

## CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

This Confidential Settlement and Release Agreement (“Agreement”) is made and entered into as of the last day set forth on the signature page (“Effective Date”) by and between Center Court Community Association, Inc. (“Center Court”), Beattie Development, LLC (“Beattie Development”), Funderburk Group, L.L.C. (“Funderburk Group”), Dwight E. Funderburk (“Dwight Funderburk”), Dwight E. Funderburk II (“Dwight Funderburk II”) and Keystone Homes, Inc. (individually, a “Party,” and collectively, the “Parties”) for the purpose of resolving by compromise and settlement of all claims, controversies, alleged liabilities, and disputes between them.

### RECITALS

This Agreement is entered into with reference to the following facts:

- A. The development of the subdivision known as Center Court began in or around 1991. Plaintiff Center Court Community Association, Inc. (the “Association”) was incorporated on or about August 1, 1991.
- B. The developer and original Declarant of Center Court, Park Place Company (“Park Place”), caused to be recorded the *Declaration of Covenants and Provisions for Membership in Center Court Community Association, Inc.*, on November 25, 1991 at Book 365, Page 599 in the Greenwood County Register of Deeds (the “Declaration”).
- C. On September 2, 1994 Park Place caused to be recorded the *Supplemental Declaration of Covenants, Restrictions and Provisions for Membership in Center Court Community Association, Inc.* (the “Supplemental Declaration”) at Book 395, Page 3.
- D. Two tracts, which respectively bear Parcel ID numbers 6837-854-153 (“Parcel 854-153”) and 6837-901-070 (“Parcel 901-070”), were legally created and assigned their own separate Tax ID numbers by Greenwood County in or about 2005 after they included per recorded plats as Phase III and Phase IV of Center Court in or about 1995. After the annexation of Parcel ID No. 6837-890-165 into the City of Greenwood in 2005, Parcel 854-153 and Parcel 901-070 were treated as part of Center Court Subdivision by both the Declarant and the members of Center Court Community Association by their documented actions. Parcel 854-153 and Parcel 901-070 would remain and through the present continue to be part of Center Court Subdivision, which was confirmed legally the Special Tax District was created in June 2011 and included both of said parcels in the Special Tax District.
- E. After their creation in 2005, Parcel 854-153 and Parcel 901-070 have been referenced on plats, deeds, and other public documents as “Phase III” and/or “Future Development” of Center Court, and at all relevant times been considered by the original Declarant Park

Place, its successor Declarant(s) and the Association as being part of Center Court and subject to its Declaration.

- F. On or about June 8, 2011, the Greenwood City Council enacted Ordinance No. 2011-12 to create the Center Court Subdivision Special Tax District, requiring property owners within Center Court to pay assessments to the Association as part of their annual property tax payments to Greenwood County. Both parcels were listed within the 123 parcels included in the Special Tax District.
- G. The Association began to collect annual assessments on Parcel 854-153 and Parcel 901-070 in 2016 and neither Greenwood Development LLC nor its predecessor Declarant(s) sought or took any action to exclude the parcels from the Center Court Subdivision or the Center Court Subdivision Special Tax District.
- H. As owner of Parcel 854-153 and Parcel 901-070, Greenwood Development LLC cast votes at elections held by the Association, acting as a member of the Association and owner of both Parcels. The Association acted in reliance upon the Declarant's conduct which verified and confirmed the status of Parcel 854-153 and Parcel 901-070 as being included in and part of Center Court and subject to its recorded Declaration, specifically with regard to its budgeting and planning.
- I. Certain disputes have arisen between Plaintiff Center Court and Defendants Beattie Development, Funderburk Group, Dwight Funderburk, and Dwight Funderburk II regarding Parcel 854-153 and Parcel 901-070 as to whether the parcels are subject to restrictions as set out in Center Court's Declarations. Those disputes are more fully set forth in the pleadings filed in Court of Common Pleas of the Eighth Judicial Circuit, County of Greenwood, State of South Carolina and entitled Center Court Community Association, Inc., vs. Beattie Development, LLC; Funderburk Group, L.L.C.; Dwight E. Funderburk; Dwight E. Funderburk II; County of Greenwood, South Carolina; and The Joint Planning Commission of Greenwood County, bearing Case Number 2021-CP-24-00445, hereinafter to be referred to as the "Action."
- J. Each Party to this Agreement is fully apprised of the facts set forth in these Recitals and of the facts and contentions raised in the Action, and in all other aspects of the dispute between or among the Parties, whether pleaded or not, and possibilities of each action and matter described herein.
- K. Each Party denies all allegations, claims and defenses made by the other Party in the Action.
- L. Notwithstanding the above, solely in order to avoid the cost, delay, and uncertainty of further litigation, the Parties desire to compromise and settle all disputes and claims which exist or which may exist between and among them arising out of the facts, matters, and

events set forth above, without admitting any liability and settle their rights and obligations in connection with the Parcels and/or the Action.

**AGREEMENTS, RELEASES, AND PROMISES**

THEREFORE, in consideration of the facts and general releases and promises contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is acknowledged by each Party hereto, the Parties promise and agree as follows:

1. **Development Specifics:**

- a. **Number of Homes:** Defendants explicitly agree to and confirm to constructing only twenty-three (23) homes total on both Parcels combined, and more specifically 14 or 15 homes on Parcel 854-153 and 8 or 9 homes on Parcel 901-070 respectively (including no more than two (2) homes behind 102 Thornblade Dr. and 104 Thornblade Dr. where three (3) lots are shown on the Funderburk Plat submitted to the Planning Commission).
- b. **Designs.** Subject to Paragraph 1.x below, the designs delivered to Finkel Law Firm via a package from Attorney Nicholson on or about September 27, 2021 are acceptable as shown and described, with the materials pictured. All colors on the color sheet are acceptable as well. Copies of said designs are attached as **Exhibit A**. A summary of the model names and square footage is provided as follows:

<b>Model name</b>	<b>Square footage as presented by Defendants</b>
Winterset	2,832
Williamsburg	2,555
Richfield	1,961
Durham	3,023
Carlisle	2,705
Brinkly	2,112
Mansfield	2,294
Hamilton	1,824

- c. **Price Range and Duration of Listing Homes.** Defendants explicitly agree and confirm each home constructed on Parcel 845-153 and Parcel 901-070 must be listed at a price no less than *\$120 per square foot* and kept listed at such price range for no less than 18 months from initial listing, as follows:

<b>Model name</b>	<b>Square footage as presented by Defendants</b>	<b>Minimum list price for no less than 18 mos. (@ \$120 / sf)</b>
Winterset	2,832	\$339,840
Williamsburg	2,555	\$306,600
Richfield	1,961	\$235,320
Durham	3,023	\$362,760
Carlisle	2,705	\$324,600
Brinkly	2,112	\$253,440
Mansfield	2,294	\$275,280
Hamilton	1,824	\$218,880

- d. **Variation required.** Utilizing the aforementioned eight (8) designs, there shall be no identical homes among the twenty-three (23) total. To avoid any duplication, all twenty-three (23) homes must be built using varying colors, different materials, and different architectural details for each of the twenty-three (23) homes so that each home looks different from all others in the new Phase(s) which are built using the same similar materials. Further, of the eight (8) approved model designs, none of the eight (8) models shall be built with less than two (2) homes in between and separating homes which are the same model. Further, there shall be no more than four (4) of any one model.
- e. **Paved Driveways.** Each home must have a paved driveway (asphalt or concrete) and two-car garage (as pictured in the eight (8) designs).
- f. **Mailboxes.** Mailboxes must match the existing Center Court mailboxes (sandblasted, white metal box with red flag, same paint colors and style), and must all be on the same side of the street. See Mailbox Spec, attached as **Exhibit B**.
- g. **Landscaping.** Shrubs and trees are required to be planted and maintained around the homes in the same manner as the existing lots in Phase I and Phase II. Sod, pine straw or mulch must surround the home and must surround all shrubs and trees. Sod must be Centipede, Zoysia, St. Augustine, or Bermuda. Sprinklers and low voltage landscape lights are optional.
- h. **Trees.** No particular species of trees or shrubs is specified, except that Mimosa trees and Bradford Pear trees may not be planted, as they are an invasive species.
- i. **Traffic Signage.** Stop, Speed Limit, or other signs must match current ones in Phase I and Phase II: Metal printed reflective sign from the DOT with a wooden frame and

wooden post painted to match the mailboxes and pond signs. The Association has obtained DOT approval, and such approval applies to all roads within Center Court Subdivision.

- j. **Street names.** If there are any new street name(s) (such as the currently non-named stub roads), they must be given “grass” names like the other existing roads in the neighborhood. (Current roads are Pennington, Bermuda, Centepede, St Augustine, Thornblade, Coosaw, Zoysia, Tifton, & Charleston.)
- k. **Power Lines.** All power lines must be underground, same as existing power lines in Phase I and Phase II.
- l. **Fiber Lines.** WCTel Fiber lines must be run in the new Phase(s) at issue in this Agreement. WCTel may be willing pay for the equipment, materials and installation, as it did so for the existing Phase I and Phase II.
- m. **Street Lamps.** Add a total of five (5) street lamps prior to building lots and prior to paving the streets: Two (2) in the loop near Thornblade Drive and three (3) on the other loop going toward Bermuda. The new lights must tie into the ones CCCA currently leases from Duke Energy with 10-year contracts. CCCA will pay the monthly service fee after that. CCCA will sign the 10-year lease contract after installation is complete at developer/builder’s expense. All developer/builder will pay for is to install the leased type (Duke Energy maintains the light installations and CCCA leases them; under those term the lights are significantly less expensive to install. Lights must be the same matching style as in current Phase I and Phase II: Same pole, globe and bulbs.
- n. **Fences.** Fences around back yard are optional, but if installed, must be wooden picket, wooden privacy, white vinyl, or black iron. No chain link fences may be visible from the street). A fence is not required, but photos of some of the designs featured fences around the back yard.
- o. **Sales Signage.** Keystone homes advertisement sign as is may be placed for eight (8) months in the pine straw only. CCCA will allow other signage for up to 18 months at the front entrance, if it matches CCCA’s current signage: Same or very similar size, shape, height and dimensions, and grey in color,
- p. **Erosion Control.** Erosion must be strictly controlled and prevented invading existing owners’ properties. Please note that this was a problem with Claiborne, a builder of nearby/adjacent lots, as the CCCA’s pond was visibly, aesthetically and environmentally impaired and damaged for over one year with bright orange mud. Specific steps and precautions must be undertaken by developer/builder to avoid and prevent this or any other such erosion and/or runoff damage.
- q. **Requirement that seller must provide all purchasers of individual lots/homes a copy of recorded governing documents.** When individual lots/homes are sold by

developer/builder to purchasers, seller must provide a hard copy of all recorded documents of CCCA to all such purchasers, pursuant to the South Carolina Homeowners Association Act of 2018 and the Amendment to S.C. Code Ann. § 27-50-40(A) which requires such disclosures on the South Carolina Residential Disclosure Form, including the DCR and all amendments thereto and the ARB Guidelines and all amendments thereto.

- r. **Immediate applicability of recorded Governing Documents including Covenants and Restrictions and ARB Guidelines.** Immediately following approval of a preliminary and final subdivision application by the County Planning Commission, all new homes/lots will be subject to the recorded Covenants and Restrictions and ARB Guidelines of CCCA and any duly enacted amendments thereto.
- s. **Landscape Lighting.** Low voltage landscape lighting is permitted although not required.
- t. **Covenants Apply to Both Tracts.** Defendants explicitly acknowledge and confirm Parcel 854-153 and Parcel 901-070 are subject to Plaintiff's Declarations and Covenants, as members of the Association.
- u. **Tracts are Subject to ARB's Authority.** Defendants explicitly acknowledge and confirm any development plans relating to Parcel 854-153 and Parcel 901-070 are subject to the Architectural Review Board's ("ARB") guidelines. Subject to Paragraph 1.x below, because the designs have been approved by the Association as detailed in Paragraph 1.b herein above, no ARB applications will be required to be submitted nor any ARB application fees paid for the 23 homes subject to this agreement.
- v. **Acknowledgement, confirmation and recordation of Amendment stating that both Parcels are entirely within the Association.** Upon final approval of the subdivision application by the County of Greenwood, Defendants explicitly agree to sign an amendment to the Declarations, Covenants, and Restrictions that will serve as a "Supplemental Declaration," and which will bring Parcel 854-153 and Parcel 901-070 and the 23 new lots and their property descriptions withing the Association.
- w. **No transfer before Supplemental Declaration is recorded.** Beattie Development, LLC may not convey or transfer title to Parcel 854-153 or Parcel 901-070 before the Supplemental Declaration referenced immediately above in Section 1.v of the herein Agreement is recorded with the Register of Deeds for Greenwood County.
- x. **Approvals in this Agreement at Paragraph 1.b and 1.u are non-transferable unless acquiring person or entity signs this Agreement.** The approvals stated in the herein Agreement at Paragraph 1.b and 1.u are exclusive to the persons and entities who have signed this Agreement and are non-transferable to any other person or entity unless that person or entity signs the Agreement, thereby binding himself, herself or itself to the entirety of this Agreement and all of the terms contained herein. Should any person or

entity acquire title to Parcel 854-153 and Parcel 901-070 but decline or refuse to sign this Agreement, then the approvals stated in the herein Agreement at Paragraph 1.b and 1.u shall be entirely null and void and the holder of title to Parcel 854-153 or Parcel 901-070 shall be required to submit ARB applications for all 23 homes and must pay in full the standard ARB application fee for each such application. Approval by the ARB of such applications shall not be unreasonably withheld.

2. **Dismissal of Action.** The Parties agree to dismiss the Action with prejudice and with each Party bearing its own costs. The Parties' counsel shall execute the Stipulation and Order to Dismiss attached as **Exhibit C** to this Agreement simultaneously with the Parties' execution of this Agreement.

3. **Attorney's Fees.** Each Party shall bear its own attorneys' fees and costs incurred. If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing party or parties in such action shall be entitled to recover its reasonable attorney's fees and other expenses incurred in such action. Any award of attorneys' fees hereunder shall not be computed according to any court schedule, but, instead, shall be in such amount as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of the judgement, since it is the intention of all Parties to compensate fully the prevailing party for all attorneys' fees paid or incurred in good faith.

4. **Confidentiality.** The Parties and their attorneys represent, warrant and agree that the terms and contents of this Agreement and all information and evidence elicited or exchanged during the Action and in negotiating this Agreement are and shall be treated as confidential and shall not be disclosed or in any way used or described or characterized to any other person or entity except as follows: Parties may only disclose the contents or terms of the Agreement to their accountants and other tax preparers, to the Internal Revenue Service, to their attorneys, and/or to a court of law or government entity if legally compelled. This confidentiality provision and agreement is a material term of this Agreement, breach of which the Parties hereby agree will cause the Parties irreparable harm. If Plaintiff or Plaintiff's attorneys are required by an appropriate order of a competent court to disclose the terms of this Agreement to individuals other than those set forth above, Plaintiff shall notify Defendant's counsel, in writing, no less than fifteen (15) days prior to such disclosure.

5. **Mutual Release.** Except for the obligations and rights expressly set forth and reserved in Paragraph 13 of this Agreement, in consideration of the recitals, covenants and agreements set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, upon the Effective Date of this Agreement, the Parties and Additional Released Parties, for and on behalf of themselves and their present and future agents, successors, beneficiaries, heirs, assigns, subsidiaries, and any and all other persons who could claim through him/her/it (collectively, the "Releasers") do hereby unconditionally, irrevocably, forever and fully release, acquit, and forever discharge each Party and Additional Released Parties hereto and its/their predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives, employees, clients, administrators, executors, personal representatives, heirs or successors in interest and assigns, and

each of them (the “releasees”), of and from any and all claims, demands, actions, causes of action, suit, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgements of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys’ fees) which were or could have been raised in, arise out of, relate to, or in any way, directly or indirectly, involve the Action, the Parcels, prior disputes, or unnamed parties related to all disputes resolved herein. It is the intention and effect of this release to discharge all claims that the Releasors have against the Releasees up until and including the Effective Date of this Agreement.

6. **Release of Unknown Claims.** Plaintiff acknowledges and agrees that he may hereafter discover facts different from, or in addition to, those facts known to him or which he now believes to be true with respect to any and all of the claims, demands, actions, causes of action, suits, liens, debts, obligations, damages, liabilities, judgements, costs, expenses, and fees (including reasonable attorneys’ fees) existing on the effective date of this Agreement. Plaintiff nevertheless agrees that the releases set forth herein have been negotiated and agreed upon, notwithstanding such acknowledgement and agreement, and hereby expressly waives any and all rights which it may have under any federal or state statute or common law principle which may provide that a general release does not extend to claims which are not known to exist at the time of execution including preclusion from disclosing or assisting in the submission or support of any administrative or legal claim by itself or any other party or a bringing claim against any party related to the usages defined above. Plaintiff understands and acknowledges the significance and consequences of this waiver and assumes full responsibility for any and all damages, losses, costs, and expenses they may incur hereafter as a result of any of the facts, matters, and events referred to in the Recitals set forth above.

7. **Release Limitations.** This Agreement does not release claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement.

8. **Warranties and Representations.** The Parties hereto warrant and represent that (a) he, she, or it is the sole owner of all rights, claims, damages, actions, causes of action, suits and defenses, as the case may be, at law or in equity, he, she, or it has or may have or that were asserted or could have been asserted in the action, and (b) he, she, or it has not assigned, transferred, conveyed, or purported to assign, transfer, or convey to any person or entity any right, claim, action, cause of action, suit (at law or in equity), defense, demand, debt, liability, account, or obligation herein released, or any part thereof, or which would, absent such assignment, transfer or conveyance, be subject to the releases set forth in this Agreement.

9. **Acknowledgements.** Each of the Parties acknowledge and agree that:

- a. This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party.



- b. Each of the Parties hereto has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that he, she, or it has read this Agreement and that he, she or it is fully aware of its content and legal effects. All parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.
- c. The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the parties hereto with no presumption in favor of one party over another in the event of any ambiguity.

10. **Tax Consequences.** This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the modifications and payments set forth in this Agreement reflect the settlement of disputed legal claims and that no Party makes any representations regarding the Agreement's tax consequences.

11. **Compromise of Disputed Claims.** It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of the settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever and each released Party expressly denies any liability or responsibility whatsoever.

12. **Severability.** If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

13. **Binding Effect.** This Agreement shall be binding upon, and shall insure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.

14. **Governing Law.** This Agreement Shall be governed by the laws of the State of South Carolina and any questions arising hereunder shall be construed or determined according to such law.

15. **Further Assurances.** The Parties agree to do all acts and things to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, deeds, or agreements. The Parties further agree to give reasonable cooperation and assistance to any other party or parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.

16. **Counterparts.** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

17. **Integration Clause.** This Agreement contains the entire agreement between and among the Parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accomplished by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

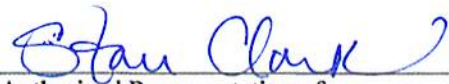
18. **Time Is Of The Essence.** Time is of the essence with respect to the performance of any and all provisions of this Agreement.

19. **Headings and Captions.** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

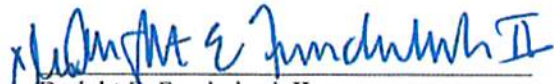
Dated 11/10, 2021

  
Authorized Representative of  
Center Court Community Association, Inc.

Print Name: Starr Clark

Title: President

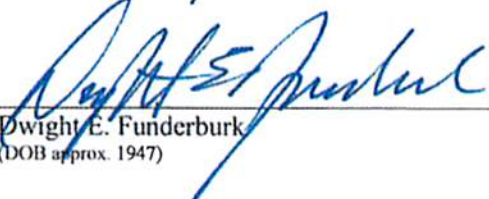
Dated 11/5, 2021

  
Dwight B. Funderburk II  
(DOB approx. 1976)  
Managing Member or Authorized Representative  
of Beattie Development, LLC

Name: Dwight E Funderburk II

Title: MANAGER

Dated: 11/5/, 2021

  
Dwight E. Funderburk  
(DOB approx. 1947)

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Authorized Officer or Representative  
of Builder of the 23 homes referenced herein

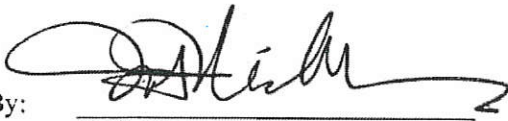
Name: \_\_\_\_\_

Title: \_\_\_\_\_


[ATTORNEY SIGNATURES FOLLOW]

APPROVED AS TO FORM AND CONTENT:

Dated: 11/8, 2021

By:   
W.H. Nicholson, III  
Nicholson, Meredith and Anderson, LLC  
Attorneys for Defendants  
Beattie Development, LLC, Funderburk Group,  
LLC, Dwight E. Funderburk, and Dwight E.  
Funderburk II

Dated: December 1, 2021

By:   
Sean A. O'Connor  
Finkel Law Firm LLC  
Attorneys for Plaintiff  
Center Court Community Association, Inc.