock Fankhauser on behalf of Stonecrest Villas of Tega Cay, LLC. These Defendants deny the remaining allegations of Paragraph 5 and demand strict proof thereof.

20. These Defendants deny the allegations of Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Plaintiffs' Third Cause of Action to the extent that they apply to these Defendants.

21. Answering Paragraph 16 of the Plaintiffs' Third Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE FOURTH CAUSE OF ACTION
**(Fraud and Misrepresentation-Fankhauser,
Fankhauser Property Group, Inc., Stonecrest COA,
and Epcon Communities, Inc.)**

22. Answering Paragraph 1 of the Plaintiffs' Fourth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 21 as if set forth herein.

23. These Defendants deny the allegations of Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Plaintiffs' Fourth Cause of Action to the extent that they apply to these Defendants.

24. Answering Paragraph 18 of Plaintiffs' Fourth Cause of Action, these Defendants deny the allegations therein as stated and crave reference to the Master Deed and Bylaws of the Association.

25. Answering Paragraph 19 of Plaintiffs' Fourth Cause of Action, these Defendants are informed and believe the allegations contained therein constitute a conclusion of law requiring no response. To the extent that a response is required, the allegations contained in Paragraph 19 are denied and strict proof thereof demanded.

26. These Defendants deny the allegations of Paragraphs 20, 21, 22, 23, 24, 25, and 26 of Plaintiffs' Fourth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

ANSWERING THE FIFTH CAUSE OF ACTION
**(Equitable Action For Accounting-Fankhauser,
Fankhauser Property Group, Inc., and
Stonecrest COA)**

27. Answering Paragraph 1 of the Plaintiffs' Fifth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 26 as if set forth herein.

28. These Defendants deny the allegations of Paragraphs 2 and 3 of Plaintiffs' Fifth Cause Of Action to the extent that they apply to these Defendants and demand strict proof thereof.

29. Answering Paragraph 4 of the Plaintiffs' Fifth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE SIXTH CAUSE OF ACTION

**(Conversion-Fankhauser,
Fankhauser Property Group, Inc., and
Stonecrest COA)**

30. Answering Paragraph 1 of the Plaintiffs' Sixth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 29 as if set forth herein.

31. These Defendants deny the allegations of Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Plaintiffs' Sixth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

32. Answering Paragraph 11 of the Plaintiffs' Sixth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE SEVENTH CAUSE OF ACTION

**(Civil Conspiracy-Fankhauser,
Fankhauser Property Group, Inc., and
Stonecrest COA)**

33. Answering Paragraph 1 of the Plaintiffs' Seventh Cause of Action, these Defendants

reallege and reaver Paragraphs 1 through 32 as if set forth herein.

34. These Defendants deny the allegations of Paragraphs 2, 3, 4, 5, 6, 7, and 8 of Plaintiffs' Seventh Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

35. Answering Paragraph 9 of the Plaintiffs' Seventh Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE EIGHTH CAUSE OF ACTION
(Breach of Express Warranty - All Defendants)

36. Answering Paragraph 1 of the Plaintiffs' Eighth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 35 as if set forth herein.

37. Answering Paragraph 2 of Plaintiffs' Eighth Cause of Action, to the extent that they apply to these Defendants, these Defendants deny the allegations contained therein as stated and aver that, upon information and belief, Plaintiffs may have been shown model homes for potential purchase by the seller, Stonecrest Villas of Tega Cay, LLC. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 2 and demand strict proof thereof.

38. These Defendants deny the allegations of Paragraph 3 of Plaintiffs' Eighth Cause of Action as stated to the extent that they apply to these Defendants and demand strict proof thereof.

39. These Defendants deny the allegations of Paragraphs 4 and 5 of Plaintiffs' Eighth Cause of Action.

40. Answering Paragraph 6 of Plaintiffs' Eighth Cause of Action, to the extent that they apply to

these Defendants, these Defendants are without sufficient information to admit or deny the allegations contained therein and, therefore, deny the same and demand strict proof thereof.

41. These Defendants deny the allegations of Paragraphs 7, 8, 9, 10, 11, and 12 of Plaintiffs' Eighth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

42. Answering Paragraph 13 of the Plaintiffs' Eighth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

**ANSWERING THE NINTH CAUSE OF ACTION
(Breach Of Implied Warranty Of Merchantability-
All Defendants)**

43. Answering Paragraph 1 of the Plaintiffs' Ninth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 42 as if set forth herein.

44. These Defendants deny the allegations of Paragraphs 2, 3, 4, and 5 of Plaintiffs' Ninth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

45. Answering Paragraph 6 of the Plaintiffs' Ninth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

**ANSWERING THE TENTH CAUSE OF ACTION
(Breach Of Implied Warranty Of Fitness for
A Particular Purpose-All Defendants)**

46. Answering Paragraph 1 of the Plaintiffs' Tenth Cause of Action, these Defendants reallege and

reaver Paragraphs 1 through 45 as if set forth herein.

47. These Defendants deny the allegations of Paragraph 2 of Plaintiffs' Tenth Cause of Action as stated to the extent that they apply to these Defendants and demand strict proof thereof.

48. Answering Paragraph 3 of Plaintiffs' Tenth Cause of Action, these Defendants admit so much of Paragraph 3 that alleges that Fankhauser Property Group, Inc. constructed the condominiums at issue in the Plaintiffs' Complaint. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 3 of Plaintiffs' Tenth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

49. Answering Paragraphs 4 and 5 of Plaintiffs' Tenth Cause of Action, these Defendants are informed and believe that the allegations contained therein, to the extent that they apply to these Defendants, constitute conclusions of law requiring no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

50. These Defendants deny the allegations of Paragraphs 6, 7, and 8 of Plaintiffs' Tenth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

51. Answering Paragraph 9 of the Plaintiffs' Tenth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded

**ANSWERING THE ELEVENTH CAUSE OF ACTION
(Construction Defect-Fankhauser and
Fankhauser Property Group, Inc.)**

52. Answering Paragraph 1 of the Plaintiffs' Eleventh Cause of Action, these Defendants reallege

and reaver Paragraphs 1 through 51 as if set forth herein.

53. Answering Paragraph 2 of Plaintiffs' Eleventh Cause of Action, these Defendants admit so much of Paragraph 2 as alleges that Defendant Fankhauser Property Group, Inc. constructed the condominium project at issue in the Plaintiffs' Complaint. These Defendants deny any remaining or inconsistent allegations contained therein and demand strict proof thereof.

54. Answering Paragraph 3 of Plaintiffs' Eleventh Cause of Action, these Defendants admit that the condominiums are partially clad with a stone masonry veneer exterior. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 3 of the Plaintiffs' Eleventh Cause of Action.

55. These Defendants deny the allegations of Paragraphs 4, 5 and all its subparts, 6, and 7 of Plaintiffs' Eleventh Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

56. Answering Paragraph 8 of the Plaintiffs' Eleventh Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

ANSWERING THE TWELFTH CAUSE OF ACTION (Breach of Express Warranties-All Defendants)

57. Answering Paragraph 1 of the Plaintiffs' Twelfth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 56 as if set forth herein.

58. Answering Paragraph 2 of the Plaintiffs' Twelfth Cause of Action, these Defendants are without sufficient information to admit or deny the allegations contained therein as stated and, therefore, deny the

same and demand strict proof thereof.

59. These Defendants deny the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and all its subparts, 13, 14, and 15 of Plaintiffs' Twelfth Cause of Action.

60. Answering Paragraphs 16, 17, and 18 of the Plaintiffs' Twelfth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

**ANSWERING THE THIRTEENTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation-All Defendants)**

61. Answering Paragraph 1 of the Plaintiffs' Thirteenth Cause of Action, these Defendants reallege and reaver Paragraphs 1 through 60 as if set forth herein.

62. Answering Paragraph 2 of Plaintiffs' Thirteenth Cause of Action, Defendant FPG admits that Defendant Epcon Communities, Inc. permits it to display model condominium homes. These Defendants deny any remaining or inconsistent allegations contained in Paragraph 2 of Plaintiffs' Thirteenth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

63. These Defendants deny the allegations of Paragraphs 3, 4, 5, 6, 7, 8 and all its subparts, 9, and 10 of Plaintiff's Thirteenth Cause of Action to the extent that they apply to these Defendants and demand strict proof thereof.

64. Answering Paragraph 11 of the Plaintiffs' Thirteenth Cause of Action, these Defendants are informed and believe that the allegations contained therein constitute a prayer for judgement and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

65. Answering the remaining paragraph and all its subparts, these Defendants are informed and believe that the allegations contained therein constitute prayers for relief and, as such, require no response. To the extent that a response is required, the allegations contained therein are denied and strict proof thereof demanded.

**FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

66. Defendants reallege and reaver Paragraphs 1 through 65 above as if set forth herein.

67. Plaintiffs failed to mitigate damages as required by law.

**FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches, and Release)**

68. Defendants reallege and reaver Paragraphs 1 through 67 above as if set forth herein.

69. Plaintiffs' claims may be barred by the doctrines of waiver, estoppel, laches, and/or release.

**FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Intervening Acts of Third Parties)**

70. Defendants reallege and reaver Paragraphs 1 through 69 above as if set forth herein.

71. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superceding acts of third parties not affiliated with Defendants and not under Defendants' domain or control.

**FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)**

72. Defendants reallege and reaver Paragraphs 1 through 71 above as if set forth herein.

73. Any damage suffered by the Plaintiffs is the direct and proximate result of comparative negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Plaintiffs' comparative negligence.

**FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Rule 12(b)(6))**

74. Defendants reallege and reaver Paragraphs 1 through 73 above as if set forth above.

75. Plaintiffs have failed to state facts sufficient to constitute a cause of action against Defendants and the Complaint should be dismissed pursuant to Rule 12(b)(6), *SCRPC*.

**FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Expiration of Warranty)**

76. Defendants reallege and reaver Paragraphs 1 through 75 above as if set forth herein.

77. Any warranty extended to the Plaintiffs has expired.

**FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Sole Negligence of Others)**

78. Defendants reallege and reaver Paragraphs 1 through 77 above as if set forth herein.

79. Even if the Plaintiffs were damaged as alleged, which is denied, such damages were solely due to, resulted from, and were caused by the negligence, carelessness, recklessness, wilfulness, and wantonness of third parties over which Defendants had no control.

**FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Barring Punitive Damages Based On SC and US Constitution)**

80. Defendants reallege and reaver Paragraphs 1 through 79 above as if set forth herein.

81. The Plaintiffs' claims for punitive damages, and any award thereof, would violate the due process

clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

**FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Spoliation of Evidence)**

82. Defendants reallege and reaver Paragraphs 1 through 81 above as if set forth herein.

83. The Plaintiffs' claims are barred due to spoliation of evidence.

**FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Acceptance)**

84. Defendants reallege and reaver Paragraphs 1 through 83 above as if set forth herein.

85. Plaintiffs accepted the work of Defendants after inspecting it and are now barred from asserting claims based upon that work.

**FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Certification of Occupancy)**

86. Defendants reallege and reaver Paragraphs 1 through 85 above as if set forth herein.

87. These Defendants affirmatively assert that the property at issue was designed, constructed, and certified for occupancy in conformity with the then applicable and prevailing industry, construction, and governmental standards, regulations and/or statutory requirements.

**FOR A THIRTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Contract Specifications)**

88. Defendants reallege and reaver Paragraphs 1 through 87 above as if set forth herein.

89. Without prejudicing and without waiving its defenses herein set forth, and assuming that

the allegations of the Plaintiffs' Complaint are true, which allegations are expressly denied, these Defendants assert that the damages of which the Plaintiffs complain resulted from the design and/or construction of the project in compliance with contracts with persons or entities other than these Defendants, including but not limited to contractors, architects, subcontractors, and suppliers of labor and materials, which contracts incorporated specifications which were complied with and were established by persons or entities other than these Defendants.

**FOR A FOURTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Disclaimer of Warranty)**

90. Defendants reallege and reaver Paragraphs 1 through 89 above as if set forth herein.
91. Upon information and belief, all warranties allegedly provided by these Defendants have been disclaimed, modified, and/or excluded.

**FOR A FIFTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to Join Necessary Party)**

92. Defendants reallege and reaver Paragraphs 1 through 91 above as if set forth herein.
93. Plaintiffs have failed to join a party necessary to this litigation as required by Rule 19, *SCRCP*, and Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(7), *SCRCP*.

**FOR A SIXTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Non Defective Product)**

94. Defendants reallege and reaver Paragraphs 1 through 93 above as if set forth herein.
95. Any products at issue in this matter were not defective or unreasonably dangerous and

therefore Plaintiffs' claim for strict liability should be dismissed.

**FOR A SEVENTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Public Interest)**

96. Defendants reallege and reaver Paragraphs 1 through 95 above as if set forth herein.

97. The construction of the homes in question does not adversely affect the public interest so as to bar recovery against these Defendants.

**FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(State of the Art)**

98. Defendants reallege and reaver Paragraphs 1 through 97 above as if set forth herein.

99. Any and all acts performed by and products allegedly manufactured and/or distributed by Defendants were, at all times relevant hereto, in conformity with the state of the art of the manufacture and design of such or similar products. The building materials incorporated into the project that is the subject of Plaintiffs' Complaint were, upon information and belief, in accordance with the then current customary practices within the industry and in conformity with the then existing state of the art, and such constitutes a complete defense to Plaintiff's claims.

**FOR A NINETEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)**

100. Defendants reallege and reaver Paragraphs 1 through 99 above as if set forth herein.

101. One or more of the Plaintiffs' claims are barred by the doctrines of accord and satisfaction and/or compromise and settlement.

RESERVATION AND NON-WAIVER

102. Defendants reallege and reaver Paragraphs 1 through 101 above as if set forth herein.

103. The Defendants reserve and do not waive any additional defenses as may become available in the course of discovery or otherwise.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND BY WAY OF CROSS CLAIM

104. Defendants reallege and reaver Paragraphs 1 through 103 above as if set forth herein.

105. Defendant Brock L. Fankhauser is a resident of North Carolina and served on the Board of the Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. ("Association").

106. Defendant Association is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

107. On or about February 26, 2007, the Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime was filed in Book 8852 at p.149 of the Public Registry of the Clerk of Court of York County.

108. Attached as "Exhibit F" to the Master Deed, in full legal force and effect at all times relevant herein, are the Bylaws of Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.

109. Upon information and belief, the Plaintiffs herein have filed an Amended Complaint alleging, among other things, causes of action and alleged damages resulting from the service of Defendant Brock L. Fankhauser on the Board of the Association.

110. Pursuant to Section 7.12 of the Bylaws, the Association is required to defend and indemnify any officer of the Association with respect to any lawsuit arising out of his or her service on the Board of the Association.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification)

111. Defendants reallege and reaver Paragraphs 1 through 110 above as if set forth herein.

112. Defendant Brock L. Fankhauser served on the Board of the Association and has been sued by the Plaintiffs herein, such Amended Complaint incorporated by reference herein.

113. Pursuant to Section 7.12 of the Bylaws of the Association, Defendant Brock L. Fankhauser is entitled to contractual indemnification, including a defense and indemnity, and including all costs and attorney's fees associated with the defense of any claims against him by the Plaintiffs allegedly arising out of or related to his service on the Board of the Association.

FURTHER ANSWERING THE COMPLAINT
AND BY WAY OF THIRD-PARTY COMPLAINT

114. Defendants reallege and reaver Paragraphs 1 through 113 above as if set forth herein.

115. Defendant Fankhauser Property Group, Inc. ("FPG"), is a North Carolina corporation doing business in South Carolina, and was the general contractor for construction of the Stonecrest Villas of Tega Cay Condominium Project ("Project"), the subject of the above captioned lawsuit filed by the Plaintiffs.

116. Stonecrest Villas of Tega Cay, LLC ("Stonecrest") is a South Carolina limited liability company and was the developer of the Project. Stonecrest assigned any and all claims involving the Project pursuant to any and all contracts with any contractors to FPG.

117. Upon information and belief, Third-Party Defendant The Architectural Alliance, Ltd. ("Alliance") is an Ohio corporation doing business in York County, South Carolina. Alliance contracted with FPG to provide architectural services for the Project.

118. Upon information and belief, Third-Party Defendant Exterior Expressions of North Carolina, Inc. ("Exterior Expressions") is a North Carolina corporation doing business in York County, South Carolina. Exterior Expressions contracted with Stonecrest for the installation of the exterior stone

masonry on the Project and related work.

119. Upon information and belief, Third-Party Defendant Al-Mega Construction, Inc. ("Al-Mega") is a North Carolina corporation doing business in York County, South Carolina. Al-Mega contracted with Stonecrest for the installation of the siding and related work on the Project.

120. Upon information and belief, Third-Party Defendant Procar, Inc. ("Procar") is a North Carolina corporation doing business in York County, South Carolina. Procar contracted with Stonecrest to perform framing and concrete work on the Project.

121. Upon information and belief, Third-Party Defendant The Southeastern Group, Inc. ("Southeastern") is a North Carolina corporation doing business in York County, South Carolina. Southeastern contracted with Stonecrest to perform painting, caulking, and sealant work on the Project.

122. Upon information and belief, Third-Party Defendant Lucas Lawn and Landscape, Inc. ("Lucas") is a North Carolina corporation doing business in York County, South Carolina. Lucas contracted with Stonecrest to perform landscaping and related work on the Project.

123. Upon information and belief, Jose Simenez, individually and/or d/b/a M&L Roofing, Inc., and/or MB Roofing Company (collectively "M&L") is an individual residing in North Carolina doing business in York County, South Carolina and/or a North Carolina corporation doing business in York County, South Carolina. M&L contracted with Stonecrest to perform roofing work on the Project.

124. Upon information and belief, the workmanship of these Third-Party Defendants has accidentally (as defined by a commercial general liability insurance policy) led to moisture intrusion at the Project that has led to property damage to property other than the work of these Third-Party Defendants and that has also caused or may cause loss of use, damage to personal property, and other consequential damages.

125. As a result of alleged deficiencies in the construction of the Project and resulting damage,

FPG has been sued as set forth in the Plaintiffs' Amended Complaint incorporated by reference herein.

126. FPG contends that if the Plaintiffs' allegations are true, which are denied, the fault lies with the above named Third-Party Defendants where the Plaintiffs' allegations pertain to the architectural design, materials supplied, and/or work performed by or at the direction of the above named Third-Party Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence as to Alliance)

127. FPG realleges and reavers Paragraphs 1 through 126 as if set forth herein.

128. Third-Party Defendant Alliance was under a duty to use due care in providing architectural services to FPG and to perform those tasks in a manner that complied with applicable building codes, the applicable standard of care, industry standards, and manufacturers' instructions.

129. If Plaintiffs' allegations are true, which have been denied by FPG, Alliance was negligent and/or careless in failing to properly carry out its tasks by creating, drawing, and/or producing deficient architectural plans all as set forth more particularly in the Affidavit of Marshall F. Clarke, attached hereto as Exhibit "A" and incorporated by reference herein.

130. As a direct and proximate result of the negligence of Alliance, FPG has become involved in litigation in which it faces liability related to Alliance's failure to properly carry out its architectural duties. FPG is informed and believes that it is entitled to recover damages from Alliance for the costs and expenses incurred in order to protect its interests and for any amount that FPG may be required to pay to the Plaintiffs herein as a result of Alliance's negligence.

FOR A SECOND CAUSE OF ACTION
**(Breach of Implied Warranties including the Implied Warranty of
Fitness of Plans and Specifications as to Alliance)**

131. FPG realleges and reavers Paragraphs 1 through 130 above as if set forth herein.
132. Third-Party Defendant Alliance undertook the architectural design of plans for the Project and held itself out as specially qualified to perform the work it undertook.
133. Alliance furnished the plans for the construction of the Project and thereby impliedly warranted the adequacy and/or the sufficiency of the plans for their intended purpose.
134. If Plaintiffs' allegations are true, which have been denied by FPG, Alliance was negligent and/or careless in the preparation of plans that did not comply with applicable building codes, industry standards, the prevailing standard of care, and/or manufacturers' instructions as set forth above.
135. If Plaintiffs' allegations are true, which have been denied by FPG, Alliance breached the implied warranty of sufficiency of plans and specifications, and FPG is entitled to recover damages from Alliance for the costs and expenses incurred in order to protect its interests and any amounts that FPG may be required to pay to the Plaintiffs herein as a result of the acts or omissions of Alliance.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Alliance)

136. FPG realleges and reavers Paragraphs 1 through 135 above as if set forth herein.
137. Third-Party Defendant Alliance and FPG entered into a contract whereby Alliance agreed to serve as architect of record and provide plans for the construction of the Project in accordance with applicable building codes, industry standards, the prevailing industry standard of care, and manufacturers' instructions.
138. If Plaintiffs' allegations are true, which have been denied by FPG, Alliance was negligent and/or

careless in carrying out its contractual duties by failing to provide plans in accordance with the applicable building codes, industry standards, the prevailing industry standard of care, and manufacturers' instructions as set forth above.

139. As a direct and proximate result of Alliance's breach of contract, FPG has become involved in litigation in which it faces liability for the services carried out pursuant to Alliance's contractual duties. FPG is informed and believes that it is entitled to recover damages from Alliance for the costs and expenses incurred in order to protect its interests and any amounts that FPG may be required to pay to the Plaintiffs herein as a result of Alliance's breach of contract.

FOR A FOURTH CAUSE OF ACTION
(Indemnity as to Alliance)

140. FPG realleges and reavers Paragraphs 1 through 139 above as if set forth herein.

141. Third-Party Defendant Alliance was under a duty by virtue of its contract with FPG and/or duties undertaken in providing architectural services for the Project as set forth above to perform these services in accordance with applicable building codes, industry standards, the prevailing duty of care, and manufacturers' instructions.

142. If Plaintiffs' allegations are true, which have been denied by FPG, Alliance was negligent and/or careless in failing to properly carry out its architectural duties and by failing to provide plans that complied with applicable building codes, industry standards, the prevailing standard of care, and manufacturer's instructions as set forth above.

143. If Plaintiffs' allegations are true, which have been denied by FPG, FPG is entitled to indemnity from Alliance for the costs and expenses incurred to protect its interests and any amounts that FPG may be required to pay to the Plaintiffs herein as a result of the acts or omissions of Alliance.

FOR A FIFTH CAUSE OF ACTION
**(Negligence as to Exterior Expressions, Al-Mega,
Procar, Southeastern, Lucas, and M&L)**

144. FPG realleges and reavers Paragraphs 1 through 143 as if set forth herein.

145. Third-Party Defendants Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L were under a duty to use due care in the performance of the tasks referenced above and to perform those tasks in a manner in compliance with the project plans, applicable building codes, industry standards, and manufacturers' instructions.

146. If Plaintiffs' allegations are true, which have been denied by FPG, these Third-Party Defendants were negligent and/or careless in failing to properly carry out their tasks and by failing to employ practices and methods of construction in conformance with the project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

147. As a direct and proximate result of the negligence of these Third-Party Defendants, FPG has become involved in litigation in which it faces liability for the work performed by or at the direction of these Third-Party Defendants and has incurred costs and expenses in order to protect its interests. FPG is informed and believes that it is entitled to recover damages from these Third-Party Defendants for any amounts that FPG may be required to pay to the Plaintiffs herein as a result of these Third-Party Defendants' negligence.

FOR A SIXTH CAUSE OF ACTION
**(Breach of Contract as to Exterior Expressions, Al-Mega,
Procar, Southeastern, Lucas, and M&L)**

148. FPG realleges and reavers Paragraphs 1 through 147 above as if set forth herein.

149. Stonecrest and Third-Party Defendants Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L entered into contracts with Stonecrest whereby these Third-Party Defendants agreed to

furnish all labor, materials, and other items necessary to fully perform and complete certain work at the Project as set forth above.

150. These Third-Party Defendants agreed to perform the referenced work in accordance with the project plans and specifications, applicable building codes, industry standards, and all manufacturers' instructions.

151. If Plaintiffs' allegations are true, which have been denied by FPG, these Third-Party Defendants breached their respective contracts with Stonecrest.

152. As a direct and proximate result of these breaches of contract, FPG has become involved in litigation in which it faces liability for work performed by these Third-Party Defendants and FPG, as assignee of Stonecrest, is informed and believes it is entitled to judgment against these Third-Party Defendants for costs and expenses incurred in order to protect its interests and any amounts that FPG may be required to pay to the Plaintiffs as a result of these Third-Party Defendants' breaches of contract.

FOR A SEVENTH CAUSE OF ACTION

(Contractual and Equitable Indemnity as to Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L)

153. FPG realleges and reavers Paragraphs 1 through 152 above as if set forth herein.

154. Third-Party Defendants Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L were under a duty by virtue of their contracts with Stonecrest and/or duties undertaken on the Project as set forth above to comply with the project plans and specifications, applicable building codes, industry standards, and manufacturers' instructions. Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L entered into contracts with Stonecrest whereby they agreed in Paragraph 12 of those contracts, incorporated by reference herein, to defend and indemnify Stonecrest against any claims, costs, losses or damages (including court costs and attorney's fees) arising from their work, as set forth with specificity

in their contracts.

155. If Plaintiffs' allegations are true, which have been denied by FPG, these Third-Party Defendants were negligent and/or careless in failing to properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with project plans and specifications, applicable building codes, industry standards, or manufacturers' instructions.

156. If Plaintiffs' allegations are true, which have been denied, FPG is entitled to equitable indemnity and contractual indemnity as assignee of Stonecrest from these Third-Party Defendants for costs and expenses incurred in order to protect its interests and any amounts that FPG may be required to pay to the Plaintiffs herein as a result of the acts or omissions of these Third-Party Defendants.

FOR AN EIGHTH CAUSE OF ACTION
**(Breach of Warranty as to Exterior Expressions, Al-Mega,
Procar, Southeastern, Lucas, and M&L)**

157. FPG realleges and reavers Paragraphs 1 through 156 above as if set forth herein.

158. Third-Party Defendants Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, and M&L expressly and impliedly warranted the proper quality, care, adequacy, suitability, and workmanship of the materials and labor that they provided on the Project.

159. If Plaintiffs' allegations are true, which have been denied by FPG, these Third-Party Defendants breached express warranties and implied warranties of merchantability, workmanlike service, and fitness and FPG is entitled to a judgment against these Third-Party Defendants for costs and expenses incurred in order to protect its interests and any amounts that FPG may be required to pay to Plaintiff herein as a result of such breaches of warranty.

WHEREFORE Defendants Brock L. Fankhauser and Fankhauser Property Group, Inc., pray that the court inquire into the above referenced matter and, to the extent the principles of law and equity allow, dismiss Plaintiffs' Second Amended Complaint and award these Defendants the costs incurred in defending this action, including a reasonable attorney's fee, for judgment in favor of Brock L. Fankhauser against the Association pursuant to the Cross Claim, including costs and attorney's fees, for judgment in favor of Fankhauser Property Group, Inc. pursuant to the third-party claims asserted herein against the Third-Party Defendants, including costs, attorney's fees, and prejudgment interest, and for an award of such other and further relief as this court may deem just and proper.

Dated this 16th day of August, 2011.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, PA.



Morgan S. Templeton

Graham P. Powell

145 King Street, Suite 300

Post Office Box 1200

Charleston, South Carolina 29402

(843) 329-9500

Attorneys for Brock L. Fankhauser,

Fankhauser Property Group, Inc.,

and Stonecrest Villas of Tega Cay, LLC

CERTIFICATE OF SERVICE

I, Christie Gilbert, an employee of Wall Templeton & Haldrup, P.A., hereby certify that I have served all counsel in this action with a copy of the foregoing pleading by email and/or by mailing a copy of same by U.S. Mail, postage prepaid. A list of counsel served is as follows:

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Christie Gilbert

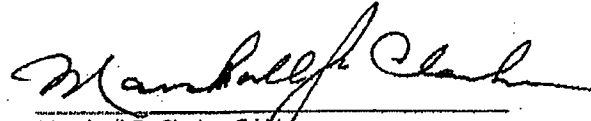
Christie Gilbert

August 16, 2011

- f. Detail L-5.1EC is referenced on Detail H-5.2EC, This detail provides no instructions as to the requirements for head flashing with weep holes, 2 layers of weather resistant barriers lapped over the vertical leg of the head flashing or the requirements for sealant and backer rod at the perimeter of the window frame for the prevention of moisture intrusion. This detail also indicates no provisions for the support of the brick veneer over the window opening by the use of lintel angles.
- g. The architectural details at the jamb installation conflict with those shown in the "Installation guidelines for Adhered Concrete Masonry Veneer" for exterior windows shown on page 32. This detail requires 9" wide self adhered flexible flashing under the nail fin, the window flange set in bedding sealant, with the 2 layers of weather resistant barrier sealed to the edge of the nail fin. And the requirement for a 3/8" sealant and backer rod at the perimeter of the window to prevent moisture intrusion.
- h. The architect details are in conflict with the standards of the "Installation Guidelines for Adhered Concrete Masonry Veneer" as follows:
 - 1. Kickout flashing at roof to wall intersections as shown in the "Installation Guidelines for Adhered Concrete Masonry Veneer" page 34.
 - 2. Fixture and pipe penetration details as shown in the "Installation Guidelines for Adhered Concrete Masonry Veneer" pages 39 and 40.
 - 3. Transition details between Hardi-Siding and Adhered Concrete Masonry Veneer" pages 15, 18, 21 and 22.
 - 4. Outside and inside corner detail for Adhered Concrete Masonry Veneer - pages 19 and 20.
 - 5. Details at side wall to composition shingles. Page 27.
- i. Architectural drawing 5.3EC sections A, B and Details C & C1.. The installation requirements for James Hardi, Hardi Plank Lap Siding and Hardi Trim requires the installation of a weather resistant barrier on the exterior face of the plywood or OSB sheathing. At all sections and enlarged details no weather barrier was noted to be installed per the manufacturer's installation instructions. Details C-5.3EC and C1-5.3EC are in conflict as to integration of the window nail fin to the weather resistant barrier. And the requirement for sealant and backer rod at the perimeter of the window to prohibit moisture intrusion.
- j. The architectural drawings are in conflict with details that are required according to the James Hardi lap siding installation instructions.
 - 1. Provide minimal 1" to 2" clearance between James Hardi siding and trims at paths, steps and archways.
 - 2. Provide roof to wall details that indicate roof step flashing that is integral to the weather resistance barrier and indicating that the bottom of the lap siding and trims provide a minimal clearance of 1" to 2".
 - 3. Maintain a 1/4" clearance between the bottom of the James Hardi siding and trims and horizontal flashing for moisture drainage. Do not caulk gap.
 - 4. Maintain a minimal 1" gap between gutter end caps siding and trim.
 - 5. Details for kickout flashing at roof to wall locations.
 - 6. Joint treatment details for James Hardi lap siding.

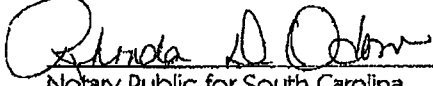
16. The negligent act(s) described in the above-referenced Paragraph is/are not meant to be exhaustive and/or exclusive;

FURTHER AFFIANT SAYETH NOT.



Marshall F. Clarke, FALA
Director of Forensic Architecture
MCA Architecture, Inc
28 Agora Place
Greenville, South Carolina 29615

SWORN to and Subscribed before me
this 7th day of September, 2010



Notary Public for South Carolina
My Commission Expires **September 15, 2018**

LAW OFFICES

HALFORD, NIEMIEC & FREEMAN, L.L.P.

A Registered South Carolina Limited Liability Partnership Including Limited Liability Companies

238 ROCKMONT DRIVE

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J. Cameron Halford ^
Matthew R. Niemiec
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September 20, 2011

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Re: C/A No. 2010-CP-46-2326 Juontonio Pinckney, et al. v.
Epcon Communities, Inc., Brock L. Fankhauser, et al.

Dear Counsel:

Please find attached the Amended Summons and Amended Complaint filed pursuant to the September 9, 2011 Order of Judge Hayes. Please sign the Acknowledgment of Service and forward back to me. Thank you.

With kind personal regards, I am

Sincerely,



J. Cameron Halford

^ MEDIATOR AND ARBITRATOR

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Matthew R. Niemiec

P. John Freeman

Enclosure

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cc: Thomas Dougall (via e-mail)

cc: David Cleveland (via e-mail)

cc: Bonum Wilson (via e-mail)

cc: Andrew Williams (via e-mail)

cc: Sarah Wetmore (via e-mail)

cc: Payton Hoover (via e-mail)

cc: Christy Mahon (via e-mail)

cc: Tracy Vann (via e-mail)

cc: Elizabeth Martineau

cc: Michael Wilkes (via e-mail)

cc: Durham Cole

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

JUONTONIO PINCKNEY, et al.,

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

Plaintiffs,

v.

EPCON COMMUNITIES, INC.; EPCON
COMMUNITIES FRANCHISING, INC.;
BROCK L. FANKHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; STONECREST
VILLAS OF TEGA CAY, L.L.C.;
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

ACKNOWLEDGEMENT
AND ACCEPTANCE OF SERVICE

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

Third-Party Defendant.

EXTERIOR EXPRESSIONS OF NORTH
CAROLINA, INC.,

Fourth-Party Plaintiff,

v.

MARCOS GONZALEZ,

Fourth-Party Defendant.

I hereby acknowledge and accept service of the Amended Summons and Amended Complaint this ____ day of September, 2011.

Brett Dressler, Esquire
Seller, Hinshaw, Ayers, Dorth & Lyons P.A.
Suite 410 Cameron Brown Building
301 South McDowell Street
Charlotte, North Carolina 28204

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
)

JUONTONIO PINCKNEY, et al.,

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

Plaintiffs,

v.

EPCON COMMUNITIES, INC.; EPCON
COMMUNITIES FRANCHISING, INC.;
BROCK L. FANKHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; STONECREST
VILLAS OF TEGA CAY, L.L.C.;
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

)
)
)
)
) ACKNOWLEDGEMENT
) AND ACCEPTANCE OF SERVICE
)

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

Third-Party Defendant.)
_____)
EXTERIOR EXPRESSIONS OF NORTH)
CAROLINA, INC.,)
Fourth-Party Plaintiff,)
v.)
MARCOS GONZALEZ,)
Fourth-Party Defendant.)
_____)

I hereby acknowledge and accept service of the Amended Summons and Amended Complaint this ____ day of September, 2011.

Curtis Dowling, Esquire
Barnes Alford Stork & Johnson
P.O. Box 8448
Columbia, South Carolina 29202

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

JUONTONIO PINCKNEY, et al.,

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

Plaintiffs,

V.

EPCON COMMUNITIES, INC.; EPCON
COMMUNITIES FRANCHISING, INC.;
BROCK L. FANKHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; STONECREST
VILLAS OF TEGA CAY, L.L.C.;
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

ACKNOWLEDGEMENT
AND ACCEPTANCE OF SERVICE

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

V.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

y.

STONECREST VILLAS OF TEGA CAY, LLC,

Third-Party Defendant.)
_____)
EXTERIOR EXPRESSIONS OF NORTH)
CAROLINA, INC.,)
Fourth-Party Plaintiff,)
v.)
MARCOS GONZALEZ,)
Fourth-Party Defendant.)
_____)

I hereby acknowledge and accept service of the Amended Summons and Amended Complaint this ____ day of September, 2011.

Graham Powell, Esquire
Elmore & Wall, P.A.
P.O. Box 1200
Charleston, South Carolina 29402

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
)

JUONTONIO PINCKNEY, et al.,

)

)

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

)

)

Plaintiffs,

)

)

v.

)

)

EPCON COMMUNITIES, INC.; EPCON
 COMMUNITIES FRANCHISING, INC.;
 BROCK L. FANKHAUSER; FANKHAUSER
 PROPERTY GROUP, INC.; STONECREST
 VILLAS OF TEGA CAY, L.L.C.;
 STONECREST VILLAS OF TEGA CAY HOME
 OWNERS ASSOCIATION, INC.,

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Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

Third-Party Defendant.)
_____)
EXTERIOR EXPRESSIONS OF NORTH)
CAROLINA, INC.,)
Fourth-Party Plaintiff,)
v.)
MARCOS GONZALEZ,)
Fourth-Party Defendant.)
_____)

I hereby acknowledge and accept service of the Amended Summons and Amended Complaint this ____ day of September, 2011.

Melissa Nichols, Esquire
Wilkes Bowers Attorneys at Law
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306

Third-Party Defendant.

EXTERIOR EXPRESSIONS OF NORTH
CAROLINA, INC.,

Fourth-Party Plaintiff,

V.

MARCOS GONZALEZ,

Fourth-Party Defendant.

TO:

DEFENDANTS ABOVE NAMED: EPCON COMMUNITIES, INC.; EPCON COMMUNITIES FRANCHISING, INC.; BROCK L. FANKHAUSER; FANKHAUSER PROPERTY GROUP, INC.; STONECREST VILLAS OF TEGA CAY, LLC; AND (HOA) STONECREST VILLAS OF TEGA CAY OWNERS ASSOCIATION, INC.

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Amended Consolidated Complaint in this action, a copy of which is herewith served upon you, and provide a copy of your Answer to the Complaint to the undersigned subscriber within thirty days of service of the Summons and Complaint.

YOU WILL TAKE NOTICE that should you fail to Answer in the time set forth above the Plaintiffs will, by and through their undersigned counsel, petition the court to render judgment against you in your absence and by default for all relief demanded in the Complaint.

HALFORD, NIEMIEC & FREEMAN

J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6639 fax

September 15, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

JUONTONIO PINCKNEY, et al.,

Plaintiffs,

v.

EPCON COMMUNITIES, INC.; EPCON
COMMUNITIES FRANCHISING, INC.;
BROCK L. FANKHAUSER; FANKHAUSER
PROPERTY GROUP, INC.; STONECREST
VILLAS OF TEGA CAY, L.L.C.;
STONECREST VILLAS OF TEGA CAY HOME
OWNERS ASSOCIATION, INC.,

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

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

Third-Party Plaintiff,

v.

STONECREST VILLAS OF TEGA CAY, LLC,

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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

AMENDED COMPLAINT

JURY TRIAL DEMANDED

FILED - RECEIVED
2011 SEP 16 PM 4:38
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Third-Party Defendant.

EXTERIOR EXPRESSIONS OF NORTH
CAROLINA, INC.,

Fourth-Party Plaintiff,

v.

MARCOS GONZALEZ,

Fourth-Party Defendant.

TO:

DEFENDANTS ABOVE NAMED: EPCON COMMUNITIES, INC.; EPCON COMMUNITIES FRANCHISING, INC.; BROCK L. FANKHAUSER; FANKHAUSER PROPERTY GROUP, INC.; STONECREST VILLAS OF TEGA CAY, LLC; AND (HOA) STONECREST VILLAS OF TEGA CAY OWNERS ASSOCIATION, INC.

This Amended Consolidated Complaint is filed pursuant to Order of Hon. John C. Hayes, III dated September 6, 2011 permitting Plaintiffs Leave to Amend to add as necessary Defendant parties Epcon Communities Franchising, LLC and developmental and selling entity Stonecrest Villas of Tega Cay, LLC. Additionally, the Amended Complaint adds three (3) Plaintiff home owners, represented by units described in paragraph 2(a), 2(d) and 2(j) *infra* and causes of action by Plaintiffs for Rescission and Slander of Title.

Plaintiffs would respectfully show the court the following:

JURISDICTION

1. Jurisdiction of this case is proper in York County as all causes of action alleged *infra* occur from conduct, misrepresentations, errors, omissions, duties, and privities (seller to purchaser) associated with the sale and/or maintenance of York County real properties known as "Stonecrest Villas of Tega Cay" condominiums situated within York County.
2. Plaintiffs are purchasers and owners of condominium properties within the horizontal property regime known as Stone Crest Villas of Tega Cay, Inc. constructed and sold to Plaintiffs by Brock L. Fankhauser ("Fankhauser") and Fankhauser Property Group, Inc. ("FPG, Inc."), and Stonecrest Villas of Tega Cay, LLC consisting of the following:

- | | |
|---------------------------------------|---|
| a. <u>Gerry & Thomas Arcoria:</u> | 768 Ledgestone Court, Tega Cay, SC 29708. |
| b. <u>James and Deborah Barone :</u> | 767 Ledgestone Court, Tega Cay, SC 29708. |

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- c. Ismael & Valerie Gonzales : 709 Ledgestone Court, Tega Cay, SC 29708.
 - d. Vincent Longobardo: 870 Ledgestone Court, Tega Cay, SC 29708.
 - e. Joe and Sandra Moore : 821 Ledgestone Court, Tega Cay, SC 29708.
 - f. David Musgrave : 748 Ledgestone Court, Tega Cay, SC 29708.
 - g. Juontonio Pinckney : 809 Ledgestone Court, Tega Cay, SC 29708.
 - h. Josephine Sciacca : 717 Ledgestone Court, Tega Cay, SC 29708.
 - i. Addie Smith : 858 Ledgestone Court, Tega Cay, SC 29708.
 - j. Allen & Edith Vesting: 868 Ledgestone Court, Tega Cay, SC 29708.
 - k. Thea - Eve Vicari : 830 Ledgestone Court, Tega Cay, SC 29708.
 - l. Troy and Nancy Williams : 828 Ledgestone Court, Tega Cay, SC 29708.
3. Defendant Epcon Communities, Inc. ("EPCON") is a commercial developer of single story attached residential condominiums, including the "*pinwheel*" design, which offers for sale to purchasers by and through Epcon builder Brock L. Fankhauser ("Fankhauser"), Fankhauser Property Group, Inc. ("FPG"), and/or Stonecrest Villas of Tega Cay, LLC condominiums of the Epcon design within Stonecrest community development in Tega Cay, York County.
 4. Defendant Epcon Communities Franchising, Inc. ("ECF, INC.") is on information and belief Epcon owned, or an Epcon affiliate, *franchisor*, and the trademark owner of Epcon designs, plans and specifications and the "Epcon Developmental System", utilized by the Fankhauser Defendants in the advertisement, marketing, sale and construction of Plaintiffs' homes within the Stonecrest Development of Tega Cay.
 5. Defendant Brock L. Fankhauser ("Fankhauser") is a *franchisee* of Epcon and its affiliate Epcon Communities Franchising, Inc., ("ECF, INC."), is owner, builder, principal, president, and registered agent for both Defendant Fankhauser Property Group, Inc. ("FPG, Inc."), Stonecrest Villas of Tega Cay, LLC, and Stonecrest Villas of Tega Cay Owners Association, Inc. ("Stonecrest HOA") all of whom do business in York County, South Carolina. This Defendant is a resident of North Carolina doing business in York County, South Carolina.
 6. Defendant Fankhauser Property Group, Inc. ("FPG, Inc.") is a North Carolina corporation owned by Brock L. Fankhauser; FPG, Inc., franchisee of the Epcon Developmental system plans and specifications owned by Epcon Communities and/or Epcon affiliate Epcon Communities Franchising, Inc., and FPG, Inc. served as developer and contractor for the construction and development of Stonecrest condominiums including the construction of each respective Plaintiff's home by and through licensed contractor Brock L. Fankhauser.
 7. Defendant Stonecrest Villas of Tega Cay, LLC ("SCVTC, LLC") is a wholly owned developmental and sales entity owned by Brock L. Fankhauser which sold Plaintiffs their homes in Stonecrest Villas by and through owner and manager and operator Brock L. Fankhauser.

8. Defendant Stonecrest Villas of Tega Cay Owners Association, Inc. ("Stonecrest HOA") is a South Carolina non-profit corporation organized by Defendant Brock L. Fankhauser under South Carolina law and existing pursuant to the Master Deed and declaration of covenants and restrictions filed with the York County Clerk of Court governing the Stonecrest community development.
9. Stonecrest Villas of Tega Cay is an Epcon horizontal property regime in York County, planed, advertised, marketed, developed, constructed by and through Defendants Epcon Communities, Epcon Communities Franchising, Inc., builder and developer Brock L. Fankhauser, Fankhauser Property Group, Inc. ("FPG, INC."), and Stonecrest Villas of Tega Cay, LLC ("SCVTC, LLC").
10. Plaintiffs are informed and believe that direct privity exists between the Plaintiffs and Defendant parties by virtue of Plaintiffs' purchase and ownership of a Stonecrest Villas condominium and by virtue of Master Deed and restrictive covenants running with, appurtenant to, and binding said properties.
11. Plaintiffs are informed and believe that contractual duties existed between the Plaintiffs and all Defendants, supported by consideration, and that Defendants jointly and severally have breached said contractual obligations and express warranties owed to Plaintiffs, to wit:

FOR A FIRST CAUSE OF ACTION

(AS AGAINST DEFENDANTS BROCK L. FANKHAUSER, FANKHAUSER PROPERTY GROUP, INC., STONECREST VILLAS OF TEGA CAY, LLC and EPCON COMMUNITIES, INC. and EPCON COMMUNITIES FRANCHISING, INC.)
(ACTION FOR RESCISSION)

1. The above allegations are re-stated and incorporated by reference as if having been set forth verbatim.
2. That pursuant to Franchise Agreement, Epcon and Epcon Communities Franchising, Inc. ("ECF, INC.") expressly granted unto Epcon builder and developer Fankhauser and FPG the rights to engage in advertising, marketing, development and sale using the Epcon Developmental System, the terms and conditions of said Franchise Agreement are incorporated by reference.
3. Plaintiffs are informed and believe that Defendants Epcon Communities, and Epcon Communities Franchising, Inc., by and through builder Brock L. Fankhauser and Fankhauser Property Group, Inc. exhibited Epcon Communities, Inc. communities and model home designs during the sales process to Plaintiffs which was material to Plaintiffs' decision to purchase a Epcon Communities home in the Stonecrest Villas development in York County.

4. Plaintiffs are informed and believe that Defendants represented to Plaintiffs as purchasers that the condominiums and community they were purchasing within Stonecrest was an Epcon community design active-adult and maintenance free home. Said representations were materially false, as set forth in paragraph (6) below.
5. Plaintiffs are informed and believe that Defendants Epcon Communities, Inc. and Epcon Communities Franchising, permitted Fankhauser use and sale of trademark Epcon plans, designs and specifications in the advertising, marketing and sale of Stonecrest condominiums to these Plaintiffs.
6. Plaintiffs are informed and believe that Defendant Epcon Communities Franchising, Inc. by and through Brock L. Fankhauser, developed, published, and permitted use of its home plans and specifications for building of homes in the Stonecrest Villas of Tega Cay community.
7. Plaintiffs are informed and believe that the contractor and developer Fankhauser and FPG, Inc. materially deviated from Epcon Communities Franchising, Inc. plans and specifications in the construction of the Stonecrest Community condominiums sold to Plaintiffs, including the homes of Plaintiffs Vesting, Longobardo and others, and that Epcon and ECF, Inc. failed to enforce strict compliance with Franchise Agreement terms upon Fankhauser and FPG, Inc.
8. Plaintiffs are informed and believe that Brock L. Fankhauser and FPG, Inc. were Epcon Builders pursuant to that certain Franchise Agreement between the Epcon Defendants and Fankhauser Defendants, the terms and conditions of which are incorporated by reference.
9. Plaintiffs are informed and believe that Brock L. Fankhauser, by and through Fankhauser Property Group, Inc. "FPG" was the contractor, developer, builder, and seller of said Epcon designs and specifications which were ultimately sold to Plaintiffs as maintenance free Epcon home designs within an Epcon Community "Stonecrest Villas of Tega Cay".
10. Plaintiffs are informed and believe that Brock L. Fankhauser through "Stonecrest Villas of Tega Cay, LLC" sold the homes to Plaintiffs. Brock L. Fankhauser also served as contractor and developer for the properties. Brock L. Fankhauser also served as sole controlling interest of the HOA Stonecrest Villas of Tega Cay Owners Association, Inc. until June 30, 2010. Brock L. Fankhauser is the controlling interest and manager of developmental and selling LLC entity Stonecrest Villas of Tega Cay, LLC.
11. Plaintiffs are informed and believe that due to building code violations and deviations from the Epcon Developmental System by Fankhauser, Defendants have breached contractual duties to these Plaintiffs by selling homes which suffer from reoccurring water intrusion, construction defects, and/or design defects, and which do not conform to the representations made to these Plaintiffs by Epcon sales agents and Epcon Builder Fankhauser of maintenance free active adult homes constructed in a workmanlike manner

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pursuant to Epcon Communities, Inc. models and Epcon Communities Franchising, Inc. plans and specifications.

12. Plaintiffs are informed and believe that their homes were constructed with code violations, do not conform to the applicable building code, and do not conform to the specifications of the Epcon Communities Franchising, Inc. specifications; and that builder Brock L. Fankhauser materially deviated from code and Epcon Community Franchising, Inc. plans and specifications in development and construction of homes sold at Stonecrest to these Plaintiffs and others.
13. Plaintiffs are informed and believe that Brock L. Fankhauser, by and through Stonecrest Villas of Tega Cay, LLC, was the declarant for the Stonecrest community development and by provisions of the Master Deed created the HOA "Stonecrest Villas of Tega Cay Owners Association, Inc."
14. That Brock L. Fankhauser as contractor, developer, and seller through Stonecrest Villas of Tega Cay, LLC was the sole board member and controlling interest for the HOA "Stonecrest Villas of Tega Cay Owners Association, Inc." ("HOA") until June 30, 2010, including the date of February 15, 2010 mortgaging the common properties by instrument recorded at Book 11272 at Page 129-139 in York County.
15. That Brock L. Fankhauser and FPG, Inc. as Epcon Communities, Inc. and Epcon Communities Franchising, Inc. *franchisee* materially deviated from the Epcon Developmental System, Epcon plans, Epcon specifications, and building code in construction of Stonecrest condominiums, including the Plaintiffs' condominium homes.
16. That despite actual knowledge of flooring and foundation defects by Epcon principal Philip Fankhauser, Epcon Communities and Epcon Communities Franchising, Inc. knowingly and willfully permitted further contracts and sale by Fankhauser, FPG, and Stonecrest Villas of Tega Cay, LLC of homes whose construction by FPG materially deviated from Epcon plans, specifications, materials and designs.
17. That Epcon Communities and Epcon Communities Franchising, Inc. willfully and deliberately failed to enforce Franchise Agreement terms and conditions upon Fankhauser and FPG, Inc. as Epcon franchisee, resulting in construction of homes that deviate from Epcon plans, models, specifications, building code, and which now suffer reoccurring water intrusion and mold.
18. That the duties and responsibilities of Stonecrest Villas of Tega Cay Owners Association, Inc. ("Stonecrest HOA") are set forth in the bylaws, restrictive covenants, and master deed recorded at Book 8852 at Page 149, which is incorporated by reference, including taking any steps or performing any acts deemed necessary to appropriate to preserve the values of the condominium units and to promote the health, safety and welfare of unit owners, including payment of taxes on Stonecrest common properties.

19. That Defendant Stonecrest Villas of Tega Cay Owners Assoc. Inc. ("HOA") has failed and is failing to carry out its purposes under the Master Deed to these Plaintiffs. The HOA, through Brock Fankhauser has engaged in private loans with the Epcon builder Fankhauser, failed to remedy water intrusion, failed to pay taxes on the common elements, and failed to protect and preserve Plaintiffs' homes or home exteriors.
20. That Defendants named in this cause of action have breached contractual duties owed to Plaintiffs by selling them dwellings which suffer from reoccurring water intrusion, construction defects, and which do not conform to the Epcon Communities, Inc. communities, model home designs, or Epcon Communities Franchising plans and specifications used to advertise to, market, and ultimately sell to Plaintiffs Epcon homes.
21. Plaintiffs are informed and believe that Defendant Stonecrest Villas of Tega Cay Owners Association, Inc. "Stonecrest HOA" has breached contractual and fiduciary duties owed to these Plaintiffs, is undercapitalized and incapable of carrying out its functions under the Master Deed to protect the common properties of Stonecrest, including the exterior components comprising these Plaintiffs' homes and payment of taxes. As a result, said homes suffer from routine water intrusion and mold and are subject to tax levies resulting in increased financial burden on owners.
22. That Defendants' failures and breach of contract is so fundamental and substantial that it defeats the purpose of the contract as entered into by Plaintiffs with Defendants, to wit:
 - a. Defendants Epcon Communities and Epcon Communities Franchising have knowingly failed to enforce Franchise Agreement compliance terms upon Epcon franchisee and Epcon seller Brock L. Fankhauser and FPG, permitting FPG and Brock L. Fankhauser to build Epcon homes which materially deviate from building code and the Epcon developmental system, Epcon plans and Epcon specifications.
 - b. Defendants Brock L. Fankhauser, Fankhauser Property Group, Inc. "FPG" and Stonecrest Villas of Tega Cay, LLC have using Epcon trademark styles and designs advertised, marketed, constructed, sold and conveyed to Plaintiffs homes that are substantially different, materially deviate from, and are non-conforming to representations of Epcon designs and quality Plaintiffs were promised and bargained for.
 - c. That Epcon's representations of Epcon quality and value, through Epcon sales agents and Epcon builder Fankhauser, were material to Plaintiffs' decision to purchase a Stonecrest condominium.
 - d. Plaintiffs' homes suffer from routine re-occurring water intrusion and water penetration at various locations per household, including foundations, windows, siding, and roofs. Plaintiffs are informed and believe said water intrusion cannot be remedied and that their homes are compromised by construction defects or design defects as constructed by FPG and Brock L. Fankhauser.

- e. The construction of Plaintiffs homes materially differs and substantially deviates from the Epcon Communities, Inc. plans and specifications due to errors, omissions, deviations from code and plans, and misrepresentations of the contractor/developer Brock Fankhauser and Fankhauser Property Group, Inc. ("FPG").
- f. Defendants homes on information and belief suffer from growth of mold caused by reoccurring water intrusion which is the direct and proximate result of builder error or omissions, specifically by Brock L. Fankhauser and Fankhauser Property Group, Inc. "FPG".
- g. That despite demands made, Defendant HOA "Stonecrest Villas of Tega Cay Owners Association, Inc.", has been and remains unwilling or incapable of assisting Plaintiffs to repair homes, including common elements, to prevent further water intrusion and mold damages, despite accepting Plaintiffs' monthly assessments faithfully paid to the HOA.
- h. Plaintiffs were sold homes within a horizontal property regime wherein the HOA is unwilling or incapable of maintaining the common elements pursuant to the Master Deed created by developer Brock L. Fankhauser / declarant Stonecrest Villas of Tega Cay, LLC. by and through Brock L. Fankhauser.
- i. That due to financial mismanagement of Brock L. Fankhauser as controlling HOA board, Plaintiffs have been subjected and will continue to be subjected to special assessments caused by conflicts of interest wherein the HOA board was incapable or unwilling to take action as against declarant, developer, builder, and seller Brock L. Fankhauser, Fankhauser Property Group, Inc., and Stonecrest Villas of Tega Cay, LLC financial mismanagement, failure to pay taxes, and unlawful encumbering by mortgage of common properties at Book 11272 at Page 129.
- j. Plaintiffs have been subjected and will continue to be subjected to special assessments caused by Defendant Stonecrest Villas of Tega Cay Owners Association, Inc. "HOA" failure to mitigate damages occurring due to re-occurring episodes of water intrusion at the homes of these Plaintiffs.
- k. Plaintiffs have been subjected and will continue to be subjected to increased special assessments due to the HOA board failure to pay taxes or prevent unauthorized loans and mortgaging of the Stonecrest common property by Stonecrest Villas of Tega Cay, LLC and Brock L. Fankhauser in violation of Section 10.6 of the Master Deed.

23. Plaintiffs are informed and believe that the condominium homes purchased by these twelve (12) Plaintiffs are structurally compromised, suffer from irreparable deficiencies, impracticality of repair due to cost, water intrusion, and mold contamination which are the direct and proximate result of errors, misrepresentations, deviations, and omissions of Brock L. Fankhauser.
24. Plaintiffs are informed and believe that Plaintiffs are entitled to recovery of the full purchase price paid by Plaintiff buyers, plus damages, attorneys fees, and costs in the discretion of the court and a jury.

FOR A SECOND CAUSE OF ACTION

[AS TO BROCK L. FANKHAUSER AND STONECREST VILLAS OF TEGA CAY, LLC]
(SLANDER OF TITLE)

1. The above allegations are re-stated here and incorporated by reference as if having been set forth verbatim.
2. That Defendant Stonecrest Villas of Tega Cay, LLC is the Declarant under the Master Deed for the developed community Stonecrest Villas of Tega Cay and sold condominium homes to Plaintiffs by and through Brock L. Fankhauser.
3. That Brock L. Fankhauser is the controlling interest, manager, and owner of Stonecrest Villas of Tega Cay, LLC. Brock L. Fankhauser occupied the board and controlling interest of the HOA Stonecrest Villas of Tega Cay Owners Association beyond the end of the Declarant Control period as identified in the Master Deed, resigning June 30, 2010.
4. That Defendant Brock L. Fankhauser, by and through parents Philip Fankhauser and Kathleen Fankhauser, permitted private lending and private mortgage to encumber the common property within the horizontal property regime Stonecrest Villas of Tega Cay in violation of the community master deed, Section 10.6, page (17), as published by Fankhauser and Stonecrest Villas of Tega Cay, LLC.
5. In so doing, Brock L. Fankhauser by and through Declarant Stonecrest Villas of Tega Cay, LLC encumbered the common properties without lawful authority and in violation of the Master Deed Section 10.6, in the amount of \$560,000.00 on February 15, 2010 as recorded in Book 11272 Page 129-139 in the records of the York County Clerk of Court.
6. That as a direct and proximate result of Epcon Builder Fankhauser violations of Section 10.6 of the Master Deed, Plaintiffs' undivided ownership interests in the common properties has been mortgaged through unauthorized loans undertaken by Stonecrest Villas of Tega Cay ("SCVTC, LLC") by and through Brock L. Fankhauser, Epcon principal Philip Fankhauser, and Stonecrest Villas HOA.
7. That said conduct occurred in violation of the Master Deed sold to Plaintiffs by Stonecrest Villas of Tega Cay LLC (SVTC, LLC), after end of the Declarant Control period as set forth in the Master Deed, and while Brock L. Fankhauser occupied

controlling interest of SVTC, LLC and HOA Stonecrest Villas of Tega Cay Owners Association, Inc "HOA".

FOR A THIRD CAUSE OF ACTION

[AS TO DEFENDANTS BROCK L. FANKHAUSER
FPG, INC. AND HOA STONECREST VILLAS OF TEGA CAY OWNERS ASSOC. INC.
AND STONECREST VILLAS OF TEGA CAY, LLC]
(BREACH OF FIDUCIARY DUTY)

1. The above allegations are restated and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Plaintiffs as owners are required to pay monthly assessments and dues to Stonecrest Villas of Tega Cay Owners Association, Inc. ("HOA") for preservation and maintenance of condominium exteriors and common areas and amenities pursuant to the Master Deed, bylaws and restrictive covenants.
3. Plaintiffs are informed and believe that a fiduciary relationship exists between Plaintiffs and these Defendants wherein Defendants are required, by virtue of Master Deed, bylaws and restrictive covenants, to act in equity, in good faith, and with proper due regard for Plaintiffs' interests in preservation, maintenance, and protecting Plaintiffs' properties from water intrusion damages.
4. Plaintiffs are informed and believe that Defendants voluntarily undertook this fiduciary obligation, imposed by Master Deed restrictive covenants, through acceptance of Plaintiffs' monthly assessments.
5. Plaintiffs are informed and believe that Defendants have breached this fiduciary obligation by failing to act to preserve and protect Plaintiffs' health and property values. Defendants, jointly and severally, have failed to act to preserve and maintain Plaintiff's Properties from water intrusion and potential health risks, including mold, as reported by Plaintiffs Barone (767), Pinckney (809), Sciacca (717), Vicari (830) and Arcoria (768), specifically.
6. Plaintiffs are informed and believe that Defendants have breached fiduciary duties to Plaintiffs by denying needed repairs for temporary flooring, wall repairs, and mold remediation while granting unto board members these same repairs without cost.
7. Plaintiffs are informed and believe that Defendants have breached fiduciary duties imposed upon Defendants by Master Deed by failing to timely pay taxes on the common properties of Stonecrest Villas and subjecting the same to tax levy.
8. Plaintiffs are informed and believe that these Defendants, jointly and severally, have breached said fiduciary obligations by failing to prudently act to preserve and maintain common properties within Stonecrest, including the clubhouse and Plaintiffs' home exteriors, and despite accepting monthly assessments paid by Plaintiffs.

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9. Plaintiffs are informed and believe that Defendants, jointly and severally, through Brock L. Fankhauser and Stonecrest Villas of Tega Cay, LLC have permitted private loans encumbering the common properties of Stonecrest Villas in violation of Section 10.6 of the Master Deed, recorded at Book 11272 at Page 129-139 in the records of the clerk of court for York County, South Carolina.
10. Plaintiffs are informed and believe Defendants, jointly and severally, through Brock L. Fankhauser, failed to act to pay taxes on the Common Properties, subjecting the same to tax levy sale and increased financial burdens on the Plaintiffs and home owners.
11. Plaintiffs are informed and believe that Defendants, through Brock L. Fankhauser individually, have deliberately and arbitrarily refused to enforce bylaws by permitting Fankhauser-appointed board members to operate small businesses out of their garages in express violation of the Master Deed.
12. Plaintiffs are informed and believe that Defendants, jointly and severally, improperly utilized monthly HOA assessments for purposes other than payment of taxes and maintenance of Stonecrest properties, including development of adjacent commercial property tracts and roadways, instead of employing said funds to remedy defects, make needed repairs, and cure water intrusions issues at Plaintiffs' homes.
13. Plaintiffs are informed and believe that Defendants, jointly and severally, have undercapitalized the HOA and have depleted reserves as set forth in paragraph (12) above, resulting in the HOA being unable or unwilling to protect and preserve Plaintiffs' properties, maintain values, repair water intrusion damage, mold or pay taxes.
14. That Plaintiffs' demands to Stonecrest HOA, Fankhauser and FGP, Inc. to remedy water intrusion and make repairs has met with procrastination, deliberate failure to act, and has required that this legal action be brought against Defendants.
15. Defendants, through the HOA board, have arbitrarily refused to effect repairs to the interiors of Plaintiffs' homes, caused by water intrusion originating from the HOA' failure to preserve and protect the common elements of the horizontal property regime, including walls, foundations, exteriors, roofs, siding, and landscaping of Plaintiffs homes.
16. Defendant Stonecrest HOA, through its appointed board, has breached fiduciary obligations owed to Plaintiffs by voluntarily undertaking to remove flooring at the residences of Plaintiffs Pinckney, Sciacca and Arcoria, and thereafter refusing to replace the same without lawful justification while repairing residences of HOA appointed board members with new temporary flooring and mold remediation.
17. Defendants through the HOA board has breached fiduciary obligations by arbitrarily permitting Fankhauser-appointed HOA board members to install new floor coverings, while denying repairs to Pinckney, Sciacca, Arcoria, and other Plaintiffs.

18. Defendants, through Brock L. Fankhauser, have breached fiduciary obligations by voluntarily conveying value to board members, including conveying undivided common area properties for deck extensions, in violation of Master Deed, restrictive covenants and bylaws.
19. Defendants have breached fiduciary obligations to Plaintiffs by refusing, prior to June, 2011 to undertake temporary protective measures using tarps to prevent water intrusion at Plaintiffs' residences, while arbitrarily repairing the residence flooring and wall systems of Fankhauser-appointed board members, including Iadanza and Moscovitz.
20. That due to Defendants' breach of fiduciary duties to Plaintiffs, Plaintiffs each have been damaged in amounts exceeding \$7,500 to be proven at trial of this matter before a jury.
21. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages due to the HOA Breach of Fiduciary Duties and financial mismanagement by Brock L. Fankhauser individually and as principal and controlling officer of Stonecrest HOA and FPG, Inc. wherein Defendants, through Brock Fankhauser, have acted in an arbitrary, willful, wanton, and reckless disregard of Plaintiffs' rights and interests as Stonecrest owners.
22. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages due to the HOA executive board violations of the Master Deed, Section 10.6 both before and after resignation of principal Brock L. Fankhauser, including encumbering of the common properties by private mortgage and subjecting the common properties to tax levy sale due to non-payment of taxes in violation of duties imposed upon the HOA by Master Deed.
23. Plaintiffs are informed and believe that they are entitled to an award of all attorneys' fees and costs associated with bringing this matter before the court.

FOR A FOURTH CAUSE OF ACTION

AS TO EPCON COMMUNITIES, INC.; EPCON COMMUNITIES FRANCHISING, INC.;
BROCK L. FANKHAUSER, INDIVIDUALLY, FANKHAUSER PRPOERTY GROUP, INC.
STONECREST HOA, and STONECREST VILLAS OF TEGA CAY, LLC
(BREACH OF CONTRACT)

1. The above allegations are set forth and incorporated by reference as if stated again verbatim. Plaintiffs allege that their homes were advertised, marketed, and sold pursuant to the terms of a Franchise Agreement between Epcon Communities Franchising, Inc. and Fankhauser Property Group, Inc.
2. Plaintiffs show and allege that they are intended third party beneficiaries of the terms and conditions of said Franchise Agreement terms between Epcon and Fankhauser.

3. Plaintiffs are informed and believe that the Defendants named in this cause of action knew, *or should have known*, that the property being purchased by each respective Plaintiff would serve as the Plaintiff's primary residence and home.
4. Plaintiffs are informed and believe that contractual duties exist between Plaintiffs and these Defendants, supported by consideration, and that the Defendants jointly and severally have breached said contractual obligations, to wit:
 - a. Epcn and ECF, Inc. failure to enforce strict compliance upon Epcn builder Fankhauser with Franchise Agreement terms, conditions, and restrictions.
 - b. Epcn and Defendant Brock L. Fankhauser's knowing deviation from Epcn plans, specifications, and building code in construction of the Plaintiffs' Stonecrest condominiums.
 - c. Defendant Brock L. Fankhauser until July, 2010 was the sole controlling board member, owner, and agent of Stonecrest HOA. FPG, Inc. as contractor, developer, and sole controlling HOA interest is solely responsible for misrepresentations, breach of warranties, inaction, errors, omissions, neglect, procrastination, and arbitrary refusal to take sufficient corrective action to prevent recurring water intrusion to Plaintiffs' residences and effect necessary repairs despite Brock Fankhauser's awareness and Epcn principal Philip Fankhauser awareness of ongoing defects and water intrusion issues at Stonecrest properties.
 - d. That Defendants, specifically including Defendant Brock L. Fankhauser, knew, *or should have known*, of the construction defects and/or design defects which plagued the Stonecrest Condominium properties, yet continued to repeatedly market and sell the same to innocent purchasers for cash, including Plaintiffs Williams and Vicari, *supra*.
 - e. Defendant Fankhauser Property Group (FPG, Inc.) as general contractor, by and through Brock L. Fankhauser, has by breach of warranty and breach of implied duties of good faith and fair dealing failed to render workmanlike construction on Plaintiffs' residences, including deviating from the Epcn Development System received by way of Franchise Agreement, resulting in defects and water intrusion caused by construction defects and/or design defects.
 - f. Defendant FPG, Inc., as general contractor, by and through Brock L. Fankhauser individually, has arbitrarily refused to vigilantly protect and restore Plaintiffs' properties from further damage and conduct needed repairs, despite repeated written notices and demands.
 - g. Defendants, including FPG, Inc., as general contractor, by and through Brock L. Fankhauser individually, has arbitrarily refused to repair and/or maintain Plaintiffs' properties.

- h. Defendants, by and through Brock L. Fankhauser, have arbitrarily commenced free repairs to those properties belonging to Stonecrest HOA board members appointed by Fankhauser, including Lou Moscowitz and Paulette Iadanza, while ignoring the Plaintiffs' needs for repairs in the face of known water intrusion and mold damages at Plaintiffs' residences.
 - i. Defendant Stonecrest HOA, despite notice, permitted Brock L. Fankhauser individually to exercise control of the HOA in violation of Master Deed and bylaws. Stonecrest HOA by and through Fankhauser individually (sole board member and owner) failed to act promptly to protect Plaintiffs' properties and interests from damages and failed to effect repairs, despite notice and despite acceptance of Plaintiffs' monthly assessments.
 - j. Defendant Stonecrest HOA has ratified the conduct of Fankhauser individually, acting arbitrarily to perform work on board members' property while ignoring repair needs of the Plaintiffs and other residents whose properties leak water and are affected by mold and lack of proper flooring.
 - k. Defendants Brock Fankhauser, FPG, Inc. and Stonecrest Villas of Tega Cay LLC (SVTC, LLC) and Stonecrest HOA through its board have knowingly, deliberately, and recklessly disregarded fiduciary obligations imposed upon Defendants by Master Deed and contract privity with Plaintiffs by engaged in private loans, unlawful mortgage of undivided common property owned by Plaintiffs, failed to pay taxes, and ignored known defects and repair needs existing at Plaintiffs' residences despite express knowledge of water intrusion and mold growth.
 - l. Plaintiffs are informed and believe Defendants named in this cause have improperly and in bad faith employed Plaintiffs' monthly assessments resulting in HOA undercapitalization and inability to carry out Master Deed duties to protect, preserve, repair or remedy defects, damages, and water intrusion at Plaintiffs' properties, thereby breaching contractual duties owed to Plaintiffs as purchasers for value of an Epcon product within an Epcon community.
 - m. Defendants, jointly, have failed to act prudently to repair Plaintiffs' home interiors, exteriors, pay taxes due upon and preserve common properties, including the Stonecrest Club House, from being damaged by mold and water intrusion despite accepting monthly assessments from owners.
5. That the conduct of each respective Defendant, jointly and severally, constitutes breach of contract as between the parties as set forth more fully below, including Breach of Fiduciary Duty, Breach of Contract Accompanied by Fraudulent Acts, Breach of Implied Duties of Good Faith and Fair Dealing, and Breach of Express Warranties as set forth more fully below.

6. That as a direct and proximate result of the Defendants' breach of contractual duties, jointly and severally, each respective Plaintiff has been damaged in amounts exceeding \$7,500 to be proven at trial of this matter before the court. Plaintiffs' damages are legally and proximately the result of Defendants' breach of contractual duties and obligations.
7. Plaintiffs seek actual, punitive, compensatory, and expectation damages, attorney's fees, and costs as against Defendants in amounts to be proven at trial of this matter before the court, including the expectation value of what Plaintiffs purchased vs. the value of the product and services each Plaintiff was sold by Defendants.

FOR A FIFTH CAUSE OF ACTION

[AS TO BROCK L. FANKHAUSER; FPG, INC; STONECREST VILLAS OF TEGA CAY, LLC ("SVTC, LLC") and STONECREST VILLAS OF TC OWNERS ASSOCIATION, INC.
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACTS)]

1. Plaintiffs are informed and believe that Defendants, including Brock L. Fankhauser individually, *knew or was substantially certain* that the Epcon Communities, Inc. "Stonecrest" condominium properties built by Fankhauser were plagued by water intrusion problems, construction defects, and/or design defects.
2. Plaintiffs are informed and believe that Epcon builder Fankhauser and Alice McDonald, Epcon and FGP director of construction, knowingly and deliberately deviated from Epcon Communities Franchising, Inc. materials, plans, specifications, and guidelines, in constructing Epcon "Stonecrest Villas" condominiums.
3. Yet, Defendants falsely and dishonestly continued to market and sell the condominiums as built in compliance with Epcon guidelines, specifications, and building code, without full disclosure to purchasers for value, specifically including Plaintiffs Williams and Vicari.
4. Defendants Brock Fankhauser, FPG, Inc., SVTC, LLC and Epcon were dishonest in fact by misleading Plaintiffs and by continuing to sell homes which substantially deviated from and was non-conforming to Epcon designs, plans and specifications.
5. Plaintiffs are informed and believe that these Defendants knew, or should have known, of material facts involving substantial water intrusion problems within the Stonecrest, but concealed from Plaintiffs these material facts and continued to sell defectively constructed homes after December 19, 2009.
6. Despite express knowledge by Defendants of the problems identified in paragraph (5) above, on March 19, 2009, Defendants permitted to be sold condominium # 828 to Troy and Nancy Williams.
7. Despite express knowledge by Defendants of the problems identified in paragraph (5) above, on May 28, 2010, Defendants permitted to be sold condominium # 830 to Thea-Eve Vicari, *for cash*.

8. That Defendants, through Epcon builder Brock L. Fankhauser, expressly reassured Plaintiffs at time of purchase, specifically including Plaintiffs Gonzalez (unit 709), Addie Smith (unit 858) and Thea-Eve Vicari (unit 83), that their condominium properties would be properly repaired; said assurances were materially false.
9. Plaintiff Vicari, upon notice of the true extent of water intrusion problems, demanded rescission of sale refund of cash paid to Brock L. Fankhauser. Plaintiffs are informed and believe that Defendant Brock L. Fankhauser falsely denied contract rescission was possible, and denied refund to Plaintiff Vicari, while permitting rescission and refund to other buyers within Stonecrest, said conduct constituting dishonesty in fact.
10. Defendants, expressly including Stonecrest HOA, have refused despite demand to effect repairs to Plaintiffs' properties to prevent water intrusion, despite accepting monthly assessments paid by Plaintiffs.
11. Defendants, expressly including Stonecrest HOA by its board, have arbitrarily refused despite demand to effect interior repairs to Plaintiffs' homes caused by exterior deterioration or defects known to Defendants falsely disclaiming responsibility for interior damages originating or emanating from faulty builder workmanship.
12. Defendants, despite undertaking to remove the flooring of Sciacca (unit 717) and Pinckney (unit 809), and Arcoria (768), have arbitrarily refused to complete repairs and install replacement flooring while arbitrarily providing temporary repairs to other Stonecrest properties belonging to HOA board members, including Moscowitz and Iadanza. As a result, Sciacca and Pinckney have suffered loss of use of portions of their residence for months without being compensated.
13. Plaintiffs are informed and believe that Defendants misrepresentations and failures to act are arbitrary and dishonest in fact; Defendants having never repaired Plaintiffs' properties despite repeated pleas and demands.
14. Plaintiffs are informed and believe that Defendants owed to Plaintiffs a duty to not materially conceal material material facts and to repair their homes pursuant to Master Deed, which Defendants through Epcon developer Fankhauser failed to do.
15. Plaintiffs are informed and believe Defendants, jointly and severally, through Epcon Builder Brock Fankhauser, expressly failed by *deliberate concealment* to *fully disclose* to Vicari and Williams, as purchasers, the full extent of the construction defects and/or design flaws described above and known to Defendants, including Brock L. Fankhauser individually, as affecting numerous condominium structures in Stonecrest.
16. Plaintiffs are informed and believe that Defendants, including Fankhauser individually, had and gained a pecuniary interest in the sale of defective homes being sold to Plaintiffs and others, including Vicari for cash.

17. That Plaintiffs as a group were ignorant of builder deviations from Epcon plans and specifications, building code, and the the false representations made by Defendants that their properties would be properly repaired.
18. That Plaintiffs believed that they were purchasing an EPCON home as constructed by Epcon builder and Defendant Brock L. Fankhauser and Fankhauser Property Group, Inc. which would be maintained and preserved by Stonecrest HOA pursuant to Master Deed restrictive covenants and bylaws of the HOA. *Said representations were material to Plaintiffs' decision to purchase, and were materially misleading and false.*
19. That Plaintiffs, expressly including Williams and Vicari, as purchasers for value, had the right to rely upon Defendants' representations, jointly and severally, in purchasing their Epcon Stonecrest condominium home and did in fact rely upon the representations of Defendants that they were purchasing an Epcon Communities, Inc. product, built by the Fankhauser Defendants, which would be maintained and preserved by Stonecrest HOA under Master Deed.
20. That Plaintiffs, expressly including Vicari, are now informed and believe that they have were deceived in the sales process, and were sold for value Epcon homes which suffer from construction defects and/or design defects known to the Defendants jointly and severally at the time of sale, the scope and magnitude of which were material facts concealed by Fankhauser in bad faith to induce purchase.
21. Plaintiffs are informed and believe that had Defendants disclosed material facts concerning the extent of water intrusion within the community, Plaintiffs would not have purchased a Stonecrest home.
22. That Plaintiffs have faithfully paid monthly assessments despite the Defendants being unwilling or unable to effect repairs required to protect each Plaintiffs' property, and that the HOA unwillingness or inability to repair properties while preserving board members' properties constitutes arbitrary, bad faith, and dishonest in fact breach of contract.
23. Plaintiffs are informed and believe that they have incurred damages as a direct and proximate result of the Defendants' knowing and deliberate concealment concerning construction defects and/or design defects known to Defendants to exist in the Epcon "Stonecrest" development as constructed by Defendants Fankhauser and by Defendants' continued refusal to assist and repair Plaintiffs' properties.
24. Plaintiffs believe they are entitled to all actual and punitive damages including an award of attorney's fees and costs due to Defendants' bad faith breach of contract accompanied by fraudulent act.

FOR A SIXTH CAUSE OF ACTION

[AS AGAINST DEFENDANTS BROCK L. FANKHAUSER, FANKHAUSER PROPERTY GROUP, INC., STONECREST HOA, EPCON COMMUNITIES, INC. and EPCON COMMUNITIES FRANCHISING, INC.]

(FRAUD AND MISREPRESENTATION)

1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. That a Franchise Agreement exists as between the Epcon Defendants and Fankhauser Defendants, under which Defendants advertised, marketed and sold Epcon designs to Plaintiffs. The terms and conditions of the Franchise Agreement are incorporated by reference.
3. Defendant FPG, Inc., by and through its President Brock L. Fankhauser, is an Epcon Franchisee pursuant to that certain March 23, 2006 Franchise Agreement. FPG, Inc. and Brock L. Fankhauser was the developer and builder of these Plaintiffs' condominium homes under said Franchise Agreement.
4. As Franchisee, Defendants FPG and Brock L. Fankhauser were under a duty to strictly comply and adhere to the Epcon "Development System" and not deviate from the materials, procedures, and guidelines. Defendants materially deviated from the Epcon Developmental system and materially concealed these facts from Plaintiff buyers.
5. As Franchisee, the Fankhauser Defendants were permitted the use of "Epcon" trade name, logo, brand, marks, designs, marketing materials, guidelines, video presentations, and specification manuals for advertising, marketing, construction, sales, and warranty communications.
6. Defendants Epcon and ECF, Inc., by and through Brock L. Fankhauser, permitted material deviations from plans, designs, construction specifications, and the Epcon "developmental system" in the construction of Stonecrests Condominiums, including the homes of these Plaintiffs, falsely representing that Plaintiffs were buying Epcon quality homes.
7. That Defendant Epcon Communities, Inc., by and through its affiliate Epcon Communities Franchising Inc. and Defendants named in this Cause of Action, and pursuant to Epcon Franchise Agreement, through FPG, Inc., developed, created, marketed, sold to the Plaintiffs condominium homes, and operated a horizontal property regime known as Stonecrest Villas of Tega Cay. The homes constructed in Stonecrest were advertised and sold as an Epcon homes within the horizontal property regime "Stonecrest Villas of Tega Cay" with intent that Plaintiffs and others purchase 'Epcon' design homes within an "Epcon" style community.
8. That Epcon, by and through its employees, agents, independent contractors, and affiliates, including Brock L. Fankhauser 'an Epcon Communities' developer, represented the dwellings to be constructed and ultimately sold to Plaintiffs to be quality Epcon homes built pursuant to Epcon architectural plans, designs, guidelines and specifications, free from defects. Said representation were *materially false*, to wit:
 - a. The Stonecrest Homes sold to Plaintiffs materially deviated from building code.

- b. The Stonecrets Homes sold to Plaintiffs materially deviate from Epcon guidelines, plans, specifications, and recommended materials.
 - c. The Stonecrest Homes sold to Plaintiff suffer from reoccurring water intrusion.
9. Plaintiffs as buyers materially relied on the representations of "Epcon" developer and builder Brock L. Fankhauser, and Defendants named in this cause of action, to their detriment, believing they were buying "Epcon" homes constructed like all Epcon homes and models and communities they were shown by Epcon sales personnel.
 10. The homes purchased by Plaintiffs do not conform to Epcon standards of quality or Epcon specifications as they suffer from reoccurring water intrusion and deterioration due to builder deviations from the Epcon Developmental System, uniform plans, designs and construction specifications, and building code.
 11. That Defendant Epcon Communities, by and through Alice McDonald and Brock L. Fankhauser, knew, *or should have known*, the dwellings being constructed and sold to Plaintiffs materially deviated from Epcon guidelines, Epcon materials, Epcon plans and Epcon specifications as published by Epcon and its affiliate Epcon Communities Franchising, Inc. Yet, these Defendants continued to deviate from, build, and sell Epcon materials, combinations, plans and specifications in building and selling condominiums without full disclosure to purchasers for value, including Plaintiffs.
 12. That Defendants' deviation from Epcon plans and specifications was a material fact concealed from Plaintiffs as purchasers and to which Plaintiffs were ignorant, relying upon Defendants representations, good faith, judgment, and skill in the purchasing process of an Epcon home.
 13. Defendants Brock L. Fankhauser and FPG, Inc. materially concealed deviation from the Epcon Developmental System, representing to Plaintiffs their homes were of the same uniform quality, design and specification as all Epcon Community homes and models. Defendants Fankhauser, FPG and SVTC, LLC knowingly sold homes to Plaintiffs under the Epcon trade name which materially and substantially differed in construction from Epcon guidelines and specifications published by Epcon and/or its affiliate Epcon Communities Franchising, Inc.
 14. Plaintiffs are informed and believe that Brock L. Fankhauser and FPG, Inc. deliberately deviated from the Epcon Developmental System, specifications, and *materially concealed* deviations from the Epcon Developmental system, intending that Plaintiffs purchase condominiums from Stonecrest Villas of Tega Cay, LLC (owned by Brock L. Fankhauser) believing they were buying Epcon standards and quality from an Epcon Developer and builder, Brock L. Fankhauser.
 15. Plaintiffs as purchasers were deceived by these Defendants, and were ignorant to the false representations of Epcon Communities by and through Brock L. Fankhauser, Alice McDonald, and could not have known the builder and developer had materially deviated

from Epcon specifications and guidelines these Plaintiffs reasonably believed they were purchasing.

16. Plaintiffs contracted for an "Epcon Communities" home based on representations of "Epcon" models, and as buyers purchased Epcon homes constructed by FPG and Brock L. Fankhauser from SVTC, LLC relying upon the representations of quality they received from Epcon sales personnel, including Brock L. Fankhauser individually, Alice McDonald, and construction superintendents.
17. Plaintiffs are informed and believe that their homes suffer construction defect or design defect resulting in reoccurring water intrusion, due to builder deviations from the Epcon developmental system, including specified materials, resulting in construction defects, design defects, code violations, and reoccurring water intrusion problems.
18. Plaintiffs are informed and believe that as purchasers for value, Plaintiffs were third party beneficiaries of the Franchise Agreement terms between FPG, Inc., Epcon and ECF, Inc., and had the right to rely upon the representations of these Defendants, including the logo, plans, videos, designs, logos, business cards, signs, drawings, videos, marketing materials, exhibit boards, poster renderings, and contracts representing that they would buy and receive an "Epcon" type home within an "Epcon Community" Stonecrest Villas of Tega Cay, built to Epcon quality guidelines and specifications.
19. Plaintiffs are informed and believe that Epcon Communities and ECF, Inc., pursuant to Franchise Agreement, had the absolute right to enforce strict adherence to Epcon Developmental System, including architectural guidelines, blueprints, material use, and specifications used by builder Brock L. Fankhauser and FPG, Inc.
20. Plaintiffs are informed and believe that Epcon and ECF, Inc. knowingly failed to do so, resulting in builder deviations from the Epcon Developmental system, Epcon plans, and Epcon specifications as published by Epcon or its affiliate Epcon Communities Franchising, Inc.
21. That as a direct and proximate result, Plaintiffs purchased homes from Defendants named in this cause which materially differ from Epcon specifications, suffer from re-occurring water intrusion, construction defect or design defect, and which continue to deteriorate, and which do not conform to Epcon standards or specifications due to builder deviations by FPG, Inc. and Brock L. Fankhauser as an "Epcon" developer and franchisee.
22. That each respective property is bound by Master Deed and restrictive covenants published by Stonecrest Villas of Tega Cay, LLC requiring monthly assessments of any owner within the Stonecrest development, paid by these Plaintiffs.
23. That Defendants SVTC, LLC, by and through Brock L. Fankhauser, created Stonecrest HOA, Master Deed, and bylaws applicable to Stonecrest HOA under the Master Deed to preserve and maintain the Stonecrest Community under the Master Deed, and thereby accepted and undertook and express duty to carry out preservation and protection of the

properties to prevent deterioration and waste, which Defendants have expressly failed to do. Said covenants of the Master Deeded community were sold to these Plaintiffs for value and formed part of the basis of the bargain to buy in Stonecrest Community.

24. That Defendants through Master Deed have required monthly assessments which have been paid by each respective Plaintiff without fail. That despite payment of monthly assessments, Defendants have knowingly failed to preserve, protect and repair Plaintiffs' properties to cure reoccurring water infiltration, mold growth, or personal property damage. Defendants Stonecrest Villas HOA, due to undercapitalization, is unwilling or incapable of protecting, preserving or maintaining the common property elements of Plaintiffs' homes, resulting in deterioration and damages.
25. That Defendants, through Fankhauser individually, have *knowingly* employed monthly assessments in violation of the Master Deed, restrictive covenants and bylaws, including utilization of assessments for personal loans to Brock L. Fankhauser as an "Epcon" developer, development of adjacent commercial tracts and roadways, without lawful authority.
26. That Defendants in the sales process failed to disclose material facts that their monthly assessments would be utilized in a Master Property Association "SPOA". That said nondisclosure was a material fact Plaintiffs were ignorant of, wherein Plaintiffs had they known these facts would have opted not to buy.
27. That as a result of said conduct, the HOA Stonecrest Villas of Tega Cay Owners Association, Inc., by and through its past and existing corporate board, is unwilling or incapable of carrying out preservation and maintenance of the Plaintiff's properties to prevent further water intrusion and mold damages.
28. That on February 15, 2010 Defendant development and sales entity Stonecrest Villas of Tega Cay, LLC as owned, operated, and managed by Brock L. Fankhauser, encumbered the common properties of Stonecrest in violation of Section 10.6 of the Master Deed.
29. Stonecrest Villas of Tega Cay borrowed \$560,000 from Epcon Principal, Phillip Fankhauser, *father to Brock L. Fankhauser*, to further carry out development and sale of Epcon construction at Stonecrest which Defendants knew, *or should have known*, was plagued by construction defect, design defect, reoccurring water intrusion problems, and mold. "Epcon" principal Philip Fankhauser is denoted as "lender" on said mortgage, recorded February 22, 2010 at Book 11272 Page 129-139, in the records of the Clerk of Court for York County, subsequently satisfied on January 10, 2011.
30. That failure to disclose private loans and private mortgages was a material fact concealed from Plaintiffs, which bound their undivided interest in common properties, and which was unauthorized under the Master Deed Section 10.6, which Plaintiffs, including Vicari, had they known, would have declined to purchase.

31. That as a result of financial mismanagement by Brock L. Fankhauser and the HOA board, resulting in undercapitalization of the HOA, Plaintiffs are informed and believe that the HOA board now seeks to assess Plaintiffs and others for Defendants' financial mismanagement and construction errors, and levy assessments against each respective property owner to pay for the costs of repairs and litigation after deliberately and knowingly failing to preserve, protect and maintain Plaintiff's homes and common elements from ongoing water intrusion damage pursuant to the Master Deed.
32. Plaintiffs are informed and believe they are entitled to all actual, compensatory and punitive damages as against defendants, *including any injunctive or equitable relief as may be ordered by the court*, to protect their properties.

FOR A SEVENTH CAUSE OF ACTION

[AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(EQUITABLE ACTION FOR ACCOUNTING)

1. The above allegations are set forth here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants, through Brock L. Fankhauser, have undercapitalized the HOA, engaged in unauthorized private loans, mortgages, and have improperly employed assessments for improper purposes, including development of adjacent commercial tracts and roadways by Fankhauser and FPG, Inc. in violation of HOA bylaws and restrictive covenants, specifically Section 10.6 of the Master Deed.
3. Plaintiffs are informed and believe that Defendants in this cause of action, upon notice of water intrusion issues, had a duty to act to preserve common elements of the Plaintiffs' homes first and foremost, but expressly failed to do so.
4. Plaintiffs as owners and residents are entitled to an accounting by the HOA to Plaintiffs to account for the manner in which reserves have been depleted and to investigate whether monthly assessments and reserves have been employed by Fankhauser or FPG, Inc. improperly during the time Fankhauser was in sole control of the Stonecrest HOA or board resignation of Brock L. Fankhauser June 30, 2010.
5. Plaintiffs seek that the court require the Defendants, specifically including Fankhauswer and the HOA, its past and current board, to render an accounting of all receipts and disbursements to Plaintiffs as interested owners and residents.

FOR AN EIGHTH CAUSE OF ACTION

[AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(CONVERSION)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.

2. Plaintiffs are informed and believe that Brock L. Fankhauser individually exercised exclusive dominion and control of the HOA board, and exclusive ownership of Stonecrest HOA, until approximately June 30, 2010.
3. Plaintiffs are informed and believe that said conduct occurred after expiration of the Declarant Control period, was a violation of Master Deed restrictive covenants, bylaws, and constituted an express conflict of interest wherein Fankhauser and the HOA acted in reckless disregard of Plaintiffs health and property rights.
4. Plaintiffs are informed and believe that Fankhauser has improperly employed HOA financial reserves and assessments for development of commercial tracts and roadways, violating corporate bylaws and duties imposed upon Defendants by restrictive covenants to preserve, protect, maintain and repair Plaintiffs' properties.
5. That despite demand, Defendants are unwilling and/or unable to effect necessary repairs to Plaintiffs' residences to prevent water infiltration and mold.
6. Plaintiffs are informed and believe that Fankhauser individually or corporately assumed and exercised control over community assessments and reserves, depleting the same through mismanagement, illegal use, misuse to the exclusion of the HOA and Plaintiff owners.
7. That Plaintiffs as owners and payors of monthly assessments had an interest in the funds so converted or misused by Fankhauser, or SVHOA, as set forth in paragraphs (4) and (6).
8. Plaintiffs are informed and believe that Fankhauser as controlling board member of Stonecrest HOA converted reserves and assessments to his own use without authority of Plaintiffs or Stonecrest owners at large, without notice, vote, or minutes advising Plaintiff owners of the same, and in violation of Master Deed Section 10.6 engaged in private unauthorized loans.
9. That use of HOA reserves and assessments for purposes other than required by Master Deed was without Plaintiffs' permission and/or consent and was accomplished by Fankhauser deliberately, recklessly and with conscious indifference to Plaintiff's rights as Stonecrest home owners' needs for repairs and preservation of Plaintiffs' properties.
10. That as a direct and proximate result, the Defendants, including Stonecrest HOA, is unwilling or incapable of acting to permanently protect, preserve, repair, and/or and maintain Plaintiffs' properties or Stonecrest common elements.
11. Plaintiffs are informed and believe that they are entitled to all amounts converted by Fankhauser or Fankhauser as controlling HOA board, with legal interest, from the date of conversion.

FOR A NINTH CAUSE OF ACTION
[AS AGAINST DEFENDANTS FANKHAUSER, FPG, INC. AND STONECREST HOA]
(CIVIL CONSPIRACY)

1. The above allegations are set forth here and incorporated by referenced as if set forth verbatim.
2. That Defendant Brock L. Fankhauser engaged in private loans unauthorized by the Master Deed or vote of the community at large while Fankhauser was controlling interest and controlling board member of the HOA.
3. Plaintiffs are informed and believe that Defendants Fankhauser as Stonecrest controlling board member and agent, and Stonecrest HOA by and through Fankhauser appointed board members, conspired to injure Plaintiffs by depleting HOA reserves and assessments for purposes other than preservation and maintenance of Plaintiffs' properties per Master Deed restrictive covenants.
4. Plaintiffs are informed and believe that Fankhauser, by and through Stonecrest HOA assessments, has employed reserves and assessments to develop adjacent commercial tracts and roadways owned by or under development by Fankhauser and FPG, Inc. without notice or lawful authority, while recklessly and wantonly disregarding home repair demands of the Plaintiffs.
5. That Defendant SV HOA, by and through its past and existing board, knowingly failed to mitigate damages by acting vigilantly under the Master Deed to correct problems with Plaintiffs homes, common exterior walls, foundation and flooring components.
6. Plaintiffs are informed and believe that Fankhauser and HOA board members, past and present, have acted maliciously and in conscious disregard of Plaintiffs' rights by permitting financial mismanagement of reserves and assessments.
7. Plaintiffs are informed that the HOA board, by and through Fankhauser, has effected free repairs to only certain board members' homes, while arbitrarily denying repairs needed at Plaintiffs' residences to prevent known and reported further water intrusion and mold damages.
8. Plaintiffs are informed and believe that the combination of Fankhauser and Stonecrest board conduct has repeatedly violated Master Deed HOA bylaws, restrictive covenants, and has injured the HOA and Plaintiffs financially.
9. That as a result, Plaintiffs have incurred special damages and are unable to compel Defendants to repair their residences to prevent further water intrusion, damages, and mold, necessitating that this action be brought.

10. Plaintiffs are informed and believe Defendants' depletion of reserves and assessments was with the express knowledge of Fankhauser individually and other Fankhauser appointed board members, before and after July, 2010.
11. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages for Defendants' willful and malicious misuse of HOA reserves and assessments paid by Plaintiffs.

FOR A TENTH CAUSE OF ACTION
[AGAINST ALL DEFENDANTS]
(BREACH OF EXPRESS WARRANTY)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Defendants, in concert with Epcon Communities, Inc., by voluntary affirmative act permitted marketing, display of model Epcon condominium homes shown to Plaintiffs as potential purchasers. The model homes and communities shown to Plaintiffs were represented to be Epcon products and Epcon communities.
3. Defendants, in concert with Epcon Communities, Inc. represented that Plaintiffs were purchasing Epcon homes in an Epcon Communities, Inc. development which were constructed to Epcon quality standards and in a workmanlike manner. Said representations were materially false due to Epcon builder Fankhauser's deviations from the Epcon Developmental System, unknown and undisclosed to Plaintiffs as buyers.
4. That Defendant Brock L. Fankhauser, prior to closing of the Vicari residence, materially concealed the true nature of water intrusion problems within Stonecrest, and falsely reassured Plaintiff Vicari that all inspections and repairs would be completed on condominium 830 permanently fixing leaks, and that said representations were materially false and designed to induce Vicari to purchase unit 830.
5. That Epcon developer Brock L. Fankhauser, FPG, Inc. and Stonecrest Villas of Tega Cay LLC (SVTC, LLC) knew that Plaintiffs' residences, including Vicari condominium 830, were plagued by either design defect or construction defect at the time of sale, but that Defendants nevertheless proceeded in the face of this knowledge to sell defectively constructed homes to Plaintiffs, including Vicari, *for cash*.
6. That said representations of quality and workmanship were material to each Plaintiffs' decision to purchase Epcon homes within the Stonecrest community and became a material part of the bargain wherein each Plaintiff entered into an Epcon purchase contract with Defendants believing they were purchasing Epcon Communities product in an Epcon community development.
7. That Epcon representation of Epcon quality, value, visual affirmations by display of models, and marketing of restricted community by Defendants, including Epcon, created

an express warranty that the product and community being sold to Plaintiffs would conform to the representations of Defendants, jointly. Said representations were materially false.

8. That Plaintiffs, including Williams and Vicari, were sold condominium properties by Defendants not reasonably fit or safe for use as a residence due to construction defects or design defects *well after* Defendants, particularly Brock L. Fankhauser, knew or should have known, of construction defects plaguing construction of the Stonecrest condominiums.
9. That Epcon Communities, Inc., through principal Philip Fankhauser, knew, or should have known, as early as 2007 of foundational and improper grading being built upon by Epcon franchisee and son Brock L. Fankhauser, specifically due to written exchanges of email with the Gonzalez 709 residence wherein Epcon principal Philip Fankhauser assured Plaintiff Gonzalez he would investigate his franchisee son's construction practices, which Epcon through Philip Fankhauser, expressly failed to do.
10. Plaintiffs are informed and believe their residences leak, suffer from water intrusion, and that their residences fail to conform to the EPCON model display homes they were sold by Defendants Fankhauser, FPG, and SVTC, LLC.
11. That Plaintiffs are informed and believe that the community was represented by Defendants to be a restricted community by virtue of restrictive covenants and HOA bylaws which Defendants would per Master Deed preserve, protect and maintain the properties and common elements.
12. Plaintiffs are informed and believe that said assurances as described by paragraph (110 above were materially false.
13. That Defendants' failure, inability, or unwillingness to enforce restrictive covenants and HOA corporate bylaws is a material breach wherein the community does not conform to the representations made by Defendants which induced Plaintiffs to purchase in an Epcon Community.
14. Defendants Epcon, ECF, Inc., Fankhauser, FPG, Inc. and Stonecrest HOA knew, *or should have known*, of the need to fully disclose to potential purchasers the defects each known water intrusion problems to exist within the condominiums property; yet failed to disclosed and materially concealed the same and continue to market and sell the properties despite defects for cash to innocent purchasers for value, including Vicari unit 830.
15. Plaintiffs are informed and believe that they are entitled to all actual and punitive damages, attorneys fees and costs, in the discretion of the court and jury for Defendants' knowing and willful breach of express warranties.

FOR AN ELEVENTH CAUSE OF ACTION

[AS AGAINST ALL DEFENDANTS AND EPCON COMMUNITIES, INC.]
(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

1. The above allegations are set forth and incorporated by reference as if stated again verbatim.
2. Plaintiffs are informed and believe that Defendants, jointly and severally, sold Plaintiffs defective combination of products used to construct residences now characterized by construction defects or design defect and which suffer from re-occurring water infiltration and leak water due to the defects described in paragraphs 5(a) through 5(h) of the Thirteenth Cause of Action, infra.
3. Plaintiffs are informed and believe that Defendants Epcon, ECF, Inc., Fankhauser, FPG, Inc. and SVTC, LLC are sellers of condominium residences and specifically are merchants of Epcon style and Epcon design condominium products and communities of the same kind sold to Plaintiffs.
4. Plaintiffs are informed and believe that Defendants represented Stonecrest to be an Epcon community development with implied warranty they residences sold to Plaintiffs were constructed in a workmanlike manner and would have with no construction defects, design defects, and would not leak or suffer water intrusion.
5. That the Epcon materials, products, residences and community sold to Plaintiffs as an Epcon development are not fit for the ordinary purposes as a residence due to water leakage, water intrusion, and Defendants SVHOA inability to permanently resolve the same.
6. Plaintiffs are informed and believe that they are entitled to all actual, compensatory, and punitive damages arising from Defendants' Breach of Implied Warranties of Merchantability due to condominiums components being unfit for its intended use or resale.

FOR A TWELTH CAUSE OF ACTION

[AS AGAINST ALL DEFENDANTS AND EPCON COMMUNITIES, INC.]
(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE)

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
2. Plaintiffs are informed and believe that Defendants, jointly and severally, at the time of contracting with each respective Plaintiff had reason to know the Plaintiffs were purchasing an Epcon home constructed by Fankhauser and FPG, Inc. which would serve as each Plaintiffs' primary residence.

3. Plaintiffs relied on Defendants' representations of quality, value, and skill in selecting an Epcon home to be constructed by FPG, Inc. and Brock L. Fankhauser.
4. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the homes and property being purchased would conform to Epcon specifications, building code, would not leak, deteriorate, and would be fit to serve as a defect free residence within a Master Deed community.
5. Plaintiffs are informed and believe that there arose an implied warranty made by Defendants, jointly and severally, that the Stonecrest HOA would pursuant to Master Deed restrictive covenants and bylaws preserve, protect and maintain Plaintiffs' properties and common properties.
6. That the condition of the condominiums is such that they leak water reoccurringly and that the condition of the HOA is such that the HOA, by and through Brock L. Fankhauser (and post July, 2010 through its board of directors) has been unwilling or incapable of protecting, repairing or preserving Plaintiffs' properties per the Master Deed.
7. Plaintiffs are informed and believe the Epcon home they were sold, including the Stonecrest condominiums and Stonecrest HOA, is unfit for intended use as sold to Plaintiffs by Defendants as the Plaintiffs' condominiums suffer from water intrusion wherein the HOA is either unwilling or incapable of preserving Plaintiffs' properties and common areas.
8. That said misrepresentations, failures, and omissions to act constitute breach of implied warranties of fitness for a particular purpose under South Carolina law concerning the product and community model sold to Plaintiffs by Defendants.
9. Plaintiffs are informed and believe that they are entitled to award of all actual, compensatory, and punitive damages as against Defendants, jointly and severally because the residences and property do not conform to the implied warranties of fitness for particular purpose which Defendants, at the time of contracting, were aware of.

FOR A THIRTEENTH CAUSE OF ACTION

[AS AGAINST DEFENDANTS BROCK L. FANKHAUSER AND
FANKHAUSER PROPERTY GROUP, INC.
(CONSTRUCTION DEFECT)]

1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. Defendant Fankhauser Property Group, Inc. by and through Brock L. Fankhauser constructed the Epcon homes in an Epcon community known as Stonecrest Villas of Tega Cay, which construction encompasses the residences of the Plaintiffs, respectively, allegedly pursuant to Epcon Franchise Agreement terms.

3. Defendants Fankhauser Property Group, Inc. and Brock L. Fankhauser constructed said condominiums with a stone masonry veneer exterior, slab on grade, atop improperly back-filled lots and improperly excavated and graded lots and common property.
4. Plaintiffs are informed and believe that Defendants Brock L. Fankhauser and Fankhauswer Property Group, Inc.'s construction practices resulted in condominiums which have construction defects or design defects, and suffer from re-occurring slab cracking, water intrusion, and leaks.
5. Plaintiffs are informed and believe that Defendant Fankhauser Property Group, Inc. was careless, willful, wanton, and negligent in its deviation from Epcon guides, materials, specifications, plans and in Fankhauser supervision and oversight of construction practices, to wit:
 - a. By failing to excavate, pour, and build upon weather resistant barrier or non-porous foundations properly compacted so as to prevent cracking and water intrusion damages.
 - b. By failing to properly excavate, fill, back-fill, or compact lots being built upon to meet or exceed standard load requirements.
 - c. By failing to install proper drainage away from residences constructed atop excavated and compacted soils which violate code requirements.
 - d. By failure to properly employ Epcon recommended materials, including roof truss assemblies, OSB sheathing, and weather resistant barrier envelopes.
 - e. By failing to install proper waterproofing, including moisture barriers, concurrently with the stone masonry veneer on each building exterior directly contributing to water infiltration to the Plaintiffs' residences.
 - f. By improperly constructing brick masonry veneers at window sill structures to divert rain water properly and prevent water intrusion into Plaintiffs' residences.
 - g. By failing to provide proper drip edges, and by improperly sealing brick masonry veneer exterior walls to prevent water infiltration into components of the homes.
 - h. By failing to install proper window flashing and internal drainage to prevent water infiltration into Plaintiffs' residences.
 - i. By failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exteriors.
 - j. By failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exteriors.

- k. By failing to provide a properly graded slope exterior foundation wall to each respective Plaintiffs' property to prevent surface water intrusion per code.
 - l. By failing to properly gutter the condominiums sold to Plaintiffs to properly divert rainwater away from the Plaintiffs' dwellings.
 - m. By failing to properly install drainage away from residence foundations.
6. Plaintiffs are informed and believe that the construction practices employed by Defendants Fankhauser Property Group, Inc. and Brock L. Fankhauser were carried out in a negligent and un-workmanlike manner and constitute violations of building code, the franchised Epcon Developmental System, Epcon plans, Epcon specifications and recommended materials.
 7. As a direct and proximate result of the un-workmanlike and faulty construction practices of Defendants, Plaintiffs have repeatedly experienced water infiltration into their homes and have incurred actual and special damages exceeding \$7,500 to be proven at trial of this matter before a jury.
 8. Plaintiffs are informed and believe that they are entitled to all attorney's fees and costs associated with the necessity of bringing this matter before the court pursuant to statute, contract, and the Master Deed.

FOR A FOURTEENTH CAUSE OF ACTION
(AS TO ALL DEFENDANTS NAMED)
[BREACH OF EXPESS WARRANTIES]

1. The above allegations are re-stated here and incorporated by reference as if set forth verbatim. Plaintiffs are informed and believe that they were purchasing through Defendants an Epcon Communities, Inc. condominium home within an Epcon development Stonecrest Villas of Tega Cay.
2. Plaintiffs, including Vicari specifically, during the process of sale were shown Epcon videos and Epcon model homes in Epcon developments known as Mt. Island Lake, Polo Club, Silver Oaks, Ridge Road Villas, Polo Club at Weddington. Plaintiffs were shown model homes in York County within the Stonecrest community development by Epcon employees.
3. Plaintiffs are informed and believe that Defendants jointly, by affirmative representation and display of multiple Epcon models and Epcon communities, voluntarily made Express Warranties to the Plaintiffs during the sale and contracting of each respective Plaintiff's Stonecrest home.
4. That said affirmations of quality and workmanship were material to and formed the basis of each respective purchase an Epcon product constructed by Fankhauser and FPG, Inc. as contracted upon by Plaintiffs.

5. Plaintiffs are informed and believe that all Defendants named by voluntary affirmation and/or promises, developer, builder, construction company, and HOA to purchasers, represented to Plaintiffs that the Stonecrest Villas condominium being purchased by each respective Plaintiff was an Epcon Communities, Inc. product free of defects and properly preserved and maintained by restrictive covenants and HOA bylaws through an HOA board.
6. Plaintiffs are informed and believe that the condominiums were improperly constructed in a un-workmanlike manner, are not free of defects and/or design flaws, resulting in each residence sold to Plaintiffs suffering from reoccurring water infiltration through condominium exterior common property components.
7. Plaintiffs are informed and believe that the HOA Stonecrest Villas Owners Association of Tega Cay, Inc. was under a duty and pursuant to Master Deed, restrictive covenants, and bylaws of the HOA to maintain and enforce maintenance as to condominium exteriors and common areas to preserve, protect and maintain owners' properties, yet has failed to protect and preserve Plaintiffs' properties despite repeated pleas and demand.
8. That while under Franchise Agreement, Defendants Brock L. Fankhauswer, Fankhauswer Property Group, Inc., Stonecrest HOA and Epcon Communities, Inc. jointly employed sample and/or model condominium homes by express affirmative display which became a material part of the basis of the bargain to reach respective Plaintiff purchaser. That the whole of the condominiums as purchased by Plaintiffs respectively fail to conform to the Epcon model homes and are not fit for the ordinary purpose and reasonable expectations of the Plaintiffs.
9. That Defendants' affirmative displays and descriptions of Epcon model types, plans, model condominiums, community representations, exhibition and display of models, affirmative representation, by contract, covenants, Master Deed, and bylaws formed the basis of and were material to the Plaintiffs' decisions to purchase an Epcon Stonecrest Villas condominium.
10. Plaintiffs are informed and believe that said representations were false or made in reckless disregard of Plaintiffs' rights as purchasers of a Stonecrest home and that the homes, as constructed, violate Express Warranties made by Defendants jointly and do not conform to Express Warranties and affirmations made by Defendants that Plaintiffs were purchasing an Epcon Communities product within an Epcon community.
11. Plaintiffs are informed and believe that each condominium property sold contained construction defects and/or design defects, including grading errors and absence of moisture barriers, making the home not conform to the Epcon home they bargained and contracted for with Defendants.

12. That the failure to correct water intrusion into Plaintiffs' residences, and the joint failure of all Defendants to act to protect Plaintiff's property values, is an affirmative breach of Express Warranty made by all Defendants to Plaintiffs.
13. That the Builder and HOA management has not confirmed to the representations and express warranties being made by Defendants to Plaintiffs as purchasers, to wit:
 - a. Defendant Epcon Communities permitted and by affirmative representation and display of Epcon sales literature, videos, and model condominiums representing to Plaintiffs that they were purchasing an Epcon home in terms of value, quality and workmanship. Said representations were materially false.
 - b. Defendant Brock L. Fankhauser, as sole controlling officer and owner of Stonecrest Villas HOA board, and while accepting Plaintiffs monthly assessments, knowingly and deliberately retained control of the corporation board after end of the Declarant Control Period defined in the Master Deed, and utilized Plaintiffs' assessments in master deed, bylaws and restrictive covenants.
 - c. That Defendants Brock L. Fankhauser and Stonecrest Villas HOA by and through Brock Fankhauser utilized said montly assessments required of the Plaintiffs improperly and in violation of Master Deed, including development of adjacent commercial tracts and roadways and private loans from the HOA to Brock L. Fankhauser, instead of using the same to rectify known water intrusion problems.
 - d. Epcon developer and builder Brock L. Fankhauser by affirmative false representations, for cash, seller to purchasers, sold to Plaintiffs defective condominium residences and repeatedly failed to honor express warranties that any defects would be repaired properly, and that "*we will make this right*". Said promises were materially false.
 - e. Defendant Brock L. Fankhauser knew, *or should have known*, of the construction and /or design defects existing in the products he sold Plaintiffs as an Epcon product, yet failed to repeatedly disclose the same to Plaintiffs as purchasers, specifically including Vicari and Williams, *supra*.
 - f. Defendant Fankhauser Property Group, Inc. by affirmative false representations to Plaintiffs, through Epcon franchisee and builder Brock L. Fankhauser individually, repeatedly assured Plaintiffs that their residences would be repaired. Plaintiffs are informed and believe said representations to be materially false and *dishonest in fact* designed to induce complacency and litigation forbearance.
 - g. Defendant Stonecrest Owners Association of Tega Cay, Inc. by affirmative representations, by and through Brock L. Fankhauser and its existing executive board, by affirmative false representations to Plaintiffs, has arbitrarily refused to protect Plaintiffs home owners to prevent further water intrusion, mold, and damages which re-occur at Plaintiffs' residences.

- h. Plaintiffs are informed and believe that Defendant Stonecrest Villas of Tega Cay HOA through its board has acted arbitrarily to temporarily repair only those residences owned by board members, without rendering flooring or mold remediation assistance whatsoever to Plaintiffs, including Pinckney, Sciacca, Barone, Arcoria and Vicari specifically.
14. That Plaintiffs are informed and believe their residences suffer from construction defects or design defects which have caused Plaintiffs damages due to routine water intrusion into their homes wherein Defendants have failed to protect and preserve Plaintiffs' properties under duties imposed by Master Deed of declarant and seller SCVTC, LLC and Brock L. Fankhauser.
 15. That Defendants' joint affirmative failures, by acts and/or omissions to act, failed to protect Plaintiffs' properties and constitute breach of Express Warranty made by all Defendants to Plaintiffs as purchasers.
 16. That said conduct has resulted in each respective Plaintiffs' condominium property, the Stonecrest community, and the HOA management not conforming to the affirmative representations and express warranties of the Master Deed made by Defendants at the time of display, contracting, purchase, and ownership thereby damaging Plaintiffs.
 17. Plaintiffs as purchasers for value, and as owners with direct privity with Defendants as sellers, were entitled to and in fact relied upon Defendants' representations of quality and workmanship.
 18. Plaintiffs are informed and believe that they are entitled to an award of special damages, all actual, incidental and consequential damages as against Defendants for breach of said Express Warranties made by Defendants as sellers to Plaintiffs as purchasers.
 19. That Plaintiffs have been forced to engage the services of an attorney to compel action by the Defendants, including the HOA. Plaintiffs are informed and believe that they are entitled to indemnification by the HOA, award of attorney's fees and costs should the court determine that an Express Warranty from Defendants to Plaintiffs has been breached, including breach of Master Deed duties and covenants.
 20. Plaintiffs are informed and believe they are entitled to equitable relief as against the HOA, in the discretion of the court, against levy of dues and assessments for repairs and legal fees occasioned by the malfeasance and negligence of Defendants, including Fankhuaser individually, as controlling HOA board member.

FOR A FIFTEENTH CAUSE OF ACTION
[AS AGAINST ALL DEFENDANTS JOINTLY]
(UNFAIR TRADE PRACTICES ACT VIOLATION)

1. The above allegations are set forth and incorporated by reference as if repeated verbatim.
2. That Epcon Communities, Inc. and ECF, Inc. expressly contractually permitted Defendants Fankhauser and FPG, Inc. to display and market products represented to be Epcon condominium plans and homes within Epcon developments, including Stonecrest and other North Carolina communities, allegedly constructed pursuant to Epcon representations of quality and workmanship.
3. That the relationships between Plaintiffs and Defendants, including Fankhauser, FPG, Inc. and Stonecrest Villas of Tega Cay (SVTC, LLC) is characterized by privity of title, seller to purchasers, wherein Plaintiffs and others purchased for value Epcon condominium properties.
4. Plaintiffs are informed and believe they purchased from Defendants under a scheme which required owners to become payors of monthly assessments to Stonecrest HOA, imposed and enforced by Master Deed created by Defendants Fankhauser, FPG, Inc. and Stonecrest Villas of Tega Cay, LLC pursuant to an overall Epcon Communities, Inc. developmental design.
5. That the conduct of Defendants, jointly and severally, created false assurances to Plaintiffs that Defendants would act in Plaintiffs' best interest and with due regard of Plaintiffs property preservation and property value and that the homes purchased by Plaintiffs would conform to Epcon representations made by these Defendants and which formed the basis of the Plaintiffs' decisions to buy.
6. That said conduct was materially false, deceived Plaintiffs, and constitutes methods of unfair and deceptive acts and practices declared unlawful by South Carolina law, including knowingly and falsely selling homes known to deviate from Franchisor plans, specifications, and building code.
7. That Defendants, by virtue of Franchise Agreement, jointly and severally, knew or should have known, of the necessity to act to protect owners' properties from water intrusion and other damages, yet Defendants deliberately failed to act whereby Plaintiffs and others have continued to experience water intrusion, HOA and builder inaction, procrastination, leaks, interior damages, and mold.
8. Plaintiffs have collectively suffered an ascertainable loss of money, property damages, diminution in value due specifically to reoccurring water intrusion, and special damages legally and proximately caused by Defendants' deceptive and unfair trade practices, to wit:
 - a. By Defendants falsely advertising, pricing, and offering for sale Epcon model homes and communities, yet selling Plaintiffs condominiums which suffer from construction defects or design flaws and which leak water and which are not representative of Epcon models or Epcon communities in terms of value or quality.

- b. By creating a Owners Association (HOA) where Defendant Brock L. Fankhauser knew, or should have known, that a conflict of interest would exist between his duties to Plaintiffs as developer and that of HOA chairman, President and controlling interest wherein Master Deed and HOA bylaws were not enforced to adequately protect owners' properties' from damage.
 - c. By Brock L. Fankhauser, FPG, Inc. and Stonecrest HOA board members engaging in self dealing, private loans, and failure to protect Plaintiffs' interests, specifically in failing to protect Plaintiffs' properties and failing to protect common properties, and failing to enforce Master Deed covenants and duties imposed by bylaws.
 - d. By falsely misappropriating dues, assessments, and special assessments where the HOA, by and through Brock Fankhauser, failed to honor duties to preserve and protect properties as required by HOA bylaws and Master Deed restrictive covenants.
 - e. By Brock L. Fankhauser willfully and knowingly applying monthly property assessments for private loans and/or development of adjacent commercial tracts and roads instead of properly capitalizing HOA reserves and acting promptly to remedy known water defects existing in the residences of the Plaintiffs and others with similar defects.
 - f. By permitting HOA undercapitalization by and through Brock L. Fankhauser and self dealing of board members wherein the HOA is undercapitalized, incapable, or unwilling to serve the Plaintiff owners to prevent further damage and water intrusion, proper maintenance, repair, or preservation of Plaintiffs' property value.
 - g. By violation of the duties imposed by Master Deed restrictive covenants created by Defendants where Defendants knew, or should have known, of the need to act promptly to prevent Plaintiffs and others from further water intrusion and mold damages despite requiring Plaintiffs to pay, and accepting from Plaintiffs, monthly assessments.
 - h. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties including financial impracticability of repair, Breach of Express Warranties, and Breach of Implied Warranties, as set forth supra and where Defendants knew or should have known of the necessity to act to mitigate damages, which Defendants expressly failed to do under the Master Deed.
9. That Defendants' misrepresentations of quality and value, deviations, errors, omissions, and misconduct, jointly and severally, affects the public interests at large; the same conduct has occurred with numerous Stonecrest buyers; has been and is being repeated;

and is capable of further repetition as evidenced by the Vicari and Williams transactions. As such, it expressly affects commerce within York County, South Carolina.

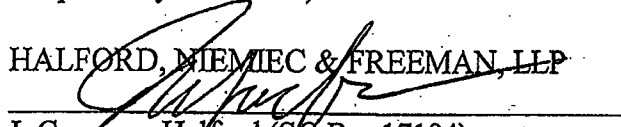
10. That Plaintiffs' actual, incidental, special, and consequential damages suffered by Plaintiffs and others would not have occurred but for the Defendants' unfair and deceptive acts and practices, which should be legally deterred.
11. Plaintiffs respectively are informed and believe that they are entitled to an award of actual, punitive, and *trebled* damages pursuant to South Carolina Code Ann. 39-5-140(a), *et. seq.*, together with costs and attorneys fees associated with prosecuting this action against Defendants.

WHEREFORE, Plaintiffs would pray for the following relief from this court:

1. For trial by jury of the matters set forth in this Amended Consolidated Complaint.
2. For judgment as against Defendants Epcon Communities, Inc., Epcon Communities Franchising, Inc., Brock L. Fankhauser, Fankhauswer Property Group, Inc. (FPG, Inc.), Stonecrest Villas of Tega Cay, LLC (SVTC, LLC) and HOA Stonecrest Villas of Tega Cay Home Owners Association in the discretion of a jury.
3. For an award of all actual and punitive damages as against Defendants in the discretion of the court and jury.
4. For an award of any incidental or special damages as may be proven specifically by each of the Plaintiffs individually, expressly including loss of use.
5. For an award of *trebled* damages pursuant to the UTPA in South Carolina, S.C. Code Ann. 39-5-140(a) to deter future such conduct by Defendants.
6. For an award of all attorneys fees and costs associated with bringing this matter before the court.
7. For such other and further relief, *legal or equitable*, as the court deems just and proper under the circumstances, including the right to temporary or permanent injunctive as may be required to prohibit further inequitable conduct by Defendants.

Respectfully submitted,

HALFORD, MIEMIEC & FREEMAN, LLP


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September 16, 2011
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OF SEPARATE L.L.C.

RUDOLPH C. BARNES
(1917-1995)
JAMES W. ALFORD
(1930-2008)

October 25, 2011

The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, SC 29745

Re: Juotonia Pickney, Josephine Sciacca, Add L. Smith and James and
Deborah Barone v. Brock L. Fankauser, et al.
Case No. 2010-CP-46-2326
BASJ File No. 76.18798
Client File No. 482181

Dear Mr. Hamilton:

Please find enclosed for filing with your office an original and one copy of the Answer of Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc. ("Stonecrest") to Plaintiffs' Third Amended Complaint (dated September 16, 2011), Stonecrest's Cross-Claim and Stonecrest's Third-Party Complaint. Please file the original and return a clocked-in copy to me in the self addressed stamped envelope provided for your convenience.

By copy of this letter, I am serving the above document upon all counsel of record.

With best regards, I am

Very truly yours,

Curtis W. Dowling

CWD/djr
Enclosures

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BARNES ALFORD STORK & JOHNSON L.L.P.
The Honorable David Hamilton
October 25, 2011
Page 2

cc: J. Cameron Halford, Esquire (w/encl.)
Morgan S. Templeton, Esquire/Graham P. Powell, Esquire (w/encl.)
Thomas F. Dougall, Esquire (w/encl.)
Sarah Wetmore, Esquire (w/encl.)
Payton Hoover, Esquire (w/encl.)
Tracy T. Vann, Esquire (w/encl.)
Christy Mahon, Esquire (w/encl.)
David C. Cleveland, Esquire (w/encl.)
Bonum S. Wilson, III, Esquire (w/encl.)
D. Andrew Williams, Esquire (w/encl.)
Michael B.T. Wilkes, Esquire/Melissa Nichols, Esquire (w/encl.)
Jonathan P. Corwin, Esquire (w/encl.)
Stephanie H. Burton, Esquire/Scott D. Spivey, Esquire (w/encl.)
Brett E. Dressler, Esquire (w/encl.)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

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

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

Third-Party Defendants,

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

Third-Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC, and
Epcon Communities Franchising, Inc.,

Third-Party Defendant,

Civil Action No. 2010-CP-46-2326

**STONECREST HOA'S ANSWER TO
AMENDED COMPLAINT, FIRST
AMENDED CROSS-CLAIM, AND
THIRD-PARTY COMPLAINT**

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

Defendant Stonecrest Villas of Tega Cay, Home Owners Association, Inc.,
reserving all rights under motions within or separately filed, answering the Second
Amended Complaint (dated September 20, 2011) herein, will respectfully show unto the
Court as follows^{1,2,3,4}.

FOR A FIRST DEFENSE

(Response to Factual and Jurisdictional Allegations)

1. Defendant denies each and every allegation of the Complaint except for those things specifically admitted below.
2. Defendant lacks sufficient knowledge or information to admit the allegations of paragraph 1.
3. Paragraph 2 is admitted, upon information and belief.

¹ Any and all inconsistent material is pled in the alternative pursuant to Rule 8(e)(2), SCRPC and such other law as is applicable. Such inconsistent material may—or may not—be specifically designated as such.

² To the extent material appearing in one defense is applicable to another defense and not inconsistent with the other defense, the material is to be deemed incorporated into the other defense.

³ To the extent material appearing herein is inconsistent with existing law, the Defendant respectfully requests to argue in good faith for a change in the law. Nothing pled in any portion of the Answer, First Amended Cross-Claim, and Third-Party Complaint is to be deemed a waiver of any defense available to the Defendant or consent to this Court exercising jurisdiction over the matter or over this Defendant.

⁴ The Defendant is incorrectly identified. The proper party is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.

4. Paragraphs 3 and 4 are admitted, upon information and belief.

5. As to paragraph 5, it is admitted that at one time, Fankhauser did serve in the capacities stated in the Amended Complaint. Additionally, the correct identity of the Defendant is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (See footnote 4).⁵

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted, upon information and belief.

8. Paragraph 8 is admitted, subject to the qualifications set forth above.

9. Paragraph 9, is admitted, upon information and belief.

10. Paragraph 10 calls for a legal opinion and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant is denied.

11. Paragraph 11 is denied as to this Defendant.

AS TO THE FIRST CAUSE OF ACTION
(Action for Rescission)

12. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

13. The cause of action asserted in paragraphs 2 through 24 is not directed to this Defendant and, therefore, no response to these allegations is required. To the extent any response is required, the Defendant denies the allegations to the extent they seek to impose any liability on this Defendant or are contrary to the allegations of this Defendant as set forth in its Answer, Cross-Claim and Third-Party Complaint.

⁵ Upon information and belief, Defendant Brock E. Fankhauser's last day as President of the Association was June 30, 2010.

AS TO THE SECOND CAUSE OF ACTION

(Slander of Title)

14. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

15. The cause of action asserted in paragraphs 2 through 7 is not directed to this Defendant and, therefore, no response to these allegations is required. To the extent any response is required, the Defendant denies the allegations to the extent they seek to impose any liability on this Defendant or are contrary to the allegations of this Defendant as set forth in its Answer, Cross-Claim and Third-Party Complaint.

AS TO THE THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty)

16. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

17. As to paragraph 2, Defendant admits only that certain payments are to be paid by members as set forth in the Bylaws.

18. As to paragraph 3, while it is admitted that certain rights and duties exist between the parties, it is denied that a fiduciary relationship exists between the Plaintiffs and this Defendant.

19. Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are denied as to this Defendant.

AS TO THE FOURTH CAUSE OF ACTION

(Breach of Contract)

20. Defendant realleges the allegations contained above in response to the allegations of paragraph 1. Further, as to the Franchise Agreement, such document will speak for itself as to its terms and conditions.

21. The allegations of paragraph 2 sets forth a legal conclusion which does not require an answer from this Defendant. To the extent that a response is required, Defendant denies all allegations which allege or imply any wrongdoing on the part of the Defendant.

22. Paragraph 3 is admitted, upon information and belief.

23. Paragraphs, 4, 5 and 6 are denied as to this Defendant.

24. As to paragraph 7, Defendant denies that the Plaintiffs are entitled to any recovery against this Defendant.

AS TO THE FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Acts)

25. Paragraph 1 is denied as to this Defendant.

26. Paragraphs 2, 3 and 4 are not directed to this Defendant and, therefore, no response to these allegations is required. To the extent any response is required, the Defendant denies the allegations to the extent they seek to impose any liability on this Defendant or are contrary to the allegations of this Defendant as set forth in its Answer, Cross-Claim and Third-Party Complaint.

27. Paragraphs 5, 6 and 7 are denied as to this Defendant.

28. As to paragraph 8, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding what Fankhauser told the Plaintiff. Defendant denies having express knowledge of the defects.

29. As to paragraph 9, Defendant lacks knowledge or information sufficient upon which to form an opinion or belief as to the allegations.

30. As to paragraphs 10 and 11, Defendant has and will continue to take steps to identify the cause of the water intrusion so an appropriate repair can be identified and undertaken.

31. As to paragraph 12, admits that flooring has been removed from the Moscovitz and Iadanza units, and admits upon information and belief that flooring has been removed from the Sciacca and Pinckney units. Defendant further admits that the flooring has not been replaced in the Moscovitz or Iadanza units, and upon information and belief, the flooring has not been replaced in the Sciacca or Pinckney units.

32. Paragraph 13 is denied as to this Defendant.

33. As to paragraph 14, Defendant denies that it has concealed any material facts regarding this matter. Defendant denies any liability to the Plaintiffs.

34. Paragraphs 15, 16 and 17 are denied as to this Defendant.

35. As to paragraph 18, Defendant lacks knowledge of what Plaintiffs believed at the time of purchase. Defendant denies that it made any false representations to the Plaintiffs.

36. As to paragraph 19, Defendants lack knowledge or information sufficient to form a belief as to what representations were made to Plaintiffs by parties other than this Defendant. Defendant denies that it made any false statements to the Plaintiffs.

37. Paragraph 20 is denied as to this Defendant.

38. As to paragraph 21, Defendant lacks knowledge or information sufficient to form a belief as to what the Plaintiffs were informed and believe regarding disclosures from other parties. Defendant denies that it made any false statements to the Plaintiffs.

39. Paragraphs 22 and 23 are denied as to this Defendant.

40. As to paragraph 24, Defendant denies that the Plaintiffs are entitled to any recovery against this Defendant.

AS TO THE SIXTH CAUSE OF ACTION
(Fraud and Misrepresentation)

41. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

42. As to paragraph 2, the document referenced therein would speak for itself and Defendant craves reference to such document. Defendant denies any allegations of paragraph 2 which seeks to impose any liability on this Defendant.

43. Paragraph 3 is admitted, upon information and belief.

44. Paragraphs 4 through 21 are not directed to this Defendant and, therefore, no response to these allegations is required. To the extent any response is required, the Defendant denies the allegations to the extent they seek to impose any liability on this Defendant or are contrary to the allegations of this Defendant as set forth in its Answer, Cross-Claim and Third-Party Complaint.

45. Paragraph 22 is admitted.

46. As to paragraph 23, it is admitted that Brock L. Fankhauser, by and through Stonecrest Villas of Tega Cay, LLC, formed Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., the stated purpose of which is to administer, operate and manage the Common Elements. Defendant denies any allegations implying any failure on its part to carry out its duties.

47. As to paragraph 24, it is admitted that Plaintiffs have paid assessments as required by the Bylaws. It is admitted that the cause of the water intrusion has not been

identified and therefore no fix or repair has been undertaken. Defendant denies any allegations which seek to impose any liability on this Defendant.

48. Paragraphs 25, 26 and 27 are denied as to this Defendant.

49. As to paragraph 28, Defendant lacks knowledge or information sufficient to form a belief as to what was done by Stonecrest Villas of Tega Cay, LLC, as managed by Fankhauser, as alleged in this paragraph. Defendant denies that anything done by those parties imposes any liability on this Defendant.

50. As to paragraph 29, the document referenced therein would speak for itself and Defendant craves reference to such document. Defendant denies any allegations of paragraph 24 which seeks to impose any liability on this Defendant.

51. As to paragraph 30, Defendant lacks knowledge or information sufficient to form a belief as to what Plaintiffs would have done regarding their purchases.

52. As to paragraph 31, this Defendant reserves the right to levy a special assessment if necessary to administer, operate and manage the Common Elements, though it has not done so at this time. The remaining allegations of paragraph 31 are denied as to this Defendant.

53. As to paragraph 32, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE SEVENTH CAUSE OF ACTION
(Equitable Action for Accounting)

54. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

55. Paragraph 2 is denied as to this Defendant.

56. Paragraph 3 is denied.

57. The allegations of paragraph 4 set forth a legal conclusion which does not require an answer from this Defendant.

58. As to paragraph 5, it is admitted that Plaintiffs seek the court to require Defendants, including this Defendant, to render an accounting.

AS TO THE EIGHTH CAUSE OF ACTION

(Conversion)

59. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

60. The allegations of paragraph 2 are admitted.

61. As to paragraph 3, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

62. As to paragraph 4, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

63. As to paragraph 5, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

64. As to paragraphs 6, 7, 8 and 9, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

65. As to paragraph 10, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

66. As to paragraph 11, Defendant denies that Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE NINTH CAUSE OF ACTION
(Civil Conspiracy)

67. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

68. As to paragraph 2, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

69. Paragraph 3 is denied as to this Defendant.

70. As to paragraph 4, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

71. Paragraph 5 is denied.

72. Paragraph 6 is denied as to this Defendant. Defendant specifically denies that any present board members have acted maliciously and in conscious disregard of Plaintiffs' rights by permitting financial mismanagement of reserves and assessments.

73. Paragraphs 7, 8, 9 and 10 are denied as to this Defendant.

74. As to paragraph 11, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE TENTH CAUSE OF ACTION
(Breach of Express Warranty)

75. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

76. Paragraphs 2 and 3 are denied as to this Defendant.

77. As to paragraph 4, Defendant lacks knowledge or information as to what representations were made by parties other than this Defendant to Plaintiff Vicari. This Defendant denies making any representations to Plaintiff Vicari.

78. Paragraphs 5, 6, 7 and 8 are denied as to this Defendant.

79. Paragraph 9 is not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant is denied.

80. Paragraphs 10, 11, 12, 13 and 14

81. As to paragraph 15, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE ELEVENTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

82. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

83. Paragraph 2 is denied as to this Defendant.

84. Paragraph 3 is admitted, upon information and belief.

85. Paragraphs 4 and 5 are denied as to this Defendant.

86. As to paragraph 6, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE TWELFTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

87. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

88. Paragraph 2 is denied as to this Defendant.

89. As to paragraph 3, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted. Denied as to this Defendant.

90. Paragraph 4 is denied as to this Defendant.

91. Paragraph 5 sets forth a legal conclusion that does not require an answer from this Defendant. To the extent that an answer is required, the liability of this Defendant is denied.

92. As to paragraphs 6 and 7, Defendant admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed. The remaining allegations in paragraphs 6 and 7 are denied as to this Defendant.

93. Paragraph 8 sets forth a legal conclusion that does not require an answer from this Defendant. To the extent that an answer is required, the liability of this Defendant is denied.

94. As to paragraph 9, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE THIRTEENTH CAUSE OF ACTION
(Construction Defect)

95. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

96. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Fankhauser and FPG are denied.

AS TO THE FOURTEENTH CAUSE OF ACTION
(Breach of Express Warranties)

97. Defendant realleges the allegations contained above in response to the first sentence of paragraph 1. As to the remaining allegations of paragraph 1, they are admitted upon information and belief.

98. As to paragraph 2, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations.

99. As to paragraphs 3 and 4, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding parties other than this Defendant. Those allegations are denied as to this Defendant.

100. Paragraph 5 is denied as to this Defendant as stated.

101. Paragraph 6 is admitted.

102. As to paragraph 7, Defendant admits that it is responsible for administering, operating and managing the Common Elements. Defendant further admits that the cause of the water intrusion has not been identified and therefore the water intrusion problem has not been fixed.

103. Paragraphs 8, 9 and 10 are denied as to this Defendant.

104. Paragraph 11 is admitted upon information and belief.

105. Paragraph 12 is denied as to this Defendant.

106. As to paragraph 13, this Defendant denies making representations and express warranties to Plaintiffs. Defendant lacks information sufficient to form a belief as to the truth of the allegations regarding other parties' representations and express warranties to Plaintiffs. Defendant denies that it has arbitrarily refused to protect Plaintiffs from water intrusion, mold or damages. Defendant further denies that it has repaired residences owned by board members without rendering assistance to Plaintiffs.

107. Paragraphs 14 and 15 are denied as to this Defendant.

108. As to paragraph 16, this Defendant denies making representations and express warranties to Plaintiffs. Defendant lacks information sufficient to form a belief

as to the truth of the allegations regarding other parties' representations and express warranties to Plaintiffs.

109. Paragraph 17 is denied as to this Defendant.

110. As to paragraphs 18, 19 and 20, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE FIFTEENTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation)

111. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

112. Paragraph 2 is admitted upon information and belief.

113. Paragraphs 3, 4, 5, 6, 7 and 8 are denied as to this Defendant. Defendant specifically denies any self dealing as alleged in paragraphs 8c and f.

114. Paragraph 9 is denied as to this Defendant.

115. Paragraph 10 is denied as to this Defendant.

116. As to paragraph 11, Defendant denies that the Plaintiffs are entitled to any recovery from this Defendant.

AS TO THE PRAYER FOR RELIEF

117. Defendant denies that the Plaintiffs are entitled to the relief requested in the prayer.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRCP—Failure to State Facts)

118. With regard to some or all causes of action appearing in the Amended Complaint, the Amended Complaint fails to state facts sufficient to constitute a cause of

action upon which relief may be granted and thus, those causes of action should be dismissed.

FOR A THIRD DEFENSE
(Attorney's Fees – Not Recoverable)

119. With regard to some or all of the causes of action appearing in the Amended Complaint, the Amended Complaint fails to state facts sufficient to constitute causes of action on which the recovery of attorney's fees are allowed.

FOR A FOURTH DEFENSE
(Improper Identify of the Defendant)

120. The Defendant is improperly identified in this action.

FOR A FIFTH DEFENSE
(Standing)

121. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs lack standing.

FOR A SIXTH DEFENSE
(Proximate Cause)

122. No acts or omissions on the part of this Defendant were the proximate cause or cause in fact of some or all damages allegedly suffered by the Plaintiffs (the existence of such damages being denied); therefore, the Plaintiffs' action is barred in whole or in part.

FOR A SEVENTH DEFENSE
(Alleged Damages Caused by Third-Party)

123. Some or all damages allegedly sustained by the Plaintiffs (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom this Defendant had no control or duty to control. The Defendant pleads the acts of another party or parties as a complete defense to all claims.

FOR AN EIGHTH DEFENSE

(Waiver)

124. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of waiver.

FOR A NINTH DEFENSE

(Estoppel)

125. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A TENTH DEFENSE

(Assumption of Risk)

126. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the Plaintiffs' assumption of risk.

FOR AN ELEVENTH DEFENSE

(Intervening Causes)

127. Some or all damages allegedly sustained by the Plaintiffs (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening causes which the Defendant pleads as a bar to this action.

FOR A TWELFTH DEFENSE

(Punitive Damages)

128. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and the Excessive Fines Clause of the South Carolina Constitution in that:

a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. Any award of punitive damages based upon the wealth of the Defendant violates due process guarantees;

d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

e. Even if it can be argued that a standard governing the imposition of punitive damages exists, the standard is void for vagueness and ambiguity;

f. The claim for punitive damages violates the equal protection and due process clauses of the United States Constitution, Article 1, Section 3 of the South Carolina Constitution, and the Excessive Fines Clause of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant and other factors which are constitutionally impermissible; and

g. The claim for punitive damages violates the Federal Doctrine of Separation of Powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A THIRTEENTH DEFENSE

(South Carolina Unfair Trade Practices Act Inapplicable)

129. The South Carolina Unfair Trade Practices Act is inapplicable to the allegations contained in the Amended Complaint directed at this Defendant.

FOR A FOURTEENTH DEFENSE

(Statute of Limitations)

130. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the statute of limitations as a complete defense to some or all of the Plaintiffs' claims.

FOR A FIFTEENTH DEFENSE

(Laches)

131. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the doctrine of laches as a complete defense to some or all of the Plaintiffs' claims.

FOR A SIXTEENTH DEFENSE

(Meeting of the Minds)

132. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the contracts terms did not include those allegedly breached by the Defendant nor did the duties require the Defendant to take any action that has not been taken or abstain from any action that has been taken because there was no meeting of the minds with regard to those contract terms or duties.

FOR A SEVENTEENTH DEFENSE

(Failure to Mitigate)

133. With regard to some or all causes of action appearing in the Amended Complaint for which the Plaintiffs seeks damages, the Plaintiffs' claims are barred in whole or in part because of the Plaintiffs' or their agents' failure to mitigate damages.

FOR AN EIGHTEENTH DEFENSE

(Impossibility of Performance)

134. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the Defendant's performance of such duties was rendered impossible in a manner that excused performance.

FOR A NINETEENTH DEFENSE

(Plaintiff's Own Negligence)

135. The Plaintiffs' own negligence, gross negligence, recklessness, or willfulness contributed to their damages in a manner which should reduce or completely bar any award in this matter.

FOR A TWENTIETH DEFENSE

(Acquiescence)

136. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiffs' claims are barred by the doctrine of acquiescence.

FOR A TWENTY-FIRST DEFENSE

(Frustration of Purpose)

137. To the extent a contract or other duties arose between the Defendant and the Plaintiffs, the Defendant's performance of such duties was discharged under the doctrine of frustration of purpose.

FOR A TWENTY-SECOND DEFENSE

(Course of Conduct)

138. The Plaintiffs allege an ongoing course of conduct which supposedly resulted in their damages. This ongoing course of conduct was approved of by the Plaintiffs. The Plaintiffs are now barred from complaining about this course of conduct.

FOR A TWENTY-THIRD DEFENSE

(Election of Remedies)

139. The Plaintiffs will be subject to an election of remedies should they prevail on some or all of their causes of action.

FOR A TWENTY-FOURTH DEFENSE

(Defenses of other Defendants)

140. Defendant incorporates by reference any defenses pled by other Defendants which apply to Plaintiffs' claims against this Defendant and which are not inconsistent with this Defendant's other defenses stated herein.

FOR A TWENTY-FIFTH DEFENSE

(Economic Loss Rule)

141. With regard to some or all claims for damages appearing in the Amended Complaint, the Plaintiffs' claims are barred, in whole or in part, by the economic loss rule.

FOR A TWENTY-SIXTH DEFENSE

(Arbitration)

142. Defendant reserves all rights it may have to demand binding arbitration.

FOR A TWENTY-SEVENTH DEFENSE
(Additional Defenses)

143. Defendant places the Plaintiffs on notice that it will subsequently move to amend this Answer to assert other defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

FURTHER ANSWERING THE AMENDED COMPLAINT AND BY WAY OF CROSS-CLAIM AGAINST BROCK FANKHAUSER, FANKHAUSER PROPERTY GROUP, INC., EXTERIOR EXPRESSIONS OF NORTH CAROLINA, INC., A1-MEGA CONSTRUCTION, INC., PROCAR, INC., THE SOUTHEASTERN GROUP, INC., LUCAS LAWN AND LANDSCAPE, INC., JOSE JIMINEZ, INDIVIDUALLY AND/OR D/B/A M&L ROOFING CO., LLC AND/OR MB ROOFING COMPANY, MARCOS GONZALEZ AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST STONECREST VILLAS OF TEGA CAY, LLC, AND EPCON COMMUNITIES FRANCHISING, INC.

(Factual Background)

1. The allegations of the above paragraphs are realleged to the extent they are relevant and not inconsistent with the allegations of the claims which follow.

2. Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., ("Association"), is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

3. Defendant Fankhauser Property Group, Inc. ("FPG"), is a corporation organized and existing under the laws of the State of North Carolina which is authorized to conduct business in the State of South Carolina, and was the general contractor for construction of the Stonecrest Villas at Tega Cay Condominium project (the "Project").

4. Third-Party Defendant Stonecrest Villas of Tega Cay, LLC ("Stonecrest"), upon information and belief, is the developer of the Project.

5. Third-Party Defendant Epcon Communities Franchising, Inc. is a corporation organized and existing under the laws of the state of Ohio and is doing business in York County, South Carolina. Defendant Epcon is a commercial developer of single story, attached residential condominiums, including Stonecrest Villas at Tega Cay, which are offered for sale to purchasers through Defendant Brock L. Fankhauser and FPG, Inc.

6. Exterior Expressions of Carolina, Inc. ("Exterior Expressions") is a North Carolina corporation doing business in York County, South Carolina. Exterior Expressions contracted with Stonecrest for the installation of the exterior stone masonry on the Project and related work.

7. Upon information and belief, Third-Party Defendant A1-Mega Construction, Inc. ("A1-Mega") is a North Carolina corporation doing business in York County, South Carolina. A1-Mega contracted with Stonecrest for the installation of the siding and related work on the Project.

8. Upon information and belief, Third-Party Defendant Procar, Inc. ("Procar") is a North Carolina corporation doing business in York County, South Carolina. Procar contracted with Stonecrest to perform framing and concrete work on the Project.

9. Upon information and belief, Third-Party Defendant The Southeastern Group, Inc. ("Southeastern") is a North Carolina corporation doing business in York County, South Carolina. Southeastern contracted with Stonecrest to perform painting, caulking, and sealant work on the Project.

10. Upon information and belief, Third-Party Defendant Lucas Lawn and Landscape, Inc. ("Lucas") is a North Carolina corporation doing business in York County, South Carolina. Lucas contracted with Stonecrest to perform landscaping and related work on the Project.

11. Upon information and belief, Jose Jimenez, individually and/or d/b/a M&L Roofing Co., LLC and/or MB Roofing Company (collectively "M&L") is an individual residing in North Carolina doing business in York County, South Carolina and/or a North Carolina limited liability company and/or North Carolina corporation doing business in York County, South Carolina. M&L contracted with Stonecrest to perform roofing work on the Project.

12. Upon information and belief, Marcos Gonzalez is an individual residing in South Carolina doing business in South Carolina.

13. Defendant Brock Fankhauser is a resident and citizen of Mecklenburg County, North Carolina, and is the owner, principal and president of Defendant FPG, and is the sole member of Defendant Stonecrest. At all relevant times herein, Defendant Fankhauser was the President of Defendant Association.

14. On February 26, 2007, Stonecrest, as Declarant, filed a Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime ("Master Deed") pursuant to the South Carolina Horizontal Property Act, recorded in Book 8852 at page 149 of the public registry of the York County Clerk of Court.

15. The Master Deed states that the Defendant Stonecrest deemed it desirable to create the Defendant Association which will be delegated and assigned the powers of maintaining and administering the common elements and facilities on the property.

16. Article V, Section 5.4(a) of the Master Deed states that the "Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner."

17. Article V, Section 5.1, of the Master Deed defines the Common Elements to include among other things, all portions of the Buildings (as defined in the Master Deed) located outside the Units (as defined in the Master Deed), roofs, foundations, and exterior and interior load bearing walls.

18. The Project was constructed in or about 2007.

19. After the Project was completed, Third-Party Defendant Stonecrest and/or Defendant FPG maintained control of the Defendant Association. Defendant Fankhauser was the president of the Defendant Association at all relevant times herein. Defendant Fankhauser resigned his position with the Association in June 2010 after this litigation was commenced.

20. Upon information and belief, in or about 2009, individual condominium unit owners within Stonecrest Villas of Tega Cay, including Plaintiffs herein, experienced water intrusion into their units. The neighborhood clubhouse also experienced water intrusion.

21. The Common Elements and other portions of the Project for which the Association is responsible for maintenance, repair and replacement are collectively referred to herein as the "Improvements."

22. The Improvements were developed and constructed by Third-Party

Defendant Stonecrest and/or FPG, acting by and through its agents, representatives and employees, or acting through contractors and suppliers selected by said Defendants.

23. There exist defects and deficiencies in the workmanship and material used by the Third-Party Defendant/Defendants in the construction of the Improvements including, without limitation, defects and deficiencies in the workmanship and materials used in connection with the construction and installation, including but not limited to:

- a. Failing to install a proper waterproofing, including a moisture barrier, concurrently with the masonry veneer building exterior directly contributing to water infiltration into individual unit owners residences and the Common Elements;
- b. Improperly constructing brick masonry at window sill structures to divert rain water intrusion properly from the individual unit owners residences and the Common Elements;
- c. Improperly sealing brick masonry veneer exterior walls to prevent water infiltration into individual unit owners residences and the Common Elements;
- d. Failing to install proper flashing and internal drainage to prevent water infiltration into individual unit owners residences and the Common Elements;
- e. Failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exterior;
- f. Failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exterior;
- g. Failing to provide a proper slope around brick masonry ledges and wall transitions to deflect water flow away from individual unit owners residences and the Common Elements;

- h. Failing to properly grade and slope exterior foundation walls to prevent surface water intrusion per code; and
- i. Failing to properly gutter the condominiums to properly divert rainwater away from the individual unit owners residences and the Common Elements.

24. As a result of the deficiencies in the construction of the Project by Third-Party Defendants Stonecrest and FPG and the resulting damage, Defendant Association has been sued as set forth in Plaintiffs' Amended Complaint which is incorporated by reference herein.

25. Defendant Association contends that the fault lies with Defendants FPG and Fankhauser and Third-Party Defendants Stonecrest and Epcon.

FOR A FIRST CAUSE OF ACTION
(Negligence as to Stonecrest, FPG and Fankhauser)

26. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

27. Defendant Fankhauser is the sole shareholder of Defendant FPG and the sole member of Third-Party Defendant Stonecrest. Defendants Fankhauser and FPG and Third-Party Defendant Stonecrest are collectively referred to as the "Fankhauser Defendants."

28. The Fankhauser Defendants were negligent as is more fully set forth in Paragraphs 16(a) through (i), supra.

29. The Fankhauser Defendants failed to properly oversee and supervise the construction of the Project by its agents, employees, and subcontractors which resulted in Project being constructed not in a good and workmanlike manner.

30. The Fankhauser Defendants were negligent and/or careless in failing to

properly carry out their tasks and by failing to employ construction practices and methods that conformed with project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

31. As a direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been sued by Plaintiff herein and other unit owners for the development and construction of the Project by the Fankhauser Defendants, and faces liability for the work performed by or at the direction of the Fankhauser Defendants.

32. As direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been damaged in an amount greater than \$7,500.00, and is entitled to a judgment against the Fankhauser Defendants in an amount necessary to properly compensate Defendant Association for damage to the Common Elements and any amount it may be required to compensate Plaintiffs as a result of these Defendants' negligence.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnity – Fankhauser Defendants)

33. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

34. The Fankhauser Defendants were under a duty by virtue of the duties that they took on the Project as set forth herein to comply with the Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and to properly oversee and supervise its agents, employees, and subcontractors.

35. The Fankhauser Defendants were negligent and/or careless in failing to

properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and failing to properly oversee and supervise its agents, employees and subcontractors.

36. Defendant Association is entitled to equitable indemnity from the Fankhauser Defendants, individually and severally, for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay the Plaintiff herein as result of the negligence of the Fankhauser Defendants.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Habitability and
Workmanlike Construction – Fankhauser Defendants)

37. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

38. The Improvements are being infiltrated by water caused by the defects in construction caused by the Fankhauser Defendants.

39. The Fankhauser Defendants impliedly warranted, for the benefit of the Association and all individual unit Owners, that the construction of the Project, including the Improvements which are a part thereof, the proper quality, care, adequacy, suitability, and workmanship of the labor and materials that they provided on the Project.

40. The Fankhauser Defendants have breached their obligations and duties under the implied warranties of habitability, quality and fitness. As a result of Defendants' breach of implied warranties as set forth herein, Defendant Association has

been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

41. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of warranty.

FOR A FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for Particular Purpose – Fankhauser Defendants)

42. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

43. Defendant Association is informed and believes that the Fankhauser Defendants' unworkmanlike construction resulted in the breach of an implied warranty of fitness for a particular purpose wherein the Improvements do not prevent water infiltration and seepage into individual units and/or the Common Elements.

44. As a direct and proximate result of the Fankhauser Defendants' unworkmanlike construction, Defendant has incurred economic and structural damages to the Improvements in amounts to be proven at trial of this matter exceeding \$7,500.

45. The Fankhauser Defendants, at the time of contracting, knew that Defendant Association would utilize the clubhouse for Association related activities and that individual unit owners would use their units as a family dwelling.

46. As a result of the Fankhauser Defendants' un-workmanlike construction, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements home are not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

47. The Fankhauser Defendants have breached their obligations and duties under the implied warranty of fitness for a particular purpose. As a result of Defendants' breach of implied warranty as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

48. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of warranty.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Fankhauser Defendants)

49. The allegations contained the foregoing paragraphs are incorporated by reference herein.

50. Defendant Fankhauser was the sole member and president of Third-Party Defendant Stonecrest and the sole shareholder and president of Defendant FPG. Defendants Stonecrest and FPG were under the total control of Defendant Fankhauser. Defendant Fankhauser was a member of the Board of Directors of the Association and owed a fiduciary duty to the Defendant Association.

51. Defendant Fankhauser was in control of the Association at all times relevant herein, and promoted the Association, and therefore, had a fiduciary duty to the Defendant Association.

52. Defendant Fankhauser had a fiduciary duty to Defendant Association due to the special relationship that existed between the two.

53. This duty required, among other things, that the Fankhauser Defendants

act in the best interests of Defendant Association to ensure that all Common Areas and Improvements were constructed and turned over to the Association in a reasonable state of repair.

54. As a member of the Board of Directors, Defendant Fankhauser acted in his own interests in breach of his duties as a Board Member.

55. Defendant Fankhauser breached his duty by failing to ensure that the Improvements were turned over to Defendant Association in a good state of repair.

56. The Fankhauser Defendants breached their duties by failing to ensure that the Improvements were constructed in a good and workmanlike manner.

57. As a result of Defendants' breach of fiduciary duties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

58. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breaches of fiduciary duty.

FOR A SIXTH CAUSE OF ACTION

(Unfair Trade Practices Act Violations – Fankhauser Defendants)

59. The allegations contained the foregoing paragraphs are incorporated by reference herein.

60. The Fankhauser Defendants owed Defendant Association certain fiduciary duties as hereinabove described, thereby creating a special relationship between the parties.

61. The conduct of the Fankhauser Defendants, jointly and severally, created

false assurances to the Defendant Association that Defendants would act in the best interest of the Association, which assurances were false and constitute methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.

62. The Fankhauser Defendants, jointly and severally, knew or should have known, due to the existing privities and restrictive covenants and the necessity to take immediate action to protect the Improvements, yet Defendants deliberately failed to act with diligence whereby the Association and individual unit owners continue to experience inaction, procrastination, further water intrusions, interior damages, and mold.

63. Defendant Association and others have suffered an ascertainable loss of money, property damages, diminution of property value and special damages proximately caused by Defendants' deceptive acts and practices which are pled upon information and belief to wit.

64. The Fankhauser Defendants' conduct affects the public interest at large; the same conduct has occurred with at least four Stonecrest owners, has been repeated, and affects commerce at large within York County.

a. By falsely advertising, pricing, offering for sale, falsely warranting, and falsely binding properties per restrictive covenants where the Association is undercapitalized, making it difficult to serve the Association's and owners'/residents' needs to prevent water intrusion, proper maintenance and/or proper diligence to preserve the Association's and owners' properties and property values.

b. By creating an Owners Association where Defendant Fankhauser knew, or should have known, that a conflict of interest would exist between his duties

as developer, contractor and that of HOA chairman and president to enforce covenants and adequately protect the Association's and owners' properties and interests.

c. By falsely charging dues and assessments where Defendant Association, by and through Defendant Fankhauser, failed to honor duties to preserve and protect the Improvements as required by restrictive covenants.

d. Upon information and belief, by willfully and knowingly applying property assessments for development of adjacent commercial tracts instead of properly capitalizing Defendant Association and acting promptly to remedy defects existing in the Improvements and individual residences.

e. By violation of duties imposed by restrictive covenants where the Fankhauser Defendants knew, or should have known, of the need to act promptly to prevent Defendant Association and individual unit owners from further property damage.

f. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties.

65. Damages and special damages suffered by Defendant Association and others would not have occurred but for the Fankhauser Defendants' unfair and deceptive acts and should be legally deterred.

66. Defendant Association is informed and believes that it is entitled to an award, of actual and trebled damages pursuant to South Carolina Code Ann. §39-5-140(a), *et seq*, together with any costs associated with prosecution of this action.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Express Warranties – Epcon)

67. The allegations contained the foregoing paragraphs are incorporated by reference herein.

68. Third-Party Defendant Epcon Communities has been building condominium communities for more than 20 years. Epcon represents itself to have a successful history of condominium development throughout the United States.

69. Third-Party Defendant Epcon Communities marketed and represented that Stonecrest Villas of Tega Cay was an Epcon Community and was an exceptional community.

70. Being part of an Epcon Community, Third-Party Defendant Epcon Communities represented and warranted that the construction in the community would result in buildings with zero defects and a high level of quality.

71. Third-Party Defendant Epcon Communities represented and warranted that Stonecrest Villas at Tega Cay was part of Epcon Communities QualityMark warranty program. The specific objectives of warranty program are:

- a. to produce a high quality product
- b. identify defects in the buildings at a time when it is appropriate for Epcon Communities' contractors and subcontractors to respond
- c. identify and correct deficiencies before occupancy occurs
- d. to ensure that the quality of the construction meets Epcon Communities' alleged standard of excellence.

72. Third-Party Defendant Epcon Communities represented and warranted that the construction would be thoroughly inspected, including mechanical, structural and cosmetic items.

73. Third-Party Defendant Epcon Communities represented and warranted that the construction would be maintenance free.

74. The clubhouse and common elements in Stonecrest Villas at Tega Cay were part of the construction that was warranted by Third-Party Defendant Epcon Communities.

75. Third-Party Defendant Epcon Communities breached its warranties in that, among other things:

- a. Failed to construct Stonecrest Villas, including the clubhouse and common elements, in such a manner as to result in zero defects and a high level of quality;
- b. It failed to identify defects at a time when its contractors and subcontractors can address the defect before occupancy occurs;
- c. It failed to thoroughly inspect the construction, including mechanical, structural and cosmetic items;
- d. It failed to construct Stonecrest Villas, including the clubhouse and common elements in such a manner that it was maintenance free.

76. As a result of Third-Party Defendant Epcon Communities' breach of its warranties, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements are

not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

77. Defendant Association is entitled to judgment against the Third-Party Defendant Epcon Communities for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiffs herein as result of such breach of warranty.

FOR AN EIGHTH CAUSE OF ACTION
(Negligence against Subcontractors)

78. The Association realleges and reavers Paragraphs 1 through 77 as if set forth herein.

79. Exterior Expressions, Al-Mega, Procar, Southeastern, Lucas, Jose Sminez, M&L Roofing, MB Roofing and Gonzalez (collectively referred to as "Subcontractors") were under a duty to use due care in the performance of their respective tasks referenced above and to perform those tasks in a manner in compliance with the project plans, applicable building codes, industry standards, and manufacturers' instructions.

80. The Subcontractors were negligent and/or careless in failing to properly carry out their tasks and by failing to employ practices and methods of construction conformance with the project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

81. The negligence of the Subcontractors has proximately caused financial damage to the Association, including but not limited to the repair of the exterior portions of the buildings at issue in this case. Moreover, the Subcontractors' work caused damages to work other than that of the respective Subcontractors' work, namely interior

damages to various units as a result of water penetration. While the Association denies it is liable for the repair of any interior units, if the Court determines otherwise, the Association hereby states a contingent claim for such damages in an amount equal to repair any damaged interior unit spaces.

FOR NINTH CAUSE OF ACTION
(Breach of Implied Warranty as to Subcontractors)

82. The Association realleges and reavers Paragraphs 1 through 81 above as if set forth herein.

83. The Subcontractors impliedly warranted the proper quality, care, adequacy, suitability, and workmanship of the materials and labor that they provided on the Project.

84. The Subcontractors breached their implied warranty of workmanship as described above by constructing building exteriors that allow for water to penetrate the building interiors.

85. The Association has been damaged by the Subcontractors' breach of implied warranty in that the exterior surfaces must be rebuilt or repaired. While the Association denies it is liable for the repair of any interior units, if the Court determines otherwise, the Association hereby states a contingent claim for such damages in an amount equal to repair any damaged interior unit spaces.

WHEREFORE, Defendant Association prays the Court that:

1. The Plaintiffs' Amended Complaint be dismissed with Prejudice;
2. It have and recover judgment against the Defendant Brock L. Fankhauser, Fankhauser Property Group, Inc., and Third Party Defendant Stonecrest Villas of Tega Cay, LLC, on Defendant Association's First through Sixth Causes of Action as set out

hereinabove;

3. It have and recover judgment against the Third Party Defendant Epcon Communities Franchising, Inc., on Defendant Association's Seventh Cause of Action as set out hereinabove;

4. It have and recover judgment against the Subcontractors on the Association's Eighth and Ninth Causes of Action as set out hereinabove;

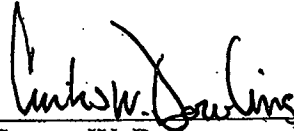
5. It be awarded actual, consequential, incidental, and punitive damages against the Fankhauser Defendants, Epcon, and Subcontractors in the discretion of the court and jury;

6. It be awarded any special damages as may be proven by Defendant Association;

7. It receive a trial by jury of the matters alleged herein; and

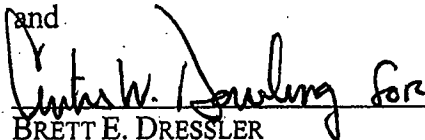
8. It be awarded such other and further relief as the Court may deem just and proper.

Signature page follows.



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Condominium Owners Association, Inc.
(Cross-Claims and Third-Party Complaint)

October 25, 2011

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:

Stonecrest HOA's Answer to Amended Complaint, First Amended Cross-Claim and Third-Party Complaint

PERSON(S) SERVED:

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Attorney for The Southeastern Group, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

Plaintiffs,

v.

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

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants,

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

Third-Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC

Third-Party Defendant,

Civil Action No. 2010-CP-46-02326

**AFFIDAVIT OF
LOUIS MOSCOWITZ**

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

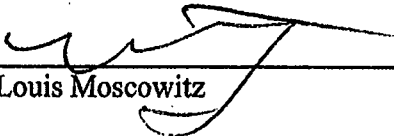
PERSONALLY APPEARED BEFORE ME Louis Moscovitz who,
being duly sworn, deposes and states as follows:

1. My name is Louis Moscovitz. I am a resident of York County, South Carolina.
2. I am over the age of eighteen (18) and am competent to give this Affidavit. Unless otherwise stated, each statement contained herein is of my own personal knowledge.
3. I am a unit owner in Stonecrest Villas of Tega Cay, a condominium community in York County, and a member of the board of directors of Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. ("Stonecrest COA").
4. Stonecrest COA has elected at this time not to fund the repairs of the community's common areas requested by the Plaintiffs in this action because the repairs would likely cost approximately \$3 million and Stonecrest COA does not have adequate reserves to fund such an expenditure. Thus, any decision to proceed with repairing the common areas would necessitate the imposition of a large special assessment on the community's unit owners.

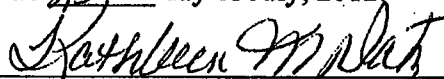
5. The community is currently made up of 86 units, meaning the amount of the special assessment would be approximately \$34,883.72 per unit.

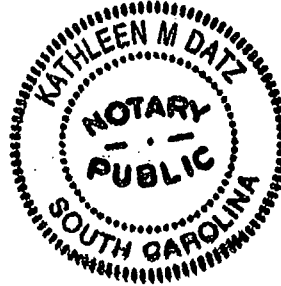
6. In hopes of avoiding such an enormous special assessment against its members, Stonecrest COA elected to let this litigation run its course so it can be determined which parties are truly and ultimately responsible for the damages. Those parties will then be required to fund the necessary repairs directly.

FURTHER AFFIANT SAYETH NOT.


Louis Moscovitz

Sworn to and subscribed before me
this 23rd day of July, 2012.


Notary Public for the State of South Carolina
My Commission Expires: 4/1/2020



designated expert.

8. Second, and perhaps most importantly, the Board considers the Plaintiffs' damage model to be unrealistic because the likelihood of actually recovering \$6 million is small even if a jury were to award it. One of the Board's primary concerns is the existence of insurance coverage to pay for the damages to the neighborhood. For example, the Board is concerned that recovery for items like a new roof or new windows, which appear not to be causing damage to the property, will not be covered by any insurance policy. The Board is informed and believes that there are likely in excess of 20 insurance policies at issue in this dispute given all of the subcontractors and various policy periods. The Board is informed and believes that these policies all have differing coverage and exclusionary language to varying degrees. The Board is informed and believes that the cost of breaking out the damages in such a way to capture coverage on these various policies will increase the costs of the litigation by another \$100,000 due to the complexity of the issues. Furthermore, this would potentially delay any recovery for years due to the coverage litigation that will follow any final verdict. As it is, the Board negotiated with the defendants over 4 days of formal mediation in order to obtain the current deal. The subcontractors have stated that their portion of the settlement is composed mainly of defense costs. The Board is seriously concerned about the ability to keep the subcontractor's money on the proverbial table if the settlement does not close.

9. Finally, the Board must balance the needs of the community as a whole. If not permitted to settle, the members of the COA will be forced to vote on a special assessment to continue this litigation. The Board is informed and believes that the cost to bring this litigation to close absent a settlement will be on the order of \$200,000. A substantial amount of discovery remains to be conducted, including the deposition of literally every defense expert. The Board anticipates the trial will likely take three weeks. In the meantime, one member of the COA has already objected to the COA's plan to replace the stone around her unit. She said that she does not want the COA to replace ANYTHING on the exterior of her unit. Her objection underscores the need to take into consideration the fact that nearly 40% of the units in the neighborhood have not experienced any water penetration. Other members of the neighborhood are also anxious to sell their units, but this litigation and the resulting delay in repairs is a major obstacle to making the units marketable.

10. For these reasons, the Board of the COA asks the Court to issue a ruling that will allow it to settle with the defendants for \$2.62 million in exchange for a release of exterior damages. The release would not include a release for any subsurface soil conditions currently under investigation and the damages caused by such conditions. In its business judgment, the Board believes this settlement is

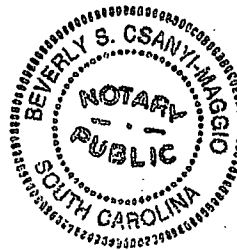
in the best interest of the members of the COA. In its business judgment, the Board believes the settlement is fair and reasonable.

This the 1st day of October, 2012

Paulette Iadanza
Paulette Iadanza

Sworn to and subscribed before me,
This the 1st day of October, 2012.

Beverly S. Csanyi-Maggio
Notary Public
My Commission Expires: 01-18-2019



STATE OF SOUTH CAROLINA
COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

FILED-RECEIVED
2012 OCT 12 PM 3:54
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

COA's Motion for Partial Summary
Judgment and Approval for Settlement as to
Exterior Damages or, in the alternative,
Motion for Dismissal pursuant to 41(a)(2)

The COA moves for partial summary judgment on the issue of exterior damages. The COA relies on the affidavit of Paulette Iadanza filed on October 12, 2012 in support of this motion and other evidence that may be presented at the hearing on this motion. As the Court is aware, the plaintiffs and the COA have both asserted the cost to repair the exteriors of the Stonecrest buildings as an element of damage in their respective lawsuits. The Court previously ruled that both sets of parties have standing to pursue this type of damage, but that only one recovery may be had. The recovery has now been had in part through a settlement with Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez. The Plaintiffs have no claims and have never made any claims against these parties.

In addition, the settlement entered into with Brock L. Fankhauser, Stonecrest Villas of Tega Cay, LLC, and Fankhauser Property Group, Inc., does not affect the Plaintiffs' claims for the damages to the property they individually own. The Plaintiffs' claims for their various causes of action such as rescission, fraud, etc., remain.

The COA has entered into a conditional settlement agreement with all of the defendants (including third and fourth party) for the payment of \$2.62 million in full satisfaction of the exterior damages. The agreement is conditioned upon a ruling from the Court that the settlement extinguishes all parties' claims for exterior damages. The COA acknowledges the Court's prior ruling that Plaintiffs have standing to pursue a claim for exterior damages and that the recovery would inure to the benefit of the Association. However, now that the Association is able to settle the exterior damage claim, the plaintiffs' pursuit of the claim is moot. The COA asks the Court to enter an order holding that the proposed settlement extinguishes all parties' claims to exterior damages raised in this lawsuit.¹ In the alternative, the COA asks the Court to dismiss the exterior damage claim from the lawsuit pursuant to Rule 41(a)(2).

¹ The settlement does not include a release of claims for damages associated with subsurface soil conditions currently under investigation. Specifically, the COA requests 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

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:

- **Stonecrest HOA's Answer to Amended Complaint, First Amended Cross-Claim and Third-Party Complaint**

PERSON(S) SERVED:

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Stephanie H. Burton, Esquire

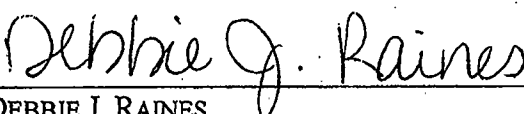
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DEBBIE J. RAINES

October 25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

Plaintiffs,

v.

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

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants,

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

Third-Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC

Third-Party Defendant,

Civil Action No. 2010-CP-46-02326

**AFFIDAVIT OF
LOUIS MOSCOWITZ**

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

PERSONALLY APPEARED BEFORE ME Louis Moscowitz who,
being duly sworn, deposes and states as follows:

1. My name is Louis Moscowitz. I am a resident of York County, South Carolina.

2. I am over the age of eighteen (18) and am competent to give this Affidavit. Unless otherwise stated, each statement contained herein is of my own personal knowledge.

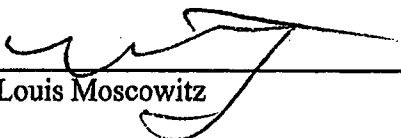
3. I am a unit owner in Stonecrest Villas of Tega Cay, a condominium community in York County, and a member of the board of directors of Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. ("Stonecrest COA").

4. Stonecrest COA has elected at this time not to fund the repairs of the community's common areas requested by the Plaintiffs in this action because the repairs would likely cost approximately \$3 million and Stonecrest COA does not have adequate reserves to fund such an expenditure. Thus, any decision to proceed with repairing the common areas would necessitate the imposition of a large special assessment on the community's unit owners.

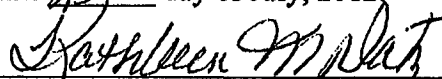
5. The community is currently made up of 86 units, meaning the amount of the special assessment would be approximately \$34,883.72 per unit.

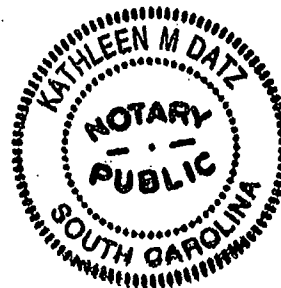
6. In hopes of avoiding such an enormous special assessment against its members, Stonecrest COA elected to let this litigation run its course so it can be determined which parties are truly and ultimately responsible for the damages. Those parties will then be required to fund the necessary repairs directly.

FURTHER AFFIANT SAYETH NOT.


Louis Moscovitz

Sworn to and subscribed before me
this 23rd day of July, 2012.


Notary Public for the State of South Carolina
My Commission Expires: 4/1/2020



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

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2012 OCT 12 PM 12:50DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

Paulette Iadanza Affidavit

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

1. My name is Paulette Iadanza. 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 a member of the Board of Directors for the Stonecrest Villas of Tega Cay Condominium Owners Association. I am making this affidavit in my capacity as a Director of the Association. The Board has authorized me to submit this affidavit to the Court. The Board has entered into a conditional settlement agreement with the defendants. The agreement calls for the payment of \$2.62 million in exchange for a release in favor of all defendants (developer, GC, third and fourth parties included) of all exterior damage claims except for damages associated with subsurface soil conditions currently under investigation. The Board asks the Court to enter an order declaring that the settlement satisfies all of the exterior damages raised by the plaintiffs and the COA in this lawsuit.

3. I have over 30 years of experience in the construction industry. My primary job responsibility has included the management of the construction of commercial buildings. I have managed the construction of buildings ranging in size from 60,000 square feet to over 2 million square feet. My responsibilities included preparation of construction budgets, identification and selection of contractors, active construction management, change order approvals, and budget compliance. I worked, in essence, as what is commonly referred to in the industry as an "Owner's Representative."

4. I am intimately familiar with the water intrusion issues at Stonecrest. I was originally selected to serve on the Water Intrusion Committee and then later selected/elected to the Board of Directors. My unit is one of the

many units that have experienced water intrusion. A portion of the exterior of my unit is currently protected by a tarp to prevent further water intrusion. The interior of my unit is still in a damaged state and needs to be fixed when the repairs to the exterior are made.

5. In the Board's judgment, the primary construction defects contributing to water penetration 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.

6. The Board has consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same. The Board, either directly or through its counsel, has consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors. 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 \$2.62 million. The bids from these individuals have ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates. 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.

7. The Board has considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts. In its business judgment, the Board considers this estimate to be too high for several reasons. First, the estimate calls for repairs that are not reasonable or necessary. For example, the estimate calls for the replacement of every roof in the neighborhood. However, the shingles on every building were replaced approximately one year ago under the COA's property policy. The Board is not aware of any reported leaks from a roof. The estimate calls for the removal and reinstallation of every window in the neighborhood with a replacement of 281 windows. There is no evidence to suggest at this time that the windows themselves are leaking. There is evidence to suggest that flashing around the windows is at issue, which is why the Board intends to seal the windows in place. Removal and replacement of all windows is excessive and may actually cause damage to the windows. The estimate calls for the replacement of all gutters on the property. The Board is informed and believes that the gutters need to be modified in only certain areas of the building where excessive water runs off due to roof intersections. Finally, the proposed \$1 million budget for surface water drainage is excessive. Other bids have ranged from \$250,000 to \$500,000. Indeed, the plaintiffs' total damage figures appear to be roughly twice as much as the estimates provided by the COA's expert as well as the developer's

designated expert.

8. Second, and perhaps most importantly, the Board considers the Plaintiffs' damage model to be unrealistic because the likelihood of actually recovering \$6 million is small even if a jury were to award it. One of the Board's primary concerns is the existence of insurance coverage to pay for the damages to the neighborhood. For example, the Board is concerned that recovery for items like a new roof or new windows, which appear not to be causing damage to the property, will not be covered by any insurance policy. The Board is informed and believes that there are likely in excess of 20 insurance policies at issue in this dispute given all of the subcontractors and various policy periods. The Board is informed and believes that these policies all have differing coverage and exclusionary language to varying degrees. The Board is informed and believes that the cost of breaking out the damages in such a way to capture coverage on these various policies will increase the costs of the litigation by another \$100,000 due to the complexity of the issues. Furthermore, this would potentially delay any recovery for years due to the coverage litigation that will follow any final verdict. As it is, the Board negotiated with the defendants over 4 days of formal mediation in order to obtain the current deal. The subcontractors have stated that their portion of the settlement is composed mainly of defense costs. The Board is seriously concerned about the ability to keep the subcontractor's money on the proverbial table if the settlement does not close.

9. Finally, the Board must balance the needs of the community as a whole. If not permitted to settle, the members of the COA will be forced to vote on a special assessment to continue this litigation. The Board is informed and believes that the cost to bring this litigation to close absent a settlement will be on the order of \$200,000. A substantial amount of discovery remains to be conducted, including the deposition of literally every defense expert. The Board anticipates the trial will likely take three weeks. In the meantime, one member of the COA has already objected to the COA's plan to replace the stone around her unit. She said that she does not want the COA to replace ANYTHING on the exterior of her unit. Her objection underscores the need to take into consideration the fact that nearly 40% of the units in the neighborhood have not experienced any water penetration. Other members of the neighborhood are also anxious to sell their units, but this litigation and the resulting delay in repairs is a major obstacle to making the units marketable.

10. For these reasons, the Board of the COA asks the Court to issue a ruling that will allow it to settle with the defendants for \$2.62 million in exchange for a release of exterior damages. The release would not include a release for any subsurface soil conditions currently under investigation and the damages caused by such conditions. In its business judgment, the Board believes this settlement is

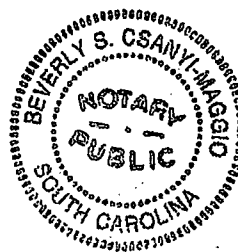
in the best interest of the members of the COA. In its business judgment, the Board believes the settlement is fair and reasonable.

This the 12 day of October, 2012

Paulette Iadanza
Paulette Iadanza

Sworn to and subscribed before me,
This the 12th day of October, 2012.

Beverly S. Csanyi-Maggio
Notary Public
My Commission Expires: 05-18-2019



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

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 2012 OCT 12 PM 3:54
 DAVID HAMILTON
 C.C.C.P. & G.S.
 YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

COA's Motion for Partial Summary
 Judgment and Approval for Settlement as to
 Exterior Damages or, in the alternative,
 Motion for Dismissal pursuant to 41(a)(2)

The COA moves for partial summary judgment on the issue of exterior damages. The COA relies on the affidavit of Paulette Iadanza filed on October 12, 2012 in support of this motion and other evidence that may be presented at the hearing on this motion. As the Court is aware, the plaintiffs and the COA have both asserted the cost to repair the exteriors of the Stonecrest buildings as an element of damage in their respective lawsuits. The Court previously ruled that both sets of parties have standing to pursue this type of damage, but that only one recovery may be had. The recovery has now been had in part through a settlement with Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez. The Plaintiffs have no claims and have never made any claims against these parties.

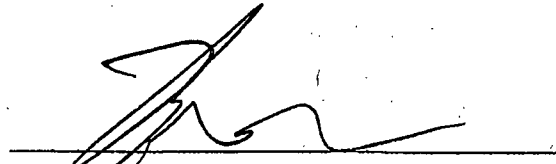
In addition, the settlement entered into with Brock L. Fankhauser, Stonecrest Villas of Tega Cay, LLC, and Fankhauser Property Group, Inc., does not affect the Plaintiffs' claims for the damages to the property they individually own. The Plaintiffs' claims for their various causes of action such as rescission, fraud, etc., remain.

The COA has entered into a conditional settlement agreement with all of the defendants (including third and fourth party) for the payment of \$2.62 million in full satisfaction of the exterior damages. The agreement is conditioned upon a ruling from the Court that the settlement extinguishes all parties' claims for exterior damages. The COA acknowledges the Court's prior ruling that Plaintiffs have standing to pursue a claim for exterior damages and that the recovery would inure to the benefit of the Association. However, now that the Association is able to settle the exterior damage claim, the plaintiffs' pursuit of the claim is moot. The COA asks the Court to enter an order holding that the proposed settlement extinguishes all parties' claims to exterior damages raised in this lawsuit.¹ In the alternative, the COA asks the Court to dismiss the exterior damage claim from the lawsuit pursuant to Rule 41(a)(2).

¹ The settlement does not include a release of claims for damages associated with subsurface soil conditions currently under investigation. Specifically, the COA requests 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

This 12 day of October, 2012.

Respectfully submitted,



BRETT E. DRESSLER

SELLERS, HINSHAW, SYERS, DORTCH & LYONS, PA

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Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners

(Cross-Claims and Third-Party Complaint)

Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

CERTIFICATE OF SERVICE

The undersigned employee of Sellers, Hinshaw, Ayers, Dortch & Lyons, PA, 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:

**STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS' MOTION
FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AGAINST EPCON
COMMUNITIES FRANCHISING INC.**

PERSON(S) SERVED:

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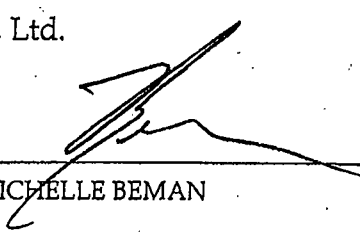
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Attorney for Architectural Alliance, Ltd.



MICHELLE BEMAN

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

ROA000437
IN THE COURT OF COMMON PLEAS

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SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
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CONSOLIDATED

Civil Action No. 2010-CP-46-2326

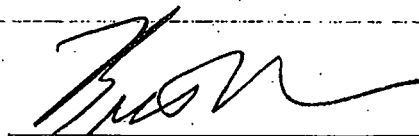
NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that Stonecrest Villas of Tega Cay Condominium Owners' Motion for Partial Summary Judgment as to Exterior Damages will be heard on October 23, 2012 beginning at 10:00 a.m. before Judge Hayes in the Beaufort County Courthouse, 102 Ribaut Rd, Beaufort, SC 29902.

Please ask for Judge Hayes' courtroom upon arrival.

This ____ day of October, 2012.

Respectfully submitted,



BRETT E. DRESSLER

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Attorneys for Stonecrest Villas of Tega Cay

Condominium Owners

(Cross-Claims and Third-Party Complaint)

CERTIFICATE OF SERVICE

The undersigned employee of Sellers, Hinshaw, Ayers, Dortch & Lyons, PA, 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:

**STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS' MOTION
FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AGAINST EPCON
COMMUNITIES FRANCHISING INC.**

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Attorney for Plaintiff

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Attorneys for Defendants Brock L. Fankhauser, Fankhauser Property Group, Inc.,
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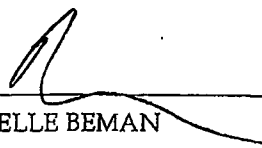
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Attorney for Architectural Alliance, Ltd.



MICHELLE BEMAN

COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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

Juontonio Pinckney, *et al.*,

Plaintiffs,

) **PLAINTIFF RETURN**
) **OPPOSING DEFENDANTS' MEMORANDUM**
) **FOR SUMMARY JUDGMENT**

) **AMENDED MEMORANDUM**
) **IN SUPPORT OF SUMMARY**
) **JUDGMENT AS TO PLAINTIFFS CLAIMS**
) **(CONSTRUCTION DEFECTS AND BREACH**
) **OF FIDUCIARY DUTY RE: TRANSITION)**

VS.

) **DEFENDANTS FANKHAUSER, FPG INC.,**
) **AND STONECREST, LLC**

Epeon Communities, Inc.,
Epeon Communities, Franchising, Inc.,

Brock L. Fankhauser; Fankhauser Property
Group, Inc.; Stonecrest Villas of Tega
Stonecrest Villas of Tega Cay, L.L.C., and
Stonecrest Villas of Tega Cay Owners'
Association, Inc.,

) **AND**
) **PLAINTIFF AMENDED MEMORANDUM**
) **RE: PROPOSED RULE 41(a)(2) SETTLEMENT**
) **MOTION OF COA STONECREST VILLAS OF**
) **TEGA CAY OWNERS ASSOC. INC.**

Defendants.

Plaintiffs here file their Return to Memorandum to Defendants Brock L. Fankhauser, FPG, Inc. and Stonecrest Villas of Tega Cay, LLC filed December 9, 2012 and December 14, 2012 respectively. Plaintiffs Return is submitted to supplement and amend the October 12, 2012 Memorandum filed with the court concerning proposed conditional settlement terms now scheduled before the court for December 19, 2012. Plaintiffs Return Memorandum is based upon deposition testimony of Defendants' expert Marshall F. Clarke, FAIA taken November 27, 2012, affidavits previously submitted in this case, SCRCP 56, SCRCP 41(a)(2), and case law submitted as cited and attached.

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DAVID HAMILTON
S.C. C.P. & G.V.
YORK COUNTY, SC

1. Marshall F. Clarke illustrates the absence of water management detail in the construction and architectural drawings as "defects".

On November 27, 2012 expert for Defendant FPG, Inc. Marshall F. Clarke, testifies as to the deficiencies within the architectural plans and construction at Stonecrest. Early in the case, Clarke submits an affidavit concerning deficiencies in the architectural drawings in relation to the architect of record. The drawings are used by FPG in construction of the Stonecrest condominiums. Clarke's testimony illustrates the omission of water management systems within both the Epcon architectural plans, and the construction now existing at the development. These matters pertain to the proposed costs for scope of repair, and damages. Clarke's testimony illustrates defects including, but not limited to, omission of weep screeds/drip screeds and weather resistant barrier (WRB) behind cementitious "hardiplank" siding.

The same water management details, despite proposed stone replacement, is absent within the repair scope proposed by the October 12, 2012 Iadanza affidavit. . 10/12/2012 Iadanza affidavit, ¶(6). Exhibit-C. Marshall Clarke's testimony evidences material fact exist. Not only does the construction evidence code violations, so does the Epcon architectural drawings. Despite omissions in water management detail being cited by eight (8) experts of record in this case, the proposed COA settlement seeks to fund repairs without remedy of known building code violations. Defendants' own expert makes clear that without remedy and correct installation, that the condominiums yet have the potential for continued leaking. Clarke, at 116 lines 14, 15. Noteworthy is that an August, 2010 attempted retrofit of Iadanza unit 727 and the November, 2011 re-roofing of the entire community evidences repairs occurring atop yet un-remedied building code

violations in the original construction. 12/14/2012 Dep. of Dennis Hall, P. ____ at ____.
(transcript not yet received). Despite retrofit of the Iadanza unit 727 with a weep screed,
the unit still suffers water intrusion. See, Iadanza affidavit, para (4) - Exhibit C.

Clarke's sworn testimony illustrates genuine issues of material fact, and why the
proposed settlement (as presented) to this court should be denied. Viewing all facts and
inferences in a light most favorable to Plaintiffs, there exists questions of fact whether the
settlement is sufficient or if the proposed repairs will remedy water intrusion. Clarke's
testimony likewise reveals why no genuine issues of material fact exist as to Plaintiffs'
Construction Defect claims. Exhibit-B.

*...until all of those are remedied and correctly installed, then I would say
that the building still has the potential for leaks. Dep. Marshall F. Clarke,
p. 116 at 14, 15.*

The testimony illustrates in patent detail what Defendant's own expert cites as 'defects'
in architectural drawings and the as-built construction :

Q. What is it that you and other experts are saying exactly ?

A. **That the water management system of these buildings have not
been solved. And they're getting built out there. And if they're
built by those plans, in dealing with the water management,
they're not going to work...every one of these projects run the
risk of leaking. Id. at 194, lines 3-10; 14-15.**

Q. Do you believe that Epcon should be insuring that these drawings
follow the building code ?

A. Yes.

Q. Is it your opinion that there are code violations as drawn ?

A. **Yes...I mean, if they're putting these plans that I think have these
errors on them all over the country, I think they ought to get them
straightened out...But if he's putting this out all over the world, he
needs to fix it. That's personal advice, free.**

Hence, the reason for proposed "conditional" settlement and release becomes clear. Amid various subcontractor parties the Defendants primarily responsible for defective plans, and most culpable for defective construction, via the COA certain Defendants seek to be released under a global "extinguishment" of all common area damage claims. Under the guise of Rule 41(a)(2) motion, the COA and primary defendant parties seek an adjudication on the merits. They do so in the face of novel and complex damage claims where genuine questions of material fact are patent as to what, precisely, the extent of damages is within the common areas, inclusive of soil and gravel defects.

2. **The proposed settlement improperly seeks an adjudication on the merits by parties most knowledgeable of omitted water management detail, and most culpable for supervising construction that omits water management systems.**

The court has twice grappled with standing issues in the case at bar amid conflicting case authority which has offered little guidance. The COA Rule 41(a)(2) motion seeks, essentially, to re-litigate standing. The court has denied motions by both the COA and Plaintiffs as to priority and/or superiority of their respective claims. Under the court's prior orders, there exist no special claim, advantage, or superiority as between the claims of the Plaintiffs and the COA. On September 27, 2012 the court denied the COA's motion for Partial Summary Judgment. The court has likewise denied Plaintiffs' reciprocal motions for partial summary judgement on or about October 27, 2012 and Plaintiffs' motion for Reconsideration.

The Rule 41(a)(2) motion by the COA is a re-packaging of the priority of claims argument. No timely motion to reconsider was undertaken by the COA of the courts September 27, 2012 Order. The court has twice ruled as a matter of law that neither the COA nor the Plaintiff parties have superior standing vis-a-vis the other.

In essence, the COA now seeks equitable relief for "conditional" settlement and release of defendant parties, including, but not limited to, FPG Inc., Brock L. Fankhauser and the Epcon parties. Exhibit -E. The proposal would seek a court-sanctioned \$2.6 million dollar settlement through *un-meritorious favor*. The proposal ignores Defendants' actual knowledge of soil defects, gravel defects, and a desire to further litigate matters Plead in this case by both Plaintiffs and the COA. In deciding these issues, the court should now look to equity law for guidance.

It is a long stated principal of equity law that he who seeks equity must do equity. Since the July 1, 2010 transition the COA has failed to promptly administer or repair condominium exteriors. On July 1, 201 Fankhauser resigned the COA board and transitioned the common areas. The common areas are incomplete, in disrepair, and suffer water intrusion. The unworkmanlike construction is illustrated by every expert in this case, including Defendants' own Marshall F. Clarke. The defect that exist is the absence of water management system within the drawings --and the construction. Exhibit A, Dep. of Marshall Clarke at 194. Plaintiffs' expert cites the defect as the failure of the buildings to provide a weather tight envelope. 12/14/2010 Dep. of Dennis Hall, p. ___ at ___ (in progress). Whether viewed in terms of absence of water management systems, or failure of the building envelopes, it is undisputed in this case that water is penetrating common elements comprising the exterior of homes.

The builder transitions the community without sufficient fund to carry out repairs. Financial affidavits by COA board member Moscovitz has illustrated \$55,000 in "overpayment" to an undisclosed Master Association. Exhibit - D. COA board member Iadanza has filed an affidavit of record proposing repairs atop code violations cited by

every expert in the case. The proposed repair omits weep screed and WRB. Exhibit - C. The COA proposed settlement seeks to *extinguish* common area claims (essentially an adjudication on the merits) and a release of culpable parties who entirely failed to do equity, expressly including the builder who knowingly transitioned the common areas not in good working order. The common elements of homes are constructed from Epcon architectural drawings. The drawings are acknowledged by Defendants' own expert to be code violations. Id. at 194.

It is a long-standing principal of equity law in South Carolina that he who seeks equity must do equity. On no less than two occasions, the COA has now permitted repairs atop known building code violations. Defendants now seek equitable relief in the form of the conditional settlement (as proposed) where primary defendant parties have (1) failed to do equity ; (2) where the COA is not first in order of time; and (3) and where the COA holds no legal estate interest and owns no common areas. The COA was created under the Master Deed to administer and maintain the common areas. Conversely, Plaintiffs (and others) own legal estate in the common elements as joint tenants in common; e.g., legal estate is not vested in the COA nor was the COA first in priority of time to file suit in this case.

3. An adjudication on the merits is improper considering legal estate, priority of time, and principals of equity.

As stated above, the court has twice ruled upon standing matters in the case at bar. If approved, the Rule 41(a)(2) settlement (as proposed) would now seek an adjudication on the merits where distinct genuine questions of material fact exist atop novel and complex damage issues. The Defendants' arguments ignore legal estate interest implicating these

complex damage claims. In a contest between litigants having only equitable interests, priority of time is the ground of preference last resorted to. *i.e.*, that a court of equity will not prefer the one to the other on the mere ground of priority in time [emphasis supplied], until it finds, upon examination of their relative merits, that there is no sufficient ground of preference between them, or in other words, that their equities are in all respects equal.

Pomeroy's Equity Jurisprudence, §414.

The South Carolina Supreme Court has held the following in the case of Powers v. Fidelity & Deposit Co., S.C. 501, 186 S.E.2d (1936). Exhibit - A. The case involves an analysis regarding equitable doctrine of priorities pertinent to liens applicable to real property. Nonetheless, the discussion of priority of claims and equitable interests is instructive:

..[w]here there exist no special claim, advantage, or superiority in any one over the others, the order of time controls."

The case mirrors the competing claims in the case sub judice and follows the equitable maxim that Where There is Equal Equity, the Law Shall Prevail. The maxim applies in scenarios like the case at bar, e.g., where each party is equally entitled to the protection and aid of the court with respect to his equitable interests yet one of them, in addition to his or her equity, also obtains legal estate in the subject matter; in such case, he who has the legal estate prevails. Pomeroy's Equity Jurisprudence, vol.2, §417. The nonprofit COA entity owns no legal estate in the common areas. It likewise did not file suit prior to June 2, 2010.

Under South Carolina law the equitable concept has been most frequently applied to situations involving a purchaser of property for valuable consideration, and without

notice of a prior equitable right to or interest in the same subject matter, obtains legal estate in addition to his equitable claim, and he or she becomes, in general, entitled to priority in both equity and law. In the case at bar, it is undisputed that the owner/developer Stonecrest Villas of Tega Cay, LLC (a Fankhauser entity) was divested of legal title as each owner purchased condominiums. At no time has the COA entity Stonecrest Villas of Tega Cay Owners' Association, Inc. purchased property from Stonecrest Villas of Tega Cay, LLC. Viewing this evidence and all fact and inferences in a light most favorable to Plaintiffs, summary judgment should respectfully be denied.

CONCLUSION

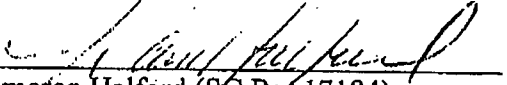
This court ruled against the COA on standing on September 27, 2012. It likewise ruled against Plaintiffs on October 27, 2012. In essence, the court has denied superior standing as to both parties' claims. Under the court's prior orders, there exist no special claim, advantage, or superiority as between the parties' respective damage claims. Both parties have equitable interests in the common areas. However, viewing (together) legal estate, the priority in time, and the equities, the proposed settlement should not operate as an adjudication on the merits as to Plaintiffs' common area damage claims. Nor should it act as a release of primary Defendant parties who have failed to do equity, had superior knowledge, and bear the most culpability for omission of water management systems.

Moreover, viewing all facts and evidence in a light most favorable to the Defendants, the common areas are constructed from Epon architectural drawings that omit a water management detail. As drawn – and as constructed – they constitute building code violations per Defendants' own expert Marshall F. Clarke. Viewing this evidence, facts, and inferences in a light most favorable to Plaintiffs Summary Judgment in favor of

Defendants should be denied and the court should grant Summary Judgment to Plaintiffs as to the Construction Defect and Breach of Duty causes of action. Plain, palpable and indisputable evidence exists on which reasonable minds cannot differ. The design and construction omitted water management systems, and homes now suffer water intrusion. Moreover, the common areas were transitioned in a damaged state by Fankhauser on July 1, 2010. Both the builder and the COA have had actual knowledge of water intrusion damage. To date, the common elements remain in a defective state of disrepair.

Respectfully submitted,

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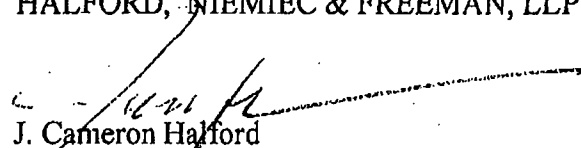
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December 17, 2012
Fort Mill, South Carolina

C

Supreme Court of South Carolina.

POWERS et al.

v.

FIDELITY & DEPOSIT CO. OF MARYLAND et al.

No. 14317.

June 22, 1936.

Appeal from Common Pleas Circuit Court of Marlboro County; E. C. Dennis, Judge.

Action by J. L. Powers, in behalf of himself and all others similarly situated, who come in and bear their share of the expenses of the action, against the Fidelity and Deposit Company of Maryland, in which the Standard Oil Company of New Jersey and others intervened. From a judgment confirming a special referee's report with certain exceptions, defendant and interveners appeal.

Affirmed.

West Headnotes

Principal and Surety 309 ◀58

309 Principal and Surety

309I Creation and Existence of Relation

309I(B) Surety Companies

309k58 k. Foreign Companies. Most Cited

Cases

(Formerly 217k21)

Only judgment creditors of insolvent surety company are entitled to share in fund, paid into court as proceeds of such company's qualification bond filed with state insurance commissioner (Code 1932, § 7947).

Principal and Surety 309 ◀58

309 Principal and Surety

309I Creation and Existence of Relation

309I(B) Surety Companies

309k58 k. Foreign Companies. Most Cited

Cases

(Formerly 217k21)

Judgment against surety company becomes special statutory lien on proceeds of such company's qualification bond, filed with state insurance commissioner, as soon as entered up in court of competent jurisdiction; word "lien," as used in statute, meaning not claim against fund, but charge thereon when entered up as provided therein (Code 1932, § 7947).

Principal and Surety 309 ◀58

309 Principal and Surety

309I Creation and Existence of Relation

309I(B) Surety Companies

309k58 k. Foreign Companies. Most Cited

Cases

(Formerly 217k21)

Judgment first obtained against insolvent surety company and duly entered should be first satisfied from proceeds of such company's qualification bond, filed with state insurance commissioner; date of entry fixing time of establishment of lien (Code 1932, § 7947).

Principal and Surety 309 ◀58

309 Principal and Surety

309I Creation and Existence of Relation

309I(B) Surety Companies

309k58 k. Foreign Companies. Most Cited

Cases

(Formerly 217k21)

Statute declaring judgment against surety company, giving bond required for license to do business in state, a lien on such bond, and authorizing suit thereon by judgment creditors, held not equitable statute to be liberally construed as making liens of all judgments against such company concurrent and providing for ratable distribution of proceeds of bond among all judgment creditors; all claims not reduced to judgment being outlawed by statute, however just (Code 1932, § 7947).

Principal and Surety 309 ◀58

309 Principal and Surety



Music Company, 45 S.C. 11, 22 S.E. 755, 757, the court said: "Section 308 of the Code [now section 742] * * * and the other provisions of the Code relative to executions, all show that the law contemplates an entry of the judgment in the book entitled 'Abstract of Judgments' before the execution can properly be issued."

To the same effect is the decision of the court in the case of *Farmers' & Merchants' Bank v. Holliday*, 108 S.C. 116, 93 S.E. 333.

Moreover, the statute here specifically declares that when so entered it shall be a lien on fund or bond.

What is a lien? "A lien may be general, particular or special. The last two terms meaning about the same. A lien is not property in the thing nor does it constitute a right of action for the thing. It more properly constitutes a charge upon the thing." A special lien "is in the nature of a particular lien being a lien upon particular property." Here we have a special lien fixed by statute, and, in my opinion, the judgment becomes a lien and becomes operative as soon as entered up in the court of competent jurisdiction. The statute simply does away with execution and levy and fixes a lien on the thing charged as soon as entered, and mandatorily provides for enforcement by suit in the county in which recovered.

The word "lien" as used in the statute has a legal significance and cannot be construed to mean a claim against the fund. It is a charge upon the fund as soon as entered up as provided in said statute.

It will always be presumed that the Legislature fully understood the import of words used in the statute.

"It will be presumed that the Legislature understood the meaning of the words it used, that it intended to use them, and unless the popular meaning is vague and indefinite, that it intended to use them in their ordinary and common meaning-or if they have a well defined legal significance that they are used in that sense." See 59 C.J., pp. 1011, 1012.

Having come to the conclusion that when a claim is reduced to judgment and duly entered upon the

"Abstract of Judgments" that it becomes a lien upon the fund, the next question that arises is: Are the judgments under the terms of the statute concurrent, and therefore, the judgment creditors should share ratably in the disposition of the fund or should they be paid off in the order of their acquisition and entry?

The statute does not in express terms fix the order of payment, and where a statute does not so fix the order of payment, resort must be had to the general rule.

"In the absence of statutory regulation the common law establishes liens in the order of their acquisition, the first in order of the time standing first in order of rank." 17 R.C.L. § 20, p. 610.

"Ordinarily it may be regarded a universal principle that the prior lien gives a prior right, which is entitled to prior satisfaction out of the subject it binds." *Paik v. Chung*, 123 Wash. 37, 211 P. 729, 731 (cited 17 R.C.L.) ; See, also *Virginia Development Co. v. Crozer Iron Co.*, 90 Va. 126, 17 S.E. 806, 44 Am.St.Rep. 893.

Corpus Juris lays down the rule as follows: "Priority in Time: As to both legal and equitable liens, it is a well established rule, in the absence of statutory regulations to the contrary, that a lien which is prior in time gives a prior claim and is entitled to satisfaction out of the subject matter it binds, before other subsequent liens binding the same property. Thus as a general rule in equity, if the liens are equal in all other respects the one prior in time will prevail." See 37 C.J. § 40, 328.

Pomeroy's Equity Jurisprudence, vol. 2, § 682, states the rule as follows: "In all of its phases, in all instances where it may be invoked, the equitable doctrine concerning priorities is embodied in three most general and fundamental rules, the first of these rules being as follows: Among successive equitable estates or interests, where there exists no special claim, advantage, or superiority in any one over the others, the order of time controls. Under these circumstances, the maxim, Among equal equities the first in order of time prevails, furnishes the rule of decisions"; and further, in section 683, same volume: "Two persons have equal

equitable interests in the same subject-matter, when each is equally entitled, with respect of his equitable interest, to the protection and aid of a court of equity. When the court is dealing with such successive equitable interests upon *528 the same subject-matter, and they are all thus equal the priority in time determines the priority in right."

I find no rule of law contrary to these citations.

Attention is called in the case of *Eads v. Surety Company*, reported in 178 Ga. 348, 173 S.E. 163.

This was a deposit case. The court followed the rule of law hereinabove set forth and held that the senior judgment must be paid first.

Therefore, I conclude that the judgment first obtained and duly entered should be first satisfied out of the fund, the date of entry of the judgment fixing the time of the establishment of the lien.

It is urged, however, that the statute should be given a liberal construction and to hold otherwise than that the liens are concurrent would lead to injustice, oppression, and hardship and that the statute intended to provide for a ratable distribution of the fund. It does not seem to me that such a position can be upheld nor by any possibility of reasoning can it be held that this statute is an equitable one. It bars all claims, however just, that have not been reduced to judgment. The claims filed in this case and not reduced to judgment are all outlawed, yet in all likelihood these claims are as just and equitable as those reduced to judgment.

The Legislature has fixed the limits of recovery and the necessary steps for recovery. Judgment first and then the judgment must be entered up in a court of competent jurisdiction and thereby the lien is established. We are familiar with the words of Mr. Justice Woods in the case of *Livingstain v. Columbian Banking & Trust Co.*, 77 S.C. 305, 57 S.E. 182, 184, 22 L.R. A.(N.S.) 442, 122 Am.St.Rep. 568, to wit: "no rule of equity appeals more to the judicial conscience than that which requires the assets of an insolvent corporation to be distributed ratably among creditors." He who claims a de-

parture from this rule must establish his right clearly.

It is clear to me that the Legislature, so far as the disposition of the fund here is concerned, has taken this case out of that rule, for as stated heretofore, this statute does not seek to do equity-it outlaws all claims not reduced to judgment, however just they may be-it puts a premium upon diligence.

One of the claims filed was that of a judgment obtained by Earl Brown as administrator, 22d day of October, 1934, in the United States Court. There is nothing to show that this judgment has ever been entered upon the abstract of judgments in any county of this state. In order for this particular judgment to constitute a judgment lien in the state court, it would be necessary for a transcript of the judgment to be filed and entered in some county in this state. The original of a judgment obtained in United States Court is filed and entered in the office of the clerk of that court rendering the judgment and when the transcript of the judgment is filed and entered in the proper office in the respective counties of the state it thereupon becomes a lien. See *Lineker v. Dillon* (D.C.) 275 F. 460, and *Rhea v. Smith*, 274 U.S. 434, 47 S.Ct. 698, 71 L.Ed. 1139. There is nothing to show that this has been done, and since this is a state statute and this is an action in the state court, it appears to me that this should have been done in order to create a lien.

I have heretofore reported that three judgments, to wit, Ramsey and Bryan, Myrtle Beach Farms Company, Chapin & Co. have not been entered of record, and having heretofore recommended that only judgments entered can participate in this fund it follows that these three should be excluded.

However, should the court conclude that all judgments are concurrent, and the fund should be distributed ratably, and entry of the judgment is not essential to the creation of the lien, then I call attention of the court to the order of Judge Mann, which is attached to this report, in which he gave judgment in 59 cases against the National Surety Company. Twelve of these judgment creditors have filed their claims in this immediate action. Judge Mann directed the clerk to enter all these

1 saying and get it straight, get it fixed, because
2 it really would not be a big deal, it would not be
3 difficult to get it correct.

4 Q. What is it that you and other experts
5 are saying exactly?

6 A. That the water management system of
7 these buildings have not been solved. And they're
8 getting built out there. And if they're built by
9 these plans, in dealing with the water management,
10 they're not going to work.

11 And if they don't clarify even going to
12 the manufacturers' instructions, if they don't
13 build them and integrate all of these components,
14 every one of these projects run the risk of
15 leaking. Can a contractor fix all of that? Maybe
16 a good craftsman in certain trades, very excellent,
17 pick all of this up, and fix it, I'm sure some of
18 that happens, but that's apparently not what
19 happened at Tega Cay.

20 Q. Mr. Clarke, you're saying the
21 franchisor shouldn't permit these type of details
22 to be placed into the stream of commerce?

23 A. Franchisor...

24 MR. COLE: Object to form.

25 THE WITNESS: I would hope that --



1 surprise me that his unit still leaked, unless they
2 repaired all of these water management problems at
3 the same time --

4 Q. And when you say all of the water
5 management problems, that would presumably include
6 weather-resistant barrier?

7 A. Yeah, that includes a -- yeah. The
8 weather-resistive barrier behind the HardiePlank,
9 the flashing and weather-resisting connections and
10 flashings, head jams and sill of all windows and
11 doors, and the release of the water at the -- with
12 the weep screed type of detail at the sill -- in
13 other words, until all of those are remedied and
14 correctly installed, then I would say that the
15 building still has the potential for leaks.

16 Q. I guess I need to also add the comment
17 about sealant joints and the proper application of
18 sealants at the many intersections of the various
19 veneers and windows and doors.

20 (CLARKE EXH. 538, Five photographs;
21 Bates FPG-09013, 09014, 09022, 09024, 09025, was
22 marked for identification.)

23 BY MR. HALFORD:

24 Q. I'm passing you a series of
25 photographs -- four -- that have been labeled with

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

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

SIXTEENTH JUDICIAL CIRCUIT

Plaintiffs,

v.

CONSOLIDATED

Brock L. Fankhauser, et al.

Civil Action No. 2010-CP-46-2326

Defendants.

Paulette Iadanza Affidavit

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

1. My name is Paulette Iadanza. 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 a member of the Board of Directors for the Stonecrest Villas of Tega Cay Condominium Owners Association. I am making this affidavit in my capacity as a Director of the Association. The Board has authorized me to submit this affidavit to the Court. The Board has entered into a conditional settlement agreement with the defendants. The agreement calls for the payment of \$2.62 million in exchange for a release in favor of all defendants (developer, GC, third and fourth parties included) of all exterior damage claims except for damages associated with subsurface soil conditions currently under investigation. The Board asks the Court to enter an order declaring that the settlement satisfies all of the exterior damages raised by the plaintiffs and the COA in this lawsuit.
3. I have over 30 years of experience in the construction industry. My primary job responsibility has included the management of the construction of commercial buildings. I have managed the construction of buildings ranging in size from 60,000 square feet to over 2 million square feet. My responsibilities included preparation of construction budgets, identification and selection of contractors, active construction management, change order approvals, and budget compliance. I worked, in essence, as what is commonly referred to in the industry as an "Owner's Representative."
4. I am intimately familiar with the water intrusion issues at Stonecrest. I was originally selected to serve on the Water Intrusion Committee and then later selected/elected to the Board of Directors. My unit is one of the



many units that have experienced water intrusion. A portion of the exterior of my unit is currently protected by a tarp to prevent further water intrusion. The interior of my unit is still in a damaged state and needs to be fixed when the repairs to the exterior are made.

5. In the Board's judgment, the primary construction defects contributing to water penetration 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.

6. The Board has consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same. The Board, either directly or through its counsel, has consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors. 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 \$2.62 million. The bids from these individuals have ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates. 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.

7. The Board has considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts. In its business judgment, the Board considers this estimate to be too high for several reasons. First, the estimate calls for repairs that are not reasonable or necessary. For example, the estimate calls for the replacement of every roof in the neighborhood. However, the shingles on every building were replaced approximately one year ago under the COA's property policy. The Board is not aware of any reported leaks from a roof. The estimate calls for the removal and reinstallation of every window in the neighborhood with a replacement of 281 windows. There is no evidence to suggest at this time that the windows themselves are leaking. There is evidence to suggest that flashing around the windows is at issue, which is why the Board intends to seal the windows in place. Removal and replacement of all windows is excessive and may actually cause damage to the windows. The estimate calls for the replacement of all gutters on the property. The Board is informed and believes that the gutters need to be modified in only certain areas of the building where excessive water runs off due to roof intersections. Finally, the proposed \$1 million budget for surface water drainage is excessive. Other bids have ranged from \$250,000 to \$500,000. Indeed, the plaintiffs' total damage figures appear to be roughly twice as much as the estimates provided by the COA's expert as well as the developer's

**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

**IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**

Juontonio Plinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

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.

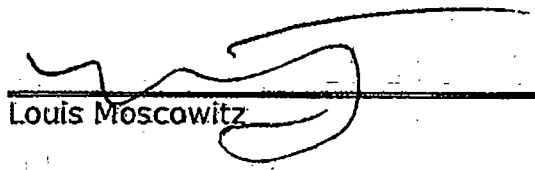
5. This affidavit verifies the accuracy of the figures stated in Exhibit A attached hereto. I hereby verify as accurate the figures in the following lines based upon my own personal knowledge: "Assessment



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.

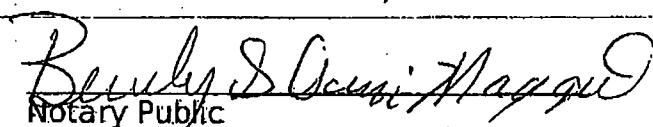
6. The remainder of the figures, including the Master Association's actual expenses, were derived from and with the assistance of counsel in reliance upon documents provided by the Master Association, which were all produced to the plaintiffs a year ago.

This the 27 day of September, 2012



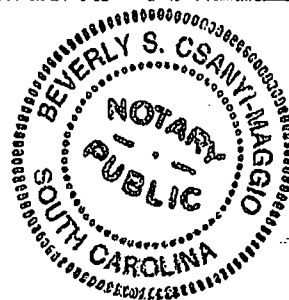
Louis Moscovitz

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**

	2007	2008	2009	2010	2011
BUDGETED ANNUAL EXPENSES	165,000.00	150,700.00	152,575.00	44,125.00	39,500.00
ACTUAL ANNUAL EXPENSES	31,975.62	80,986.58	38,718.77	33,135.52	44,161.51
BUDGET EXCESS	\$133,024.38	\$79,713.42	\$113,856.23	\$10,989.48	-\$4,661.51
ASSESSMENT BILLED TO STONECREST VILLAS	21,346.43	29,303.42	28,785.30	8,661.30	7,835.94
ASSESSMENT BASED ON ACTUAL EXPENSES INCURRED	2007	2008	2009	2010	2011
Total Expenses	\$31,975.62	\$80,986.58	\$38,718.77	\$33,135.52	\$44,161.51
Less Walmart	5,438.82	17,116.35	7,543.70	6,925.96	9,659.88
Net Without Walmart	\$26,536.80	\$63,870.23	\$31,175.07	\$26,209.56	\$34,501.63
Total Expense to be Shared	26,536.80	63,870.23	31,175.07	26,209.56	34,501.63
Correct Stonecrest Villas Multiplier	22.3369%	22.3369%	22.3369%	22.3369%	22.3369%
Corrected Annual Assessment	\$5,927.50	\$14,266.63	\$6,963.54	\$5,854.40	\$7,706.59
Assessment Paid/Billed Corrected Assessment	21,346.43 5,927.50	29,303.42 14,266.63	28,785.30 6,963.54	8,661.30 5,854.40	7,835.02 7,706.59
Overpayments/Overbilling (2011)	\$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

AL-MEGA CONSTRUCTION, INC.,)

Fourth-Party Plaintiff,)

vs.)

NOE PEREZ, JUAN ABUNDEZ)

SAUCEDO, AND MOISESE)

CHAVARRA HERNANDEZ,)

Fourth-Party Defendants.)

General Settlement Provisions

The consideration of the sum of Two Million Six Hundred One Thousand Five Hundred and 00/100 Dollars (\$2,601,500.00) (the "Settlement Amount") shall be paid to Stonecrest Villas of Tega Cay Condominium Owners Association, as follows:

- (1) Brock L. Fankhauser ("Fankhauser"), Stonecrest Villas of Tega Cay, LLC ("SVT") and Fankhauser Property Group, Inc. ("FPG") will contribute \$1,503,500.00;
- (2) Architectural Alliance, Ltd. will contribute \$110,000.00;
- (3) Exterior Expressions of NC, Inc. will contribute \$310,000.00;
- (4) Al-Mega Construction, Inc. will contribute \$85,500.00;
- (5) Pro-Car, Inc. and Pro-Car II, Inc. will contribute \$150,000.00;
- (6) Lucas Lawn and Landscape, Inc. will contribute \$88,500.00;
- (7) German & Garrett, Inc. will contribute \$35,000.00;
- (8) David Carbajal, Victorina Cortez (a/k/a Ricardo Hernandez and/or Silverio Cortez) and Marco Zertuche will contribute \$100,000.00;
- (9) The Southeastern Group, Inc. will contribute \$109,500.00;
- (10) Marcos Gonzalez will contribute \$109,500.00.

The parties hereto will use all reasonable or good faith efforts to provide the settlement funds within thirty days of the full execution of a Full and Final Release, including indemnification provisions as generally set forth below, wherein Stonecrest Villas of Tega Cay Condominium Owners Association agrees to fully and forever release, acquit and discharge Epcon Communities, Inc. ("ECI"); Epcon Communities Franchising, Inc. ("ECFI"); Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc. Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Brock L. Fankhauser; Fankhauser Property Group, Inc.; Stonecrest Villas of the Tega Cay, LLC; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs,



Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns, as set forth above shall entitle any of the parties entitled to indemnification and/or defense hereunder to seek all damages recoverable at law and/or in equity, including, without limitation, attorney's fees, costs, expenses and interest.

The parties agree and stipulate that South Carolina Code Ann. Section 32-2-10 (Hold harmless clauses in certain construction contracts) does not apply to this Mediation Agreement and the Settlement Agreement and Release and the indemnity provisions in this agreement are valid and enforceable. If it is found that South Carolina Code Ann. Section 32-2-10 applies, all parties hereby waive the application of South Carolina Code Ann. Section 32-2-10 and all parties agree to the application, viability and enforceability of the above indemnification provisions.

Notwithstanding the foregoing, nothing herein shall be interpreted, construed or otherwise found to limit or in any way impair ECF's, ECFT's and/or their insurer's claims against SVT, FPG and their insurers, provided however, that this provision does not effect any claims expressly released above for additional insured coverage claims against German & Garrett, Inc.; Exterior Expressions of North Carolina, Inc. Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, and their insurers.

Mediation Agreement Contingency

All of the foregoing is contingent upon the Court issuing an order approving the settlement entered into by all parties except the twelve individually named plaintiffs finding 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 concrete pads and any alleged resulting issues from the lack of gravel or cracking of the concrete pads which may have caused damage, 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..

This agreement shall in all respects be interpreted, construed, enforced and governed by the laws of the State of South Carolina without regard to choice of law rules.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JUANTONIO PINCKNEY; JOSEPHINE
SCIACCA; ADDIE SMITH; JAMES
BARONE AND DEBORAH BARONE;
GERRY & THOMAS ARCORIA;
ISMAEL & VALERIE GONZALES;
VINCENT LONGOBARDO; JOE MOORE
AND SANDRA MOORE; DAVID
MUSGRAVE; ALLEN VESTING &
EDITH VESTING; THEA & EVE
VICARI; AND TROY AND NANCY
WILLIAMS,

Civil Action No. 2010-CP-46-2326

Plaintiffs,

MEDIATION AGREEMENT

vs.

EPCON COMMUNITIES, INC.; BROCK
L. FANKHAUSER; FANKHAUSER
PROPERTY GROUP, INC., AND
STONECREST VILLAS OF TEGA CAY
HOME OWNERS ASSOCIATION,

Defendants.

FANKHAUSER PROP. GROUP, INC.,

Third-Party Plaintiff,

vs.

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&L
ROOFING CO., LLC AND/OR MB
ROOFING COMPANY,

Third-Party Defendants,

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

Third-Party Plaintiff,

vs.

STONECREST VILLAS OF TEGA CAY,
LLC AND EPCON COMMUNITIES
FRANCHISING, INC.,

Third-Party Defendants,

EXTERIOR EXPRESSIONS OF NC., INC.

Fourth-Party Plaintiff,

vs.

MARCOS GONZALEZ ,

Fourth-Party Defendant.

PROCAR II, INC.

Fourth-Party Plaintiff,

vs.

MARCO ZERTUCHE; DAVID
CARBAJAL; VICTORINA CORTEZ;
BALANOS CONSTRUCTION CO.;
BALANOS FRAMING, INC.;
RICHARDO HERNANDEZ; AND,
SILVERIO CORTEZ,

Fourth-Party Defendants.

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

General Settlement Provisions

The consideration of the sum of Two Million Six Hundred One Thousand Five Hundred and 00/100 Dollars (\$2,601,500.00) (the "Settlement Amount") shall be paid to Stonecrest Villas of Tega Cay Condominium Owners Association, as follows:

- (1) Brock L. Fankhauser ("Fankhauser"), Stonecrest Villas of Tega Cay, LLC ("SVT") and Fankhauser Property Group, Inc. ("FPG") will contribute \$1,503,500.00;
- (2) Architectural Alliance, Ltd. will contribute \$110,000.00;
- (3) Exterior Expressions of NC, Inc. will contribute \$310,000.00;
- (4) Al-Mega Construction, Inc. will contribute \$85,500.00;
- (5) Pro-Car, Inc. and Pro-Car II, Inc. will contribute \$150,000.00;
- (6) Lucas Lawn and Landscape, Inc. will contribute \$88,500.00;
- (7) German & Garrett, Inc. will contribute \$35,000.00;
- (8) David Carbajal, Victorina Cortez (a/k/a Ricardo Hernandez and/or Silverio Cortez) and Marco Zertuche will contribute \$100,000.00;
- (9) The Southeastern Group, Inc. will contribute \$109,500.00;
- (10) Marcos Gonzalez will contribute \$109,500.00.

The parties hereto will use all reasonable or good faith efforts to provide the settlement funds within thirty days of the full execution of a Full and Final Release, including indemnification provisions as generally set forth below, wherein Stonecrest Villas of Tega Cay Condominium Owners Association agrees to fully and forever release, acquit and discharge Epcon Communities, Inc. ("ECI"); Epcon Communities Franchising, Inc. ("ECFI"); Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc. Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Brock L. Fankhauser; Fankhauser Property Group, Inc.; Stonecrest Villas of the Tega Cay, LLC; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs,

successors, predecessors and successors in interest and assigns (collectively referred to as "Released Parties"), from the following including, but not limited to,

(a) any and all claims, demands, actions or causes of action, whether in law or equity or otherwise, whether in contract or tort or pursuant to any statute or regulation, whether direct or indirect, whether known or unknown, whether presently discoverable or undiscoverable, whether suspected or claimed, which Stonecrest Villas of Tega Cay Condominium Owners Association ever had, now has, or may in the future have against the Released Parties in any way arising from and/or related to the subdivision known as Stonecrest Villas of Tega Cay; and

(b) any and all other claims, demands, actions or causes of action, whether in law or equity or otherwise, whether in contract or tort or pursuant to any statute or regulation, whether direct or indirect, known or unknown.

(c) Provided, however, that nothing herein shall be construed to release, waive or limit any rights SVTCCOA has against German & Garrett, Stonecrest Villas of Tega Cay, LLC, Fankhauser Property Group, Inc., or Brock Fankhauser 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.

Additionally, in consideration of the payment of the amounts identified above, Brock L. Fankhauser, Fankhauser Property Group, Inc. and Stonecrest Villas of the Tega Cay, LLC will execute a Full and Final Release, including indemnification provisions as generally set forth below, wherein Brock L. Fankhauser, Fankhauser Property Group, Inc. and Stonecrest Villas of the Tega Cay, LLC, fully and forever release, acquit and discharge Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns (collectively referred to as "Released Third and Fourth Party Defendants"), the Released Third and Fourth Party Defendants from the following including, but not limited to,

(a) any and all claims, demands, actions or causes of action, whether in law or equity or otherwise, whether in contract or tort or pursuant to any statute or regulation, whether direct or indirect, whether known or unknown, whether presently discoverable or undiscoverable, whether suspected or claimed, which Brock L. Fankhauser, Fankhauser Property Group, Inc. and Stonecrest Villas of the Tega Cay, LLC ever had, now have, or may in the future have against the Released Third and Fourth Party Defendants in any way arising from and/or related to the subdivision known as Stonecrest Villas of Tega Cay; and

(b) any and all other claims, demands, actions or causes of action, whether in law or equity or otherwise, whether in contract or tort or pursuant to any statute or regulation, whether direct or indirect, known or unknown.

(c) Provided, however, that nothing herein shall be construed to release, waive or limit any rights against German & Garrett or its insurers 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.

Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; ECI; ECFI; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez hereby fully, finally and forever release and discharge each other and their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns, from any and all claims, whether known or unknown against each other arising out of or relating to the design or construction of the Stonecrest Villas of Tega Cay project, including those that were or could have been asserted in the lawsuit. Provided, however, that nothing herein shall be construed to release, waive or limit any claims ECI and/or ECFI has against German & Garrett 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. In addition, nothing herein shall be construed to release, waive or limit any claims German & Garrett may have against ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns 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. In the event that German and Garrett is sued 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, German and Garrett agrees not to initiate an action against ECI or ECFI, and agrees not to bring ECI or ECFI into the lawsuit as a third (or additional) party. However, German and Garrett reserves its right to assert claims against ECI or ECFI if (a) ECI or ECFI is sued or brought into the lawsuit by another party and asserts a claim against German and Garrett or its insurers, or (b) ECI or ECFI initiates a suit against German and Garrett.

Stonecrest Villas of Tega Cay Condominium Owners Association agrees to a Covenant-Not-To-Sue-ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns.

Stonecrest Villas of Tega Cay Condominium Owners Association agrees to a Covenant-Not-To-Sue German & Garrett as to all claims except for the ones being reserved 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.

Stonecrest Villas of Tega Cay Condominium Owners reserves any rights to assert claims against German & Garrett, Brock L. Fankhauser, Fankhauser Property Group, Inc. and Stonecrest Villas of the Tega Cay, LLC 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.

Stonecrest Villas of Tega Cay Condominium Owners Association covenants that it will be responsible for and will make all repairs it deems reasonably necessary in accordance with the Master Deed to the exterior of all buildings and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay to correct the defects and deficiencies that are the subject of this lawsuit.

Any failure to provide the settlement check within thirty days of the full execution of a Full and Final Release does not necessarily void the agreement, as there may be circumstances that delay the issuance of a check by a particular party. However, a substantial failure to make a good faith effort to secure the check within a reasonable time which results in a breach of the agreement by any party does not negate the validity of a settlement agreement among the remaining parties.

Additional Insured Claims

ECI and ECFI agree to release and dismiss any and all additional insured claims related to Stonecrest Villas of Tega Cay against Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, and all of their insurers, specifically reserving their right to maintain their additional insured claims against Fankhauser Property Group, Inc. and Stonecrest Villas of Tega Cay, LLC, and their insurers, upon the condition that the Court issue an order approving the settlement entered into by all parties except the twelve individually

named plaintiffs finding 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 concrete pads and any alleged resulting issues from the lack of gravel or cracking of the concrete pads which may have caused damage, 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. Provided, however, that nothing herein shall be construed to release, waive or limit any rights ECI and/or ECFI have for additional insured coverage against German & Garrett or its insurers 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.

Indemnification Provisions

Stonecrest Villas of Tega Cay Condominium Owner's Association, Inc. ("SVTCCOA") hereby agrees to indemnify, defend and hold harmless, ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Fankhauser; FPG; SVT; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns, arising from any and all known or could have been known, past, or present claims in any way arising from and/or related to (1) the subdivision known as Stonecrest Villas of Tega Cay that were raised in the lawsuit, including but not limited to all claims for exterior damages, all claims for interior damages, loss of use, drainage and construction defects; and (2) the repairs to be undertaken pursuant to this Agreement; provided, however, (1) that Stonecrest Villas of Tega Cay Condominium Owner's Association does not agree to indemnify the aforementioned parties from any claims by Juontonio Pinckney, Josephine Sciacca, Addie Smith, James Barone and Deborah Barone, Gerry Arcoria and Thomas Arcoria, Thea Eve Vicari, Ishmael Gonzales and Valerie Gonzales, Vincent Longobardo, Joe Moore and Sandra Moore, David Musgrave, Allen Vesting and Edith Vesting, Troy Williams and Nancy Williams.

SVTCCOA hereby agrees to indemnify, defend and hold harmless, ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Fankhauser; FPG; SVT; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties,

reinsurers, heirs, successors, predecessors and successors in interest and assigns, for any and all known or unknown future claims in any way arising from and/or related to any alleged constructions defects that were or could have been raised in this lawsuit, for (1) the subdivision known as Stonecrest Villas of Tega Cay, including but not limited to all claims for exterior damages, all claims for interior damages, loss of use, construction defects, drainage, all water intrusion into any unit whether it has occurred or will occur in the future; and (2) the repairs to be undertaken pursuant to this Agreement; provided, however, (1) that Stonecrest Villas of Tega Cay Condominium Owner's Association does not agree to indemnify the aforementioned parties from any claims by Juontonio Pinckney, Josephine Sciacca, Addie Smith, James Barone and Deborah Barone, Gerry Arcoria and Thomas Arcoria, Thea Eve Vicari, Ishmael Gonzales and Valerie Gonzales, Vincent Longobardo, Joe Moore and Sandra Moore, David Musgrave, Allen Vesting and Edith Vesting, Troy Williams and Nancy Williams.

SVTCCOA hereby agrees to indemnify, defend and hold harmless, ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; ECI; ECFI; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns, 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, including but not limited to any claims that may be brought by German & Garrett, or any other individual or entity.

This entire indemnity provision includes the requirement that SVTCCOA will defend any such claims upon first notice of suit and/or claim, including, but not limited to, the duty to answer any such suit or claim. Further, SVTCCOA agrees to indemnify all parties for any and all claims arising out of the repairs to the buildings located in the subdivision.

This indemnity provision by SVTCCOA, as to German & Garrett, FPG, Fankhauser, and SVT only, shall not apply to any claims arising out of 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.

FPG, Fankhauser, and SVT hereby agree to indemnify, defend and hold harmless, Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs,

successors, predecessors and successors in interest and assigns, from any and all known, unknown, past or present claims, or any claims that could have been known, and/or any claims in any way arising from the claims of the individual plaintiffs, Juontonio Pinckney, Josephine Sciacca, Addie Smith, James Barone and Deborah Barone, Gerry Arcoria and Thomas Arcoria, Thea Eve Vicari, Ishmael Gonzales and Valerie Gonzales, Vincent Longobardo, Joe Moore and Sandra Moore, David Musgrave, Allen Vesting and Edith Vesting, Troy Williams and Nancy Williams, and any and all future claims by these individuals arising from any and all known or unknown, past or present claims, or any claims that could have been known, that were raised or could have been raised in the lawsuit, including but not limited to all claims for exterior damages, all claims for interior damages, loss of use, drainage and construction defects and design. This provision includes the requirement that FPG, Fankhauser, and SVT will defend any such claims upon first notice of suit and/or claim, including, but not limited to, the duty to answer any such suit or claim. This obligation does not include any indemnity with respect to any repairs, which shall be the responsibility of the SVTCCOA as set forth above. This indemnity provision, as to German & Garrett only, shall not apply to any claims arising out of 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.

The indemnity provisions specifically include indemnification for any and all alleged sole negligent acts of FPG/Fankhauser/SVTC (with regard to SVTCCOA indemnity obligation only); ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC; Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns. In addition, the indemnity provisions include indemnification for the alleged negligence, in whole or in part, of SVTCCOA, FPG, Fankhauser, SVTC, their agents and employees in favor of FPG/Fankhauser/SVTC (with regard to SVTCCOA indemnity obligation only); ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns.

Failure of SVTCCOA; FPG; Fankhauser; and/or SVT to indemnify, defend and/or hold harmless ECI; ECFI; Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc., Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction,

Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, their past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, partnerships, members, principals, insurers, owners, carriers, sureties, reinsurers, heirs, successors, predecessors and successors in interest and assigns, as set forth above shall entitle any of the parties entitled to indemnification and/or defense hereunder to seek all damages recoverable at law and/or in equity, including, without limitation, attorney's fees, costs, expenses and interest.

The parties agree and stipulate that South Carolina Code Ann. Section 32-2-10 (Hold harmless clauses in certain construction contracts) does not apply to this Mediation Agreement and the Settlement Agreement and Release and the indemnity provisions in this agreement are valid and enforceable. If it is found that South Carolina Code Ann. Section 32-2-10 applies, all parties hereby waive the application of South Carolina Code Ann. Section 32-2-10 and all parties agree to the application, viability and enforceability of the above indemnification provisions.

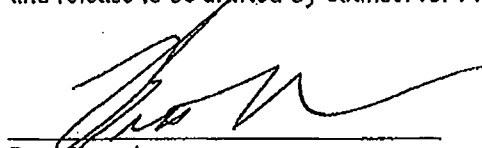
Notwithstanding the foregoing, nothing herein shall be interpreted, construed or otherwise found to limit or in any way impair ECI's, ECFI's and/or their insurer's claims against SVT, FPG and their insurers, provided however, that this provision does not effect any claims expressly released above for additional insured coverage claims against German & Garrett, Inc.; Exterior Expressions of North Carolina, Inc. Exterior Expressions of North Carolina, LLC, Exterior Expressions, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; and Moises Hernandez, and their insurers.

Mediation Agreement Contingency

All of the foregoing is contingent upon the Court issuing an order approving the settlement entered into by all parties except the twelve individually named plaintiffs finding 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 concrete pads and any alleged resulting issues from the lack of gravel or cracking of the concrete pads which may have caused damage, 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..

This agreement shall in all respects be interpreted, construed, enforced and governed by the laws of the State of South Carolina without regard to choice of law rules.

The parties agree that this memorandum summarizes the agreements reached at the mediation of this matter on October 8 and 9, 2012 and while it generally and as accurately as possible memorializes the agreements, it is to be supplanted by a formal settlement agreement and release to be drafted by counsel for FPG.



Brett Dressler
Attorney for SVTCCOA

Curtis Dowling
Attorney for SVTCCOA

Graham Powell
Attorney for Fankhauser Property Group,
Brock Fankhauser, and Stonecrest Villas
of Tega Cay, LLC

Melissa Nichols
Attorney for ECI and ECFI

Stephanie Burton
Attorney for Architectural Alliance

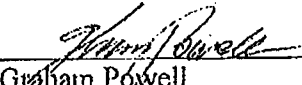
Christy Mahon
Attorney for Exterior Expressions

11/28/12 

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Stephanie Burton
Attorney for Architectural Alliance

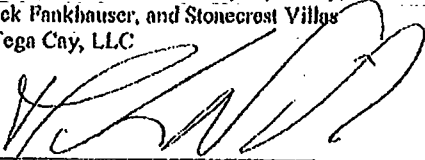
Christy Mahon
Attorney for Exterior Expressions

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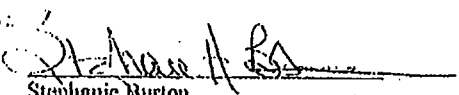
Brett Dressler
Attorney for SVTCCOA

Curtis Dowling
Attorney for SVTCCOA

Graham Powell
Attorney for Fankhauser Property Group,
Brock Fankhauser, and Stonecrest Villas
of Tega Cay, LLC



Melissa Nichols
Attorney for ECI and ECIH



Stephanie Burton
Attorney for Architectural Alliance

Christy Mahon
Attorney for Exterior Expressions

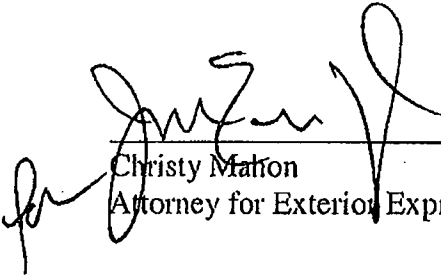
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Attorney for Fankhauser Property Group,
Brock Fankhauser, and Stonecrest Villas
of Tega Cay, LLC

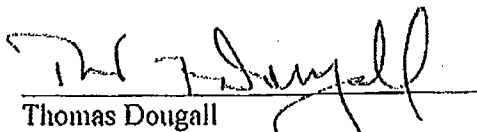
Melissa Nichols
Attorney for ECI and ECFI

Stephanie Burton
Attorney for Architectural Alliance



Christy Matton
Attorney for Exterior Expressions

Thomas Dougall
Attorney for Procar and Procar II


Thomas Dougall
Attorney for Procar and Procar II

Payton Hoover
Attorney for Lucas Lawn

David Cleveland
Attorney for Marcos Gonzalez

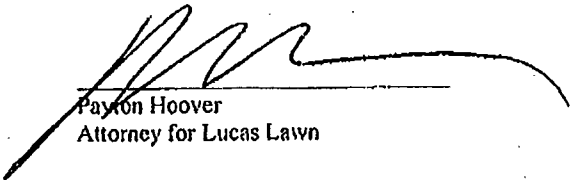
Thomas Chase
Attorney for Marco Zertuche; David Carbajal;
Victorina Cortez; Balanos Construction Co.;
Balanos Framing, Inc.; Ricardo Hernandez;
and Silverio Cortez

Harold Spears
Attorney for German & Garrett

Sarah Wetmore
Attorney for The Southeastern Group

Tracy Vann
Attorney for Al-Mega Construction

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Thomas Dougall
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Attorney for Lucas Lawn

David Cleveland
Attorney for Marcos Gonzalez

11/25/12

Thomas Chase
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Attorney for German & Garrett

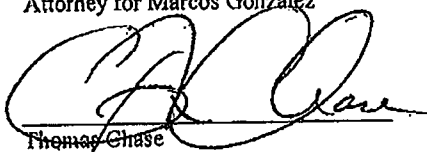
Sarah Wetmore
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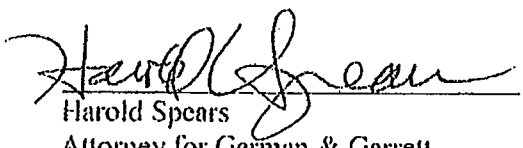
Tracy Vann
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 11/28/12
Harold Spears
Attorney for German & Garrett

Sarah Wetmore
Attorney for The Southeastern Group

Tracy Vann
Attorney for Al-Mega Construction

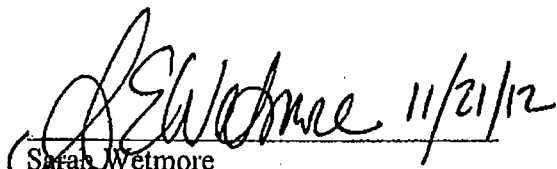
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and Silverio Cortez

Harold Spears
Attorney for German & Garrett

 11/21/12
Sarah Wetmore
Attorney for The Southeastern Group

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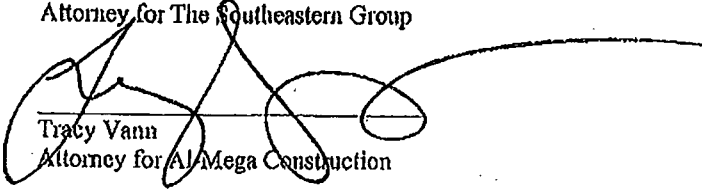
David Cleveland
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and Silverio Cortez

Harold Spears
Attorney for German & Garrett

Sarah Wetmore
Attorney for The Southeastern Group

Tracy Vann
Attorney for Al Mega Construction



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, et al.

☐ Plaintiff

v.

Stonecrest Villas Of Tega Cay Condominium
Owners Association, Inc., et al.☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-46-02326

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

, Bar No.

Address:

phone: fax:

e-mail: other:

Defendant's Attorney:

Curtis W. Dowling, Bar No. 6493

Address:

Barnes, Alford, Stork & Johnson, LLP

Post Office Box 8448, Columbia, SC 29202

phone: 803-799-1111 fax: 803-254-1335

e-mail: curtis@basjlaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)****SECTION I: Hearing Information**

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee☒ **PAID - AMOUNT: \$25.00**☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ **MOTION FEE COLLECTED:** _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

Civil Action No. 2010-CP-46-02326

Plaintiffs,

v.

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

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants,

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

Third-Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC

Third-Party Defendant,

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

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

**TO: THE PLAINTIFFS AND THEIR ATTORNEY, J. CAMERON HALFORD,
ESQUIRE**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (incorrectly identified as Stonecrest Villas of Tega Cay Home Owners Association, Inc.) ("Stonecrest COA"), by and through its undersigned counsel, will move before the Honorable John C. Hayes, III, on a date and at a time to be established by the court, for an Order granting summary judgment to Stonecrest COA on all causes of action asserted against Stonecrest COA in the Amended Complaint filed September 16, 2011.¹ This motion is made pursuant to Rules 12(b)(6), 12(c), and/or 56 of the South Carolina Rules of Civil Procedure, as well as other applicable law, and on the following grounds demonstrating that Stonecrest COA is entitled to judgment as a matter of law:

1. The Amended Complaint fails to state facts sufficient to constitute a cause of action against Stonecrest COA.

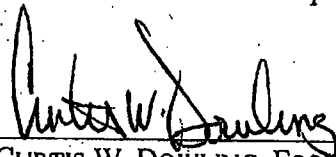
¹ The causes of action asserted against Stonecrest COA are the third (breach of fiduciary duty), fourth (breach of contract), fifth (breach of contract accompanied by fraudulent acts), sixth (fraud and misrepresentation), seventh (equitable action for accounting), eighth (conversion), ninth (civil conspiracy), 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).

2. Some or all of the Plaintiffs lack standing to assert the claims pled against Stonecrest COA in the Amended Complaint.
3. There is no record evidence that Stonecrest COA violated any duty allegedly owed to the Plaintiffs.
4. There is no record evidence that any alleged acts or omissions of Stonecrest COA were the proximate cause of any damages allegedly suffered by the Plaintiffs.
5. There is no record evidence demonstrating a genuine dispute regarding any material fact that will entitle the Plaintiffs to a verdict against Stonecrest COA.

Stonecrest COA further incorporates by reference all grounds asserted in any motions for summary judgment which have been filed or may be filed by other parties.

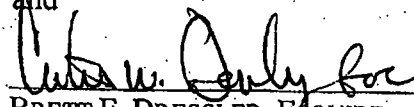
This motion is supported by the pleadings in this action, any affidavits or memoranda of law which may be subsequently submitted, all applicable statutes and case authority, all completed discovery, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find acceptable.

The undersigned counsel certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that there is no duty of consultation on a motion for summary judgment and that, in any event, a consultation would serve no useful purpose.



CURTIS W. DOWLING, ESQUIRE
MATTHEW G. GERRALD, ESQUIRE
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P.O. Box 8448
Columbia, South Carolina 29202
803.799.1111 (Office)
803.254.1335 (Fax)
curtis@basjlaw.com
matt@basjlaw.com
Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.

and



BRETT E. DRESSLER, ESQUIRE
SELLERS, HINSHAW, SYERS, DORTCH &
LYONS, P.A.

301 S. McDowell Street

Charlotte, NC 28204

704.377.5050 (Office)

704.339.0172 (Fax)

bdressler@sellershinshaw.com

Attorneys for Stonecrest Villas of Tega Cay

Condominium Owners Association, Inc.

(Cross-Claims and Third-Party Complaint)

February 27, 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:

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

PERSON(S) SERVED:

Brian C. Wolfe, Esquire
Clawson & Staubes, LLC
756 Tyvola Road, Suite 130
Charlotte, NC 28217
Attorney for Marcos Gonzalez

Christy E. Mahon, Esquire
Sweeny Wingate & Barrow
1515 Lady Street
Columbia, SC 29201
Attorney for Exterior Expressions of North Carolina, Inc.

J. Cameron Halford, Esquire
Halford, Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, SC 29708
Attorney for Plaintiff

Morgan S. Templeton, Esquire
Graham P. Powell, Esquire
145 King Street, Suite 302
P. O. Box 1200
Charleston, SC 29402
Attorneys for Defendants Brock L. Fankhauser, Fankhauser Property Group, Inc., and Stonecrest Villas of Tega Cay, LLC

Thomas F. Dougall, Esquire
Law Offices of Thomas F. Dougall
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
Attorney for Pro-Car, Inc.

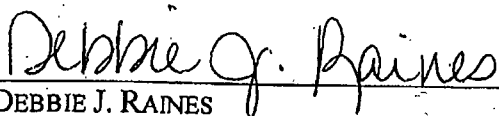
Sarah E. Wetmore, Esquire
 Carlock, Copeland & Stair, LLP
 40 Calhoun Street, Suite 400
 Charleston, SC 29401-3001
 Attorney for The Southeastern Group

Payton D. Hoover, Esquire
 Dean & Gibson, PLLC
 Suite 900, Cameron Brown Building
 301 South McDowell Street
 Charlotte, NC 28204-2686
 Attorney for Lucas Lawn and Landscape, Inc.

Tracy T. Vann, Esquire
 Hamilton Martens & Ballou, LLC
 Post Office Box 10940
 Rock Hill, SC 29731
 Attorney for Al-Mega Construction, Inc.

Bonum S. Wilson, III, Esquire
 Post Office Box 13177
 Charleston, SC 29422
 and
 D. Andrew Williams, Esquire
 Turner, Padgett, Graham & Laney, PA
 Post Office Box 1473
 Columbia, SC 29202
 Attorney for M&L Roofing Co., LLC, MB Roofing Company and Jose Simenez

Michael B.T. Wilkes, Esquire
 Wilkes Bowers
 127 Dunbar Street, Suite 200
 Spartanburg, SC 29306
 and
 Jonathan P. Corwin, Esquire
 Vorys, Sater, Seymour and Pease LLP
 52 East Gay Street
 Columbus, OH 43215
 Attorney for Epcon


 DEBBIE J. RAINES

February 27, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney, et al.,

Civil Action No. 2010-CP-46-02326

Plaintiffs,

v.

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

Defendants.

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

v.

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

Third-Party Defendants,

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

Third-Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC

Third-Party Defendant,

**MEMORANDUM IN SUPPORT OF
DEFENDANT STONECREST
VILLAS OF TEGA CAY
CONDOMINIUM OWNERS
ASSOCIATION, INC.'S MOTION
FOR SUMMARY JUDGMENT
AS TO PLAINTIFFS' CLAIMS**

Exterior Expressions of North Carolina,
Inc.,

Fourth-Party Plaintiff,

v.

Marcos Gonzalez,

Fourth-Party Defendant.

The Defendant, Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (incorrectly identified as Stonecrest Villas of Tega Cay Home Owners Association, Inc.) ("Stonecrest COA"), by and through its undersigned counsel, submits the following Memorandum in Support of its Motion for Summary Judgment.

FACTUAL BACKGROUND

The Plaintiffs are unit owners in Stonecrest Villas of Tega Cay, a condominium community in York County. They brought this action against Stonecrest COA and several other parties seeking legal and equitable relief for alleged damages and defects resulting primarily from water intrusion. The Amended Complaint filed September 16, 2011, which is the Plaintiffs' current active pleading, asserts twelve causes of action against Stonecrest COA: breach of fiduciary duty, breach of contract, breach of contract accompanied by fraudulent acts, fraud and misrepresentation, equitable action for accounting,¹ conversion, civil conspiracy, breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular

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

purpose, breach of express warranties,² and unfair trade practices act violation. For the reasons set forth below, Stonecrest COA is entitled to judgment as a matter of law on each of these causes of action.

STANDARD OF REVIEW

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

ARGUMENT

I. DAVID MUSGRAVE DOES NOT OWN HIS UNIT AND THUS HAS NO STANDING TO MAINTAIN THIS ACTION.

The Amended Complaint, in paragraph 2 under the heading “Jurisdiction,” alleges that the Plaintiffs are the “purchasers and owners of condominium properties” in the Stonecrest community. Specifically as to Plaintiff David Musgrave, that same paragraph alleges that Mr. Musgrave owns the condominium unit located at 748 Ledgestone Court.

² Stonecrest COA is unclear as to the distinction between the Amended Complaint’s tenth cause of action (breach of express warranty) and fourteenth cause of action (breach of express warranties).

However, as the court has previously recognized, that allegation is demonstrably inaccurate, as Mr. Musgrave does not hold legal title to the unit in question. York County records indicate the unit is titled in the name of Barbara J. Musgrave. See Property Card (attached as Exhibit A). Accordingly, Mr. Musgrave has no standing to maintain this action against Stonecrest COA and Stonecrest COA is entitled to judgment as a matter of law on all causes of action brought by Mr. Musgrave.

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

Though the Plaintiffs have taken the kitchen sink approach and asserted twelve causes of action against Stonecrest COA, their theory of liability boils down to this: Stonecrest COA has violated its obligations under the Master Deed and its bylaws³ to maintain and repair the community's common elements. These allegations are, upon information and belief, based on the following sections of the aforementioned documents:

- The Master Deed's Statement of Purpose, which states, in part: "Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the Common Areas and facilities on the Property[.]"
- Section 5.4(a) of the Master Deed, which states, in part: "The Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements[.]"
- Section 13.1 of the Master Deed, which states, in part: "In the event of damage to or destruction of any Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building[.]"⁴

³ The Master deed and bylaws are attached hereto as Exhibit B.

⁴ This provision clearly applies only in the event of a "fire or other casualty," neither of which is an issue in this case. Thus, this provision is irrelevant. However, it is cited here due to the Plaintiffs' (errant) reliance on it.