



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
ex rel. Kathleen Jennings, Attorney )  
General of the State of Delaware )  
 )  
Plaintiff, )

v. )

C.A. No. \_\_\_\_\_

REGAL BUILDERS, LLC, )  
GALAXY NETWORKS, LLC, )  
COUNTY PROPANE )  
OF DELMARVA, LLC, )  
EDDIE EVANS FARM PHASE I, LLC, )  
EDDIE EVANS FARM PHASE V, LLC, )  
EDDIE EVANS FARM PHASE VI, LLC, )  
EDDIE EVANS FARM PHASE VII, LLC, )  
THE VILLAGES OF NOBLE’S POND )  
HOMEOWNERS ASSOCIATION, INC., )  
THE VILLAGES OF NOBLE’S POND )  
SERVICE CORPORATION, INC., and )  
HARRY D. MILLER, III, )  
 )  
Defendants. )

**VERIFIED COMPLAINT**

Plaintiff, the State of Delaware, *ex rel.* Kathleen Jennings, Attorney General of the State of Delaware (“State”), brings this action against Defendants, Regal Builders, LLC (“Regal Builders”), Galaxy Networks, LLC (“Galaxy Networks”), County Propane of Delmarva, LLC (“County Propane of Delmarva”), Eddie Evans Farm Phase I, LLC (“Eddie I”), Eddie Evans Farm Phase V, LLC (“Eddie V”), Eddie Evans Farm Phase VI, LLC (“Eddie VI”), Eddie Evans Farm Phase VII, LLC

(“Eddie VII”), The Villages of Noble’s Pond Homeowners Association, Inc. (“Homeowners Association”), The Villages of Noble’s Pond Service Corporation (“Service Corporation”), and Harry D. Miller, III (“Miller”), for violations of the Consumer Fraud Act (“CFA”), 6 *Del. C.* § 2511 *et seq.*, the Uniform Deceptive Trade Practices Act (“DTPA”), 6 *Del. C.* § 2531 *et seq.*, the Consumer Contracts Act (“CCA”), 6 *Del. C.* § 2731 *et seq.*, and the Delaware Health Spa Regulation (“HSR”), 6 *Del. C.* § 4201 *et seq.* Plaintiff alleges as follows:

### **Summary of the Case**

1. This action arises out of an investigation by the Consumer Protection Unit (“CPU”) of the Delaware Department of Justice (“DOJ”) into various fraudulent practices affecting prospective homebuyers and current residents in The Villages of Noble’s Pond (“Noble’s Pond”), a planned community under construction in Kent County, Delaware.

2. Regal Builders, the developer of Noble’s Pond, requires those who buy homes in the community to enter into contracts that: (1) contain confusing and unintelligible language; (2) misrepresent or omit material facts; (3) are inconsistent with its advertisements for the community; and (4) include terms and conditions that violate state and/or federal law.

3. The “rights” purportedly conferred by these contracts enable Regal Builders and its affiliates to, in perpetuity, dominate community governance and exploit Noble’s Pond residents in relation to the provision of goods and services.

4. For example, Regal Builders and its affiliates use unlawful “exclusive” easements to compel Noble’s Pond residents to purchase utility services from providers under common ownership, control, and/or management.

5. Similarly, Regal Builders and its affiliates use an improper self-dealing arrangement with a community homeowners association (which they control) to extract mandatory “Club Charges” from Noble’s Pond residents in connection with a privately-owned clubhouse that is not a genuine community amenity.

6. Noble’s Pond residents are unaware of problems with the community until after they move into it, as Regal Builders: (1) fails to provide prospective homebuyers with specific disclosures required under state law; and (2) advertises and sells homes in a manner intended to mislead prospective homebuyers.

7. The CPU seeks equitable and legal relief—including reformation of contract and civil penalties—in this effort to end the misconduct described above.

### **Jurisdiction and Venue**

8. This Court has subject matter jurisdiction over this action pursuant to Del. Const. art IV, § 10 and 10 *Del. C.* § 341 because it involves matters in equity.

9. This Court has personal jurisdiction over Regal Builders, Galaxy Networks, County Propane of Delmarva, Eddie I, Eddie V, Eddie VI, Eddie VII, the Association, and the Service Corporation because they are Delaware entities.

10. This Court has personal jurisdiction over Miller because he is a resident of Delaware.

11. Venue is proper under 29 *Del. C.* § 2520(a)(4) and 6 *Del. C.* § 2522(a) because most or all of the unlawful conduct alleged in this action took place within Kent County.

### **Parties**

#### ***The Plaintiff***

12. The State is the sole plaintiff in this action. It brings this action by and through Kathleen Jennings, Attorney General of Delaware. The Attorney General has standing to enforce the CFA, the DTPA, the CCA, and the HSR under 29 *Del. C.* § 2520(a)(4), 6 *Del. C.* § 2522(a), 6 *Del. C.* § 2533(d), 6 *Del. C.* § 2736, and 6 *Del. C.* § 4222.

#### ***The Individual Defendant***

13. Miller is a Delaware resident with primary place of residence located at 13 Nobles Pond Crossing, Dover, DE 19904.

#### ***The Developer Entity Defendants***

14. Regal Builders is a Delaware limited liability company that (together with a number of affiliates) engages in various real estate development efforts related

to Noble's Pond, including but not limited to the construction, advertisement, and sale of single-family homes in the community.

15. Galaxy Networks is a Delaware limited liability company that is involved in the provision of internet and video services to Noble's Pond residents.

16. County Propane of Delmarva is a Delaware limited liability company that purports to provide propane gas and equipment to Noble's Pond residents.

17. Eddie I is a Delaware limited liability company that owns certain building lots in Noble's Pond.

18. Eddie V is a Delaware limited liability company that owns a clubhouse facility ("the Clubhouse") in Noble's Pond.

19. Eddie VI is a Delaware limited liability company that owns certain roads in Noble's Pond.

20. Eddie VII is a Delaware limited liability company that owns certain open space areas, woodland areas, wetland areas, and storm water management areas in Noble's Pond.

21. The Homeowners Association, a nominal defendant, is a Delaware corporation that undertakes maintenance, collects assessments, promulgates rules and regulations, and enforces restrictive covenants with respect to common property in Noble's Pond.

22. The Service Corporation, a nominal defendant, is a Delaware corporation that undertakes maintenance, collects assessments, promulgates rules and regulations, and enforces restrictive covenants with respect to individual lots in Noble's Pond.

23. Miller owns, controls, and/or manages Regal Builders, Galaxy Networks, County Propane of Delmarva, Eddie I, Eddie V, Eddie VI, Eddie VII, the Homeowners Association, and the Service Corporation.

### **Factual Allegations**

#### ***Background***

24. Regal Builders started marketing single-family homes in Noble's Pond in late 2007 or early 2008. As of the date of this Complaint, it has constructed and sold over 220 homes in the community. The record plans for Noble's Pond indicate that Regal Builders intends to build nearly 900 homes in all—a total that would make Noble's Pond one of the largest planned communities in Delaware.

25. Noble's Pond is an example of a "common interest community." Communities of this kind generally involve property that a developer has divided into smaller units (i.e. individual lots featuring single-family homes). Each unit owner agrees: (1) to share certain costs and benefits of living in the community with other unit owners; (2) to comply with various covenants, conditions, and restrictions

that run with the property; and (3) to address matters relevant to the welfare of the community by means of a governing body known as a “homeowners association.”

26. In Noble’s Pond, the powers and duties of a typical homeowners association are divided among two different entities—the Homeowners Association and the Service Corporation.

27. Noble’s Pond is an age-restricted “55 plus” community.

28. Initially, Noble’s Pond was a “land lease” community: residents leased individual lots from a Regal Builders affiliate on a long-term basis. On or around December 1, 2010, Regal Builders arranged for conversion of the community to fee simple ownership. This occurred shortly after the DOJ issued Attorney General Opinion No. 10-IB08, a letter opinion finding the Manufactured Home Owners and Community Owners Act, 25 *Del. C.* § 7001 *et seq.*, applicable to Noble’s Pond.

29. On April 26, 2011, a Regal Builders affiliate recorded two “Declarations” containing covenants, conditions, and restrictions for Noble’s Pond. The first (attached hereto as **Exhibit A**) is an 80-page document entitled Master Declaration of Easements, Covenants, and Restrictions for the Villages of Noble’s Pond (Association) (“Homeowners Association Declaration”). The second (attached hereto as **Exhibit B**) is a 64-page document entitled Master Declaration of Easements, Covenants, and Restrictions for the Villages of Noble’s Pond (Service Corporation) (“Service Corporation Declaration”).

30. Each Declaration defines Eddie I, Eddie VI, and Eddie VII, collectively, as the “Declarant.”

31. The Declarations are enforceable contracts that set out the rights and responsibilities of individual homeowners, the Homeowners Association, the Service Corporation, and the Declarant in relation to Noble’s Pond.

32. These documents give Miller—the sole member of Eddie I, Eddie VI, and Eddie VII—absolute control over the Homeowners Association and the Service Corporation.

33. As noted below (*infra*, ¶ 163), the most recent State of Delaware Annual Franchise Tax Reports submitted by the Homeowners Association and the Service Corporation indicate that Miller is the only director and the only officer of each entity.

34. Miller owes fiduciary duties to homeowners in Noble’s Pond in light of his control over the Homeowners Association and the Service Corporation and his status as a director and officer of each.

35. The Delaware Uniform Common Interest Ownership Act (“DUCIOA”), 25 *Del. C.* § 81-101 *et seq.*, applies to Noble’s Pond.

### ***General Allegations***

36. Regal Builders and its affiliates fail to provide prospective homebuyers with clear, complete, and timely disclosure about Noble’s Pond.



37. In particular, the home sale process occurs in a manner that overwhelms homebuyers with information and omits key details regarding the community.

38. Moreover, the language of the Declarations—the central governing documents for the community—obscures material facts and is difficult to understand.

39. This is not accidental: Regal Builders’ conduct suggests intent to mislead homebuyers as to the nature of various features in Noble’s Pond, including but not limited to utility services and the Clubhouse.

40. The home sale process in Noble’s Pond typically involves multiple steps. A prospective homebuyer who wishes to purchase a home in Noble’s Pond first signs a “Sales Contract” and gives Regal Builders a “nonrefundable” deposit in connection with a particular lot. Regal Builders and its affiliates then begin constructing a home on the chosen lot. Upon completion—which usually occurs about six months from the contract signing date—the parties proceed to settlement.

41. DUCIOA imposes specific disclosure requirements on common interest community developers in an effort to protect homebuyers and address “the need for the developer to fully reveal all aspects of the planned community.”

42. In particular, 25 *Del. C.* § 81-402(c) requires the developer to provide each homebuyer with a “public offering statement” no later than the date of the sales contract.

43. Under 25 *Del. C.* § 81-403, the public offering statement “must contain or fully and accurately disclose” certain details about the common interest community in question, including but not limited to “a brief narrative description of the significant features of the declaration . . . and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community[.]”

44. Regal Builders gives homebuyers hundreds of pages of documents pertaining to Noble’s Pond—including the Declarations—on the contract signing date, but does not provide them with a public offering statement of the kind described above.

45. The Buyer Property Protection Act, 6 *Del. C.* § 2570 *et seq.*, imposes additional disclosure obligations in connection with sales of residential real estate, which the seller generally satisfies by means of a standard form known as the “Seller’s Disclosure of Real Property Condition Report” promulgated by the Delaware Real Estate Commission pursuant to 6 *Del. C.* § 2578.

46. Regal Builders provides misleading or incomplete responses to certain of the questions on this form, including but not limited to questions regarding provision of a public offering statement, knowledge of violations of law relating to the property, and matters that should be disclosed due to their potential to materially and adversely affect the property.

47. The Declarations are rife with extremely long paragraphs, opaque terms, repetitive lists, and complex cross-references.

48. Section 7.1(r)(i) of the Homeowners Association Declaration, reproduced below in its entirety, typifies the writing style used in the Declarations:

Reservation and Grant of Community Utility Easements. Declarant hereby creates, imposes, grants, establishes, retains, reserves and conveys unto Declarant and the Owners of all or any portion of the Adjacent Property, for the benefit of Declarant and all and every portion of the Adjacent Property and the Owners of all or any portion of the Adjacent Property, together with their respective mortgagees, occupants, tenants, subtenants, agents, contractors, customers, visitors, licensees, invitees, guests, members and concessionaires (collectively, “**Permittees**”), one or more free, perpetual, and uninterrupted non-exclusive rights, privileges, and easements on, under, over, across, within and through all and every portion of the Property and Community, including any Lots and Common Facilities, in common with others entitled to the use thereof, together with the right, privilege and authority to Construct and Maintain any one or more Utilities on, under, over, across, within and through all and every portion of the Property and Community, including any Lots and Common Facilities, that are reasonably necessary or required for the use, operation, development, enjoyment, Construction and/or Maintenance of all or any portion of the Adjacent Property now or in the future, all for the benefit, in perpetuity, of Declarant, all and every portion of the Adjacent Property, and the Owners thereof, in accordance with all applicable Laws (collectively, the “**Community Utility Easements**”). The location of the Community Utility Easements and the associated Utilities on, under, over, across, within and through all or any portion of the Property and Community shall be determined by Declarant, in its sole subjective and absolute discretion, provided that such location does not unreasonably and materially interfere with, or impede the use and enjoyment of, the Property and Community as a residential community.

49. The Declarations also misstate facts and omit information required by state law.

50. For example, though Section 5.3(a)(i) of the Homeowners Association Declaration purports to limit the amount Noble’s Pond residents must pay annually in common expense assessments during the period of developer control over the Homeowners Association, Regal Builders and its affiliates actually charge residents much more each year than the sum specified in this section.

51. Likewise, the record plans for Noble’s Pond—which, pursuant to 25 *Del. C.* § 81-209(a), “are a part of the declaration”—do not contain mandatory DUCIOA disclosure pertaining to proposed community features, including the designations specified in 25 *Del. C.* § 81-209(c) regarding mandatory and optional contemplated improvements.

52. Many terms and conditions in the Declarations—and in related documents, including the respective bylaws of the Homeowners Association and the Service Corporation (attached hereto as **Exhibit C** and **Exhibit D**)—are incompatible with state or federal law.

53. A number of provisions in the Declarations and bylaws pertaining to the Homeowners Association and the Service Corporation expand the rights of Regal Builders and its affiliates and/or diminish the rights of Noble’s Pond residents with respect to community governance in a manner prohibited by DUCIOA.

54. These provisions include: (1) provisions in the Declarations concerning voting rights, which discriminate in favor of units owned by affiliates of Regal

Builders in violation of 25 *Del. C.* § 81-207; (2) provisions in the bylaws relating to homeowner and executive board meetings, which deprive Noble’s Pond residents of the ability to voice concerns about matters affecting the community in violation of 25 *Del. C.* §§ 81-308 and -308A; and (3) provisions in the bylaws addressing the composition of the executive board, which preclude the election of members unaffiliated with Regal Builders in violation of 25 *Del. C.* § 81-303.

55. As noted below (*infra*, ¶¶ 110 and 134), provisions in the Homeowners Association Declaration regarding utilities contravene other state and federal laws.

56. The Declarations and bylaws contain additional provisions that are unlawful and/or unconscionable, including but not limited to: (1) provisions concerning amendment of the Declarations; and (2) provisions relating to the Declarants’ power of attorney.

57. Regal Builders does not clearly explain relevant provisions in the Declarations and bylaws to homebuyers (or disclose the problems with these documents), and conducts the home sale process in a manner intended to inundate homebuyers in paperwork.

58. In interviews with CPU personnel, Noble’s Pond residents observed that Regal Builders presented them with (and asked them to sign) “stacks of documents,” that they had very little time to read the documents they received, and that the home sale process left them feeling “overwhelmed.”

59. Regal Builders does not give certain important documents—including utility service agreements—to homebuyers until after it collects “nonrefundable” deposits from them.

60. The day of settlement does little to resolve the issues identified above.

61. Regal Builders directs homebuyers to use a lawyer with longstanding connections to Miller as their settlement attorney. During the above-referenced interviews, one Noble’s Pond resident stated that this lawyer was “evasive” when asked about potential conflicts of interest. Another reported that the lawyer offered to arrange for non-conflicted representation in exchange for an additional fee.

62. Once they move to Noble’s Pond, homebuyers are contractually bound by the Declarations and bylaws.

63. In violation of their fiduciary duties, Regal Builders and its affiliates use powers ostensibly conferred by these documents to operate the Homeowners Association and the Service Corporation in a manner that lacks transparency and marginalizes residents.

64. Noble’s Pond residents receive minimal disclosure from Regal Builders and its affiliates regarding the activities of the Homeowners Association and the Service Corporation, and have few means to resolve concerns regarding these activities (and other matters affecting the community).

65. During the above-referenced interviews, many residents observed that communication with individuals responsible for Homeowners Association and Service Corporation activities—including but not limited to Miller—has been extremely poor or nonexistent.

66. Furthermore, some residents expressed unease as to whether the Homeowners Association and the Service Corporation spend assessments and other funds they collect in accord with their intended uses, and noted that Regal Builders and its affiliates have ignored or rebuffed inquiries on the subject.

67. As described in the subsections below, Regal Builders and its affiliates also make use of provisions in the Homeowners Association Declaration to exploit Noble’s Pond residents in connection with various community features, including: (1) utility services; and (2) the Clubhouse.

#### *Specific Allegations – Utility Services*

68. Regal Builders and its affiliates use unlawful means to induce Noble’s Pond residents to purchase utility services from companies they control, including Galaxy Networks and County Propane of Delmarva.

69. Section 7.1(s) of the Homeowner’s Association Declaration, entitled “Reservation and Grant of Exclusive Provider Rights,” contains provisions that restrict the ability of Noble’s Pond residents to choose utility service providers not connected with Regal Builders and its affiliates.

70. Much of the language in Section 7.1(s) is difficult to understand, and key terms and conditions are obscured in lengthy paragraphs full of cross-references and qualifications.

71. Subsection (i)(A) of Section 7.1(s) authorizes the Declarant to grant “rights, privileges, and easements” to certain “Providers” for the purpose of providing utility services in Noble’s Pond. The definition of “Provider” set out in this subsection expressly incorporates Galaxy Networks and County Propane of Delmarva. Subsections (i)(B) and (i)(C) of Section 7.1(s) confer “free, perpetual, irrevocable, exclusive, and uninterrupted” use and access rights on each “Provider.”

72. Subsection (ii) of Section 7.1(s) requires every new homebuyer in Noble’s Pond to execute a binding utility services contract (“Service Agreement”) with each “Provider” prior to the date of settlement on his or her home.

73. Subsection (iii) of Section 7.1(s) provides in its entirety as follows:

Each and every Owner of all or any portion of the Property or Community, including the Lots and Common Facilities, together with their respective Permittees, shall be required to use, and shall use, the Facilities Improvements and the Facilities Services, and shall be required to pay, and shall pay, directly to the Provider of each of the Facilities Services in accordance with the Service Agreement by and between such Owner and such Provider, except as otherwise provided by Law. No Owner nor any of their respective Permittees shall have any right to, and none shall, install or use, and each Owner and their respective Permittees are expressly prohibited from installing or using, any other source for, or supplier of, any one or more of the Utilities (including, but not limited to, above or below ground fuel tanks) other than the Facilities Improvements and the Facilities Services, on or to all or any portion of the Property and Community, including the Lots and



Common Facilities, except as otherwise provided by Law. No Owner nor any of their respective Permittees shall have any right to, and none shall, use any supplier of any one or more of the Utilities to all or any portion of the Property or Community, including the Lots and Common Facilities, other than the Providers selected by Declarant, except as otherwise provided by Law. Notwithstanding the foregoing, this Section shall not prohibit an Owner from using a 20 pound or less liquid petroleum tank in connection with such Owner's use of an outdoor grill on such Owner's Lot.<sup>1</sup>

74. The practical effect of the above-referenced subsections is to: (1) require Noble's Pond residents to purchase utility services from providers selected by Regal Builders and its affiliates; (2) prohibit residents from obtaining these services from alternative providers; and (3) preclude alternative providers from entering the community by means of "exclusive" use and access rights.

75. As noted above (*supra*, ¶ 44), Regal Builders and its affiliates do not give prospective homebuyers a "public offering statement," in violation of their DUCIOA obligations. Under 25 *Del. C.* § 81-403, this document must contain "a brief narrative description of any contracts or leases that will or may be subject to

---

<sup>1</sup> Section 1 of the Homeowners Association Declaration defines key terms used in this subsection as follows:

Section 1.22 "**Facilities Improvements**" shall mean any and all pipes, lines, wires, cables and conduits, including any accessory or appurtenant facilities, structures or improvements, including meters, utility vaults, substations and pumping or treatment stations now or in the future associated with any Utilities.

Section 1.23 "**Facilities Services**" shall mean the supply of any one or more Utilities through any one or more Facilities Improvements to all or any portion of the Property and Community, including any Lots and Common Facilities, and the Improvements located thereon, in accordance with the terms, covenants and conditions contained herein and in the Service Agreement by and between a Provider and each Owner.

cancellation by the association under § 81-305 of this title”, along with full and accurate disclosure of “[a]ny current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community.” 25 Del. C. § 81-305 encompasses “any . . . contract or lease between the association and a declarant or an affiliate of a declarant,” as well as “any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.”

76. 25 Del. C. § 317A, a statute applicable to sales of new homes in Delaware, requires the seller to, “[o]n or before the date that the contract of sale . . . is delivered to the buyer,” give the buyer “[a] written summary of all financial obligations created by documents in the chain of title.” The provider fees that Section 7.1(s) requires are “financial obligations” within the scope of this statute. Nonetheless, Regal Builders and its affiliates do not furnish prospective homebuyers with a “written summary” of the kind required.

77. As noted above (*supra*, ¶ 59), Regal Builders does not provide information about utility services to new homebuyers until after they submit nonrefundable deposits in connection with the sales process.

78. After new homebuyers submit these deposits, Regal Builders instructs them to communicate with one of its agents regarding desired utility services.

79. In interviews with CPU personnel, many Noble’s Pond residents stated that Miller and others associated with Regal Builders failed to disclose material facts about the provision of certain utility services—including the inability to use alternative service providers and Miller’s role as the sole member of Galaxy Networks and County Propane of Delmarva—before they signed Sales Contracts.

80. The “steering” of new homebuyers to affiliated service providers and the failure to provide adequate disclosure regarding the provision of utility services in Noble’s Pond amount to breaches of fiduciary obligations owed by Regal Builders and Miller to Noble’s Pond residents.

81. Regal Builders uses deceptive language in a “disclosure statement” posted on the Noble’s Pond website to mislead prospective homebuyers about utility services in the community.

82. The statement (attached hereto as **Exhibit E**) provides, in relevant part, that homebuyers “are not required to use CountyPropane of Delmarva or Galaxy Networks, LLC as a condition of purchasing a Regal Builders, LLC home.”

83. This directly contradicts Subsection (iii) of Section 7.1(s), which, as noted above, indicates that “[e]ach and every Owner of all or any portion of the Property or Community . . . shall be required to use, and shall use, the Facilities Improvements and the Facilities Services[.]”

84. The website “disclosure statement” indicates that Galaxy Networks and County Propane of Delmarva have “a business relationship” with Regal Builders that may provide the latter “a financial or other benefit,” but does not meaningfully explain the nature of the relationship between the entities (discussed in more detail below) or inform prospective homebuyers of Miller’s role with each entity.

Allegations Regarding Telecommunications Services

85. Regal Builders provides Noble’s Pond residents with few details as to the nature of Galaxy Networks’ business, and the little information it does furnish is misleading and inconsistent.

86. Each new homebuyer receives a two-sided document (attached hereto as **Exhibit F**) from Regal Builders after signing the Sales Agreement. One side contains an “Order Form” with three options (“Standard Digital Adapter with 15/5 Internet,” “Standard Digital Adapter without Internet,” and “15/5 Internet without Television”), while the other side contains a “Homeowner Communications Services Agreement.” Regal Builders instructs homebuyers to sign each side of the document and “submit [it] to Colleen [a Regal Builders agent] no later than 30 days after placing [your] home order[.]”

87. The Order Form implies that Galaxy Networks is a provider of telecommunications services.

88. Furthermore, as noted above (*supra*, ¶ 71), the Homeowners Association Declaration explicitly defines Galaxy Networks as a “Provider.”

89. In direct contradiction, Section 4(l) of the Homeowner Communications Services Agreement indicates that “Galaxy is not an operator, service provider, or reseller of regulated telecommunications or cable television services[.]”

90. Unlike the Order Form, the Homeowner Communications Services Agreement contains extremely small typeface (approximately four-point font size).

91. In interviews with CPU personnel, many Noble’s Pond residents expressed substantial confusion and misunderstanding as to the true role of Galaxy Networks in relation to the community.

92. The CPU learned in the course of its investigation that Galaxy Networks is, in fact, a middleman: after billing Noble’s Pond residents for telecommunications services each month, it remits a portion of the amount collected to the actual service provider, non-party Verizon Services Corp. (“Verizon”).

93. Galaxy Networks entered into two long-term contracts with Verizon on November 17, 2010. The first, entitled “Bulk Services Agreement,” requires it to pay Verizon a monthly “bulk services fee”—calculated based on the number of completed homes in Noble’s Pond—in exchange for the provision of telecommunications services in the community. Under the second, entitled

“Marketing Agreement for Single Family Units,” it receives a one-time payment per home sold in exchange for acting as an “exclusive marketing representative” for Verizon in Noble’s Pond.

94. Each contract refers to Galaxy Networks as an “agent” of the developer (i.e. Regal Builders and its affiliates).

95. Regal Builders and its affiliates—including Galaxy Networks—do not disclose the aforementioned contracts to Noble’s Pond residents.

96. Galaxy Networks bills Noble’s Pond residents for telecommunications services on a monthly basis. Under the Homeowner’s Association Declaration, all residents are required to pay Galaxy Networks even if they do not use any of the services Verizon provides under the Bulk Services Agreement. Section 3 of the Homeowner Communications Services Agreement specifies that “if [a homeowner] becomes delinquent in its payment of [the monthly bill] . . . [the Homeowners Association], as a guarantor of sums due a Provider of services to the Community, has the right . . . to assess charges . . . equal to the outstanding balance . . . plus late fees and other charges, directly to the [homeowner].”

97. Homeowner documents and Verizon invoices reviewed by the CPU (samples of which are attached hereto as **Exhibit G** and **Exhibit H**, respectively) indicate that Galaxy Networks charges Noble’s Pond residents more than the amount of money per home it provides to Verizon. It then pockets the difference, in violation

of fiduciary obligations stemming from its role as an agent of the developer. The price disparity has widened over time.

98. For example, in June 2014, Galaxy Networks paid Verizon a flat rate of \$46.18 per home, but charged Noble’s Pond residents between \$53.99 and \$75.99 per home.<sup>2</sup>

99. Similarly, in June 2016, Galaxy Networks paid Verizon a flat rate of \$48.49 per home, but charged Noble’s Pond residents between \$61.99 and \$83.99 per home.

100. In June 2018, Galaxy Networks paid Verizon a flat rate of \$50.91 per home, but charged Noble’s Pond residents between \$65.99 and \$88.99 per home.

101. Currently, Galaxy Networks pays Verizon a flat rate of \$53.46 per home, but charges Noble’s Pond residents between \$70.99 and \$93.99 per home.

102. Regal Builders and its affiliates—including Galaxy Networks—do not inform Noble’s Pond residents that Galaxy Networks collects more money from them than it pays to Verizon each month.

103. On the contrary, the Homeowner Communications Services Agreement contains deceptive statements intended to mask the existence of the price disparity. Section 1 suggests that the rates Galaxy Networks charges “reflect economies of

---

<sup>2</sup> Noble’s Pond residents who received both internet and television service paid the higher rate; those who received internet service alone paid the lower rate.

scale and . . . are available through the provision of services on a community-wide basis.” Section 4(b) implies that Galaxy Networks uses the monthly fees it collects to cover “[s]ignificant costs . . . incurred to arrange for and coordinate the construction, operation, and maintenance of a fiber-optic communications network to provide Basic Communications Services to the community” (when in fact the company did not incur these costs). Section 4(c) indicates that “[m]aking the payments described in this Agreement will benefit Owner by making the Basic Communications Services available to Owner” (when in fact Verizon does not require such payments in exchange for making the specified services available).

104. Noble’s Pond residents are thus unaware that Galaxy Networks uses its contractual arrangements with Verizon to enrich itself at their expense.

105. Galaxy Networks reinforces this lack of knowledge on the part of Noble’s Pond residents by means of additional misleading statements.

106. For example, on January 31, 2019, Galaxy Networks sent Noble’s Pond residents a letter stating “[d]ue to increased costs/rates from Verizon, you will see an increase in your television and/or internet by \$5.00 per month . . . effective March 1, 2019.”

107. Galaxy Networks did not inform recipients of the above letter that Verizon had only raised its flat rate price by \$2.55 per home, and that Galaxy Networks would keep the remaining \$2.45 for itself.



108. The actions of Regal Builders and its affiliates—including Galaxy Networks—in connection with telecommunications services have harmed Noble’s Pond residents in various other ways. In interviews with CPU personnel, residents (including a number of former Verizon employees) indicated that, when they purchased homes in the community, they were unaware Galaxy Networks had given Verizon the right to: (1) deny them benefits and promotions available to individuals who do not live in Noble’s Pond; (2) send them separate bills for telecommunications services not covered under the Homeowner Communications Services Agreement; and (3) route all inquiries through a specific “HOA/MDU” unit that offers only limited service. Some residents also referenced concerns regarding the quality of the telecommunications services provided (e.g. slow Internet service).

109. In light of the “perpetual” and “exclusive” use and access rights Section 7.1(s) confers, and the prohibition against use of other providers contained therein, Noble’s Pond residents have no viable means of extricating themselves from the contractual arrangements between Galaxy Networks and Verizon (and from the former entity’s self-dealing) short of selling their homes.

110. Section 7.1(s), as applied in relation to telecommunications services, is unlawful under Section 628(b) of the Communications Act of 1934 (“Communications Act”), 47 U.S.C. § 151 *et seq.*

111. Galaxy Networks made affirmative misrepresentations to Verizon at the time it executed the Bulk Services Agreement and the Marketing Agreement for Single Family Units. Under these contracts, it pledged that it “[would] not, in any manner, inform its Residents that they are restricted to using [Verizon] as their sole communications provider” and that it “[would] not misrepresent the nature, characteristics, pricing, performance or availability of the [services provided by Verizon].” Its later actions belie these commitments.

#### Allegations Regarding Propane Fuel Services

112. In violation of both statutory disclosure requirements and its fiduciary obligations, Regal Builders does not provide Noble’s Pond residents with certain material information regarding County Propane of Delmarva.

113. Regal Builders and its affiliates deliberately foster the belief among prospective homebuyers and Noble’s Pond residents that County Propane of Delmarva—a Delaware entity—is responsible for the provision of propane fuel services in the community. A form Regal Builders provides to new homebuyers (attached hereto as **Exhibit I**) indicates that “County Propane of Delmarva, LLC will be supplying all of your propane needs for your property.” Other documents that new homebuyers receive, including a “Propane Supply Agreement and Equipment Lease” (attached hereto as **Exhibit J**) and a propane safety information sheet (attached hereto as **Exhibit K**), bear the County Propane of Delmarva logo.

114. In fact, County Propane of Delmarva is a sham entity created by Miller for the sole purpose of billing Noble’s Pond residents.

115. Miller admitted during an interview with CPU personnel that County Propane of Delmarva has no full-time employees, and that non-party County Propane, LLC—a Pennsylvania entity—is the company actually responsible for the propane fuel infrastructure in Noble’s Pond.

116. Information obtained by the CPU indicates that County Propane, LLC performs other propane-related services in Noble’s Pond as well, including delivery of propane to the community and refills of on-site propane tanks.

117. County Propane, LLC is a full-service propane fuel company headquartered in Downingtown, Pennsylvania. The website of County Propane, LLC indicates that the company “has been providing [propane] to Delaware, Chester, and Montgomery Counties since 1984.” Kent County, Delaware—the location of Noble’s Pond—is not within the company’s normal service area.

118. Miller is a managing member of County Propane, LLC. As noted below (*infra*, ¶ 161), he is also the sole member/owner of County Propane of Delmarva. Though the Better Business Bureau profile for County Propane, LLC (available at [www.bbb.org](http://www.bbb.org)) lists Miller as the “owner” of the company, information regarding Miller’s role with County Propane of Delmarva is not similarly in the public domain.

119. Regal Builders does not disclose to prospective homebuyers and to Noble's Pond residents that County Propane, LLC is involved in the provision of propane fuel services to the community, and does not tell them Miller owns County Propane of Delmarva.

120. As such, it is not readily apparent to prospective homebuyers and to Noble's Pond residents that: (1) a Pennsylvania entity operating outside its normal service area is responsible for providing propane fuel services in the community; and (2) Miller personally benefits from the selection of this entity to provide the aforementioned services.

121. The actions of Regal Builders and its affiliates—including County Propane of Delmarva—have harmed Noble's Pond residents in various ways. In interviews with CPU personnel, residents observed that County Propane of Delmarva does not take appropriate measures to ensure the safety of the propane fuel infrastructure in Noble's Pond. Some residents also expressed concern and/or confusion regarding the manner in which County Propane of Delmarva calculates prices and bills for propane fuel services.

122. The safety concerns raised by Noble's Pond residents are well-founded. On August 8, 2013, the Delaware Public Service Commission ("PSC") notified County Propane of Delmarva of potential violations of 26 *Del. Admin. C.* § 8001 (administrative regulations promulgated by the PSC that enforce the standards set

out in the Federal Pipeline Safety Regulations, 49 C.F.R. §§ 190-93 and 198-99). County Propane of Delmarva subsequently admitted liability and agreed to pay civil penalties in connection with a consent agreement between it and PSC staff. An Order issued by the PSC on February 6, 2014 in connection with the consent agreement (attached hereto as **Exhibit L**) indicates that the violations included “failure to properly test the pipelines under required test pressures, failure to follow requirements in its O&M manual, and failure to ensure the qualifications of individuals performing covered tasks.”

123. Local fire and rescue personnel have responded to propane-related events in Noble’s Pond on multiple occasions, including: (1) an incident in which multiple homeowners had to evacuate due to a leak that occurred after a construction worker struck an unmarked propane gas line; and (2) an incident in which two residents had to evacuate their home due to elevated carbon monoxide levels.

124. During the above-referenced interviews, Noble’s Pond residents expressed fears regarding numerous propane-related safety issues, including but not limited to: (1) missing shutoff valves and shutoff valves that are difficult to locate; (2) recurring propane gas odors in homes, the clubhouse, and elsewhere; (3) the presence of propane tanks near individual homes, the clubhouse, and the only street exit from the community; (4) failure to properly mark propane gas lines and inform fire and rescue personnel of their location; (5) improper installation of propane gas

appliances by employees of Regal Builders and its affiliates; and (6) narrow roads that are inaccessible to fire and rescue vehicles.

125. County Propane of Delmarva routes inquiries from Noble’s Pond residents to County Propane, LLC (without informing residents of this). Because the latter company is based in Pennsylvania, it cannot provide rapid service—including emergency service—to Noble’s Pond. Residents reported having to wait for long periods of time after making service calls.

126. Evidence also validates the assertions of Noble’s Pond residents as to pricing and billing improprieties on the part of County Propane of Delmarva. Under Title 6, Chapter 34 of the Delaware Code, contracts between homeowners and providers of residential heating fuel—including propane—must include certain disclosure provisions. The Propane Supply Agreement and Equipment Lease given to residents by County Propane of Delmarva does not contain these provisions.

127. In particular, the Propane Supply Agreement and Equipment Lease violates 6 *Del. C.* § 3402(a), which requires contracts between homeowners and providers of residential heating fuel to disclose, among other things, “all charges associated with the commencement of the services provided” and “all charges associated with the termination of the services provided,” and to list such charges “with specificity.”

128. Though the Propane Supply Agreement and Equipment Lease obligates Noble's Pond residents "to pay County Propane of Delmarva's fees, rates, and charges in effect on the date that propane or equipment is delivered or services are rendered" and "to pay a restocking charge if it is necessary for County Propane of Delmarva to pump propane out of the tank at the termination of this Agreement," it does not provide detail (or price figures) with respect to most of these "fees, rates, and charges," and allows County Propane of Delmarva "to change its fees, rates and charges from time to time without prior notice to Customer."

129. During the interviews referenced above, residents observed that County Propane of Delmarva is slow to refund overage charges to those on a pay-as-you-go billing plan, and that it charges an extra meter reading fee to those on a fixed budget billing plan.

130. The Propane Supply Agreement and Equipment Lease does not explain the different billing plans offered by the company or specify the fees associated with these plans.

131. Pursuant to 6 *Del. C.* § 3402(a)(3), a contract between a homeowner and a provider of residential heating fuel must state "[t]hat the [provider] will, after the [contract] has been in effect for at least 1 year and at the written request of the homeowner, sell the residential heating system equipment installed on the premises

and owned by the [provider] to another [provider] designated in writing by the homeowner.”

132. The Propane Supply Agreement and Equipment Lease does not contain language of the kind required under 6 *Del. C.* § 3402(a)(3).

133. As noted above (*supra*, ¶ 71), Section 7.1(s) of the Homeowners Association Declaration grants County Propane of Delmarva “perpetual” and “exclusive” use and access rights in Noble’s Pond. Other providers of propane fuel services, as well as suppliers of natural gas, have no right to enter the community. Thus, Noble’s Pond residents who wish to use natural gas or alternative propane suppliers cannot do so.

134. Section 7.1(s), as applied in relation to propane fuel services, is incompatible with 6 *Del. C.* § 3402(a)(3), as it precludes Noble’s Pond residents from changing providers of propane fuel services even after one year has elapsed.

### ***Specific Allegations – Clubhouse***

135. Regal Builders and its affiliates advertise the Clubhouse to prospective homebuyers and collect “Club Charges” from Noble’s Pond residents on the strength of fraudulent and deceptive representations.

136. In advertising directed at prospective homebuyers, Regal Builders deliberately seeks to create the impression that the Clubhouse is an integral part of the overall Noble’s Pond community. The Noble’s Pond website—which Regal



Builders and/or its affiliates are responsible for maintaining—includes multiple references to the “community clubhouse.” Statements on this website describe the Clubhouse as “[t]he jewel of our community,” “the heart of the Noble’s Pond community,” “[t]he social hub of our community,” “the center of [the] Noble’s [Pond] retirement community,” and “the gathering place for our homeowners.”

137. Regal Builders highlights numerous “country club” amenities associated with the Clubhouse—including a swimming pool, ballroom, conservatory, putting green, fitness room, game room, creative center, library outdoor kitchen, covered veranda, and community garden—in its advertising.

138. The Noble’s Pond website contains specific representations about resident access to the Clubhouse. A “frequently asked questions” section indicates that “[t]he HOA fee in the Noble’s Pond community includes . . . [a]n open invitation for unlimited use of . . . the Noble’s Pond clubhouse, its amenities, and all clubs and activities[.]” Elsewhere on the website, Regal Builders states that the Clubhouse “is available to all homeowners 24 hours a day.”

139. In interviews with CPU personnel, many Noble’s Pond residents noted that they chose to move to the community in large part because of the Clubhouse.

140. Section 12 of the Homeowners Association Declaration sets out rights and responsibilities of Noble’s Pond residents in relation to the Clubhouse.

141. Much of this section is difficult to understand, and key terms and conditions are obscured in lengthy paragraphs full of cross-references and qualifications.

142. However, language in Section 12 indicates that the above-referenced assertions as to the “community clubhouse,” “unlimited use,” and clubhouse fees are intentionally misleading.

143. For example, Section 12.2 includes the following statement: “The Club Property shall be privately owned and operated by the Club Property Owner [i.e. Eddie V] and is not a part of the Property or Community.”

144. Section 12.2 also allows Eddie V “to modify, amend, limit, reduce, restrict, or otherwise change the Club Base Membership Rights applicable to any Lot, at any time and from time to time, in its sole subjective and absolute discretion and without notice or approval of any change by any third party or Person[.]”

145. The “exclusive” rights this subsection confers upon Eddie V include the power:

to approve the users of the Club Property and determine eligibility for use, to reserve use rights for future purchasers of Lots, to modify the Club Property Documents, to establish reasonable rules and regulations with respect to the use of the Club Property, to reserve memberships, to sell, lease, or otherwise dispose of the Club Property in any manner whatsoever and to any Person whomsoever, to add, issue, or modify any type, category, or class of membership, to recall any membership at any time for any reason or no reason whatsoever, to convert the Club Property into a member-owned club, to make any other changes in the terms and conditions of membership or in the facilities available for use

by members, to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges and to subdivide all or any portion of the Club Property.

146. Pursuant to Section 12.1(a), every homeowner in Noble's Pond "must acquire, pay for and maintain in good standing a base membership . . . in the [Club]." Section 12.1(d) provides that "Club Charges shall be determined and assessed by the Club Property Owner," that "[d]elinquent Club Charges are deemed to constitute special assessments," and that "[t]he Association and the Club Property Owner, as applicable, shall have a lien against each Lot for all unpaid Club Charges in the same manner as other assessments[.]" Under Section 12.3(d), Eddie V may "require the Association to collect any or all Club Charges on behalf of the Club Property Owner in the same manner as other Association assessments[.]"

147. Evidence obtained by the CPU indicates that Eddie V collects "Club Charges" from Noble's Pond residents on a quarterly basis. These charges are distinct from Homeowners Association and Service Corporation fees, despite the aforementioned statement that "[t]he HOA fee in the Noble's Pond community includes . . . [a]n open invitation for unlimited use of . . . the Noble's Pond clubhouse, its amenities, and all clubs and activities[.]" Indeed, on instructions from Regal Builders and its affiliates, residents write separate checks to each entity.

148. Eddie V does not disclose to Noble's Pond residents how it spends the "Club Charges" it collects.

149. The above-referenced provisions (and similar items elsewhere in Section 12) indicate that, contrary to Regal Builders’ representations, the Clubhouse is not a genuine Noble’s Pond community amenity with “unlimited access,” but rather a perpetual revenue generator for Eddie V that the latter can sell, restrict access to, or fundamentally change at any time.

150. Section 12 effectively forces Noble’s Pond residents to bear the costs of a common interest community amenity without receiving the benefits of one.

151. Specifically, Noble’s Pond residents must pay mandatory fees in connection with the Clubhouse even though they have no ownership interest in it, no access to portions of it (including the entire second floor), no say in how Eddie V manages it, and no knowledge as to how Eddie V uses the money it collects.

152. In interviews with CPU personnel, multiple Noble’s Pond residents indicated that Eddie V does not adequately maintain certain areas in the Clubhouse.

153. Beyond the misstatements identified above, Regal Builders and its affiliates—including Eddie V—fail to provide prospective homebuyers with certain disclosures required by law.

154. As noted above (*supra*, ¶ 44), Regal Builders and its affiliates do not give prospective homebuyers a “public offering statement,” in violation of their DUCIOA obligations. Under 25 *Del. C.* § 81-103(19), the Clubhouse constitutes real estate subject to “development rights.” Thus, the omissions by Regal Builders

and its affiliates in relation to the Clubhouse encompass information required by 25 *Del. C.* § 81-404 (specific disclosure requirements pertaining to development rights) as well as 25 *Del. C.* § 81-403 (general disclosure requirements).

155. In violation of a different provision of DUCIOA, 25 *Del. C.* § 81-209, the record plans for Noble’s Pond do not contain a “legally sufficient description” of the Clubhouse “labeled to identify the [development] rights applicable to [it].”

156. As noted above (*supra*, ¶ 76), 25 *Del. C.* § 317A requires the seller to, “[o]n or before the date that the contract of sale . . . is delivered to the buyer,” give the buyer “[a] written summary of all financial obligations created by documents in the chain of title.” The mandatory “Club Charges” are “financial obligations” within the scope of this statute. Nonetheless, Regal Builders and its affiliates do not furnish prospective homebuyers with a “written summary” of the kind required.

157. To the extent Eddie V uses “Club Charges” to subsidize expenses related to the Clubhouse, such use contravenes 25 *Del. C.* § 81-307, which provides that “the declarant alone is liable for all expenses in connection with real estate subject to development rights,” and that “[n]o other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses.”

158. Eddie V’s actions with respect these funds may be unlawful under other statutes as well, including 25 *Del. C.* § 81-105 and 25 *Del. C.* § 317.

159. Noble's Pond residents remain uncertain of their rights in relation to the Clubhouse and unclear as to the intentions of Eddie V (and Miller) concerning the future of the property on which it sits.

***Miller's Involvement in the Wrongdoing***

160. Miller is the sole member/owner of Eddie I, Eddie V, Eddie VI, and Eddie VII.

161. Miller is the sole member/owner of Galaxy Networks and County Propane of Delmarva.

162. Miller is the president of Regal Builders, and owns, manages, and/or controls the company.

163. Legal documents filed with the Delaware Secretary of State for years 2016, 2017, and 2018 list Miller as the sole officer and the sole director of the Homeowners Association and the Service Corporation.

164. The Noble's Pond website features a biography of Miller that refers to him as "the developer of Noble's Pond."

165. A recent blog post on this website describes Miller as "the mastermind behind this master-planned community."

166. Miller was evasive and refused to provide complete responses during a March 8, 2017 interview when questioned by CPU personnel about utility service arrangements in Noble's Pond.

167. However, Miller admitted in the course of this interview that it was his decision to use Galaxy Networks and County Propane of Delmarva as service providers for the community.

168. A state legislator who questioned Miller about utility services in Noble's Pond at an August 28, 2015 meeting reported that Miller responded directly to him, albeit in a manner that was "pretty dismissive."

169. Similarly, Miller personally responded to correspondence sent by a number of Noble's Pond residents expressing concerns about governance of the community and utility service arrangements (among other issues). Miller's March 19, 2014 letter to the residents largely ignored the concerns raised. The letter also included misleading statements, such as the assertion that "at settlement, it is explained that County Propane of Delmarva will be the supplier of propane in the community." (As described above, County Propane, LLC is the actual propane supplier in Noble's Pond,)

170. In the course of interviews with CPU personnel, various parties relevant to this action (including residents, legislators, Kent County government officials, and others) have expressed the belief that Miller is responsible for all major decisions pertaining to Noble's Pond.

**Causes of Action**

**Count I – Violation of the Consumer Contracts Act  
(Community Governing Documents)**

*(Against Defendants Eddie I, Eddie VI, Eddie VII, and Miller, and Nominal Defendants Homeowners Association and Service Corporation)*

171. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

172. The Homeowners Association Declaration and the Homeowners Association bylaws constitute a “contract for the sale or lease of merchandise to a consumer” within the meaning of 6 *Del. C.* § 2732, in that they require the Homeowners Association to provide services to Noble’s Pond residents in exchange for the payment of homeowner assessments.

173. The Service Corporation Declaration and the Service Corporation bylaws constitute a “contract for the sale or lease of merchandise to a consumer” within the meaning of 6 *Del. C.* § 2732, in that they require the Service Corporation to provide services to Noble’s Pond residents in exchange for the payment of homeowner assessments.

174. Eddie I, Eddie VI, and Eddie VII are collectively responsible for the contents of the aforementioned Declarations and bylaws.

175. As described more fully above, Eddie I, Eddie VI, and Eddie VII knowingly or recklessly: (1) distort or obscure the terms, conditions, and meaning of the Declarations and bylaws by including provisions that violate state and/or



federal law (including but not necessarily limited to DUCIOA and the Communications Act); (2) create a likelihood of confusion or misunderstanding by the use of unintelligible words, phrases, and sentences in the Declarations; and (3) omit information required by law (including but not necessarily limited to DUCIOA) to be disclosed in the Declarations.

176. Miller owns, controls, and/or manages Eddie I, Eddie VI, and Eddie VII, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

**Count II – Violation of the Consumer Contracts Act**  
**(Homeowner Communications Services Agreement)**  
*(Against Defendants Galaxy Networks and Miller)*

177. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

178. The Homeowner Communications Services Agreement is a “contract for the sale or lease of merchandise to a consumer” within the meaning of 6 *Del. C.* § 2732, in that it calls for Galaxy Networks to bill Noble’s Pond residents on a monthly basis in exchange for the provision of telecommunications services.

179. Galaxy Networks is responsible for the contents of the Homeowner Communications Services Agreement.

180. As described more fully above, Galaxy Networks knowingly or recklessly: (1) distorts or obscures the terms, conditions, and meaning of the

Homeowner Communications Services Agreement by including provisions that mischaracterize the nature of the services it provides; and (2) creates a likelihood of confusion or misunderstanding by the use of unintelligible words, phrases, and sentences in the Homeowner Communications Services Agreement.

181. Miller owns, controls, and/or manages Galaxy Networks, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

**Count III – Violation of the Consumer Contracts Act**  
**(Propane Supply Agreement and Equipment Lease)**  
*(Against Defendants County Propane of Delmarva and Miller)*

182. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

183. The Propane Supply Agreement and Equipment Lease is a “contract for the sale or lease of merchandise to a consumer” within the meaning of 6 *Del. C.* § 2732, in that it calls for County Propane of Delmarva to bill Noble’s Pond residents on a monthly basis in exchange for the provision of propane fuel services.

184. County Propane of Delmarva is responsible for the contents of the Propane Supply Agreement and Equipment Lease.

185. As described more fully above, County Propane of Delmarva knowingly or recklessly: (1) distorts or obscures the terms, conditions, and meaning of the Propane Supply Agreement and Equipment Lease by including provisions that

mischaracterize the nature of the services it provides; and (2) omits information required by law (including but not necessarily limited to 6 *Del. C.* § 3402) to be disclosed in the Propane Supply Agreement and Equipment Lease.

186. Miller owns, controls, and/or manages County Propane of Delmarva, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

**Count IV – Violation of the Consumer Fraud Act**  
**(Deceptive Advertising)**  
*(Against Defendants Regal Builders and Miller)*

187. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

188. Regal Builders advertises homes/lots for sale in Noble’s Pond.

189. In connection with the advertisement of homes/lots for sale in Noble’s Pond, Regal Builders uses or employs deception, fraud, false pretenses, false promises, and/or misrepresentations, and conceals, suppresses, or omits material facts with intent that prospective homebuyers rely upon such concealment, suppression, or omission.

190. Specifically, as described more fully above, Regal Builders misrepresents features of Noble’s Pond and/or omits material information about features of Noble’s Pond (including but not necessarily limited to governance, utility

services, and amenities) in its online advertising and other promotional efforts relating to the community.

191. Regal Builders engages in the aforementioned misconduct in an effort to fraudulently induce prospective homebuyers to purchase homes/lots in Noble's Pond.

192. Miller owns, controls, and/or manages Regal Builders, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

193. Regal Builders and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count V – Violation of the Consumer Fraud Act**  
**(Failure to Provide Statutorily Mandated Disclosure)**  
*(Against Defendants Regal Builders and Miller)*

194. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

195. Regal Builders, either directly or through its agents and affiliates, sells homes/lots in Noble's Pond.

196. In connection with the sale of homes/lots in Noble's Pond, Regal Builders conceals, suppresses, or omits material facts with intent that prospective homebuyers rely upon such concealment, suppression, or omission.

197. Specifically, as described more fully above, though DUCIOA requires Regal Builders to provide every prospective homebuyer with a “public offering statement” that complies with the requirements of 25 *Del. C.* §§ 81-403 and -404 no later than the date of any contract of sale, Regal Builders does not do so.

198. Furthermore, as described more fully above, Regal Builders also fails to provide other statutorily mandated disclosure, including the “written summary of all financial obligations created by documents in the chain of title” required by 25 *Del. C.* § 317A and complete and accurate responses to certain questions on the “Seller's Disclosure of Real Property Condition Report” form promulgated under 6 *Del. C.* § 2578.

199. Regal Builders engages in the aforementioned misconduct in an effort to induce prospective homebuyers to purchase homes/lots in Noble’s Pond without full and accurate knowledge of material facts about the community.

200. Miller owns, controls, and/or manages Regal Builders, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

201. Regal Builders and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count VI – Violation of the Consumer Fraud Act**  
**(Misleading Community Governing Documents)**  
*(Against Defendants Regal Builders and Miller)*

202. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

203. Regal Builders, either directly or through its agents and affiliates, sells homes/lots in Noble's Pond.

204. In connection with the sale of homes/lots in Noble's Pond, Regal Builders uses or employs deception, fraud, false pretenses, false promises, and/or misrepresentations, and conceals, suppresses, or omits material facts with intent that homebuyers rely upon such concealment, suppression, or omission.

205. Specifically, as described more fully above, Regal Builders, either directly or through its agents and affiliates, provides homebuyers with documents (including but not necessarily limited to the Declarations and the respective bylaws of the Homeowners Association and the Service Corporation) that: (1) contain confusing and unintelligible language; (2) misrepresent or omit material facts about Noble's Pond; and (3) include terms and conditions that violate state and/or federal law (including but not necessarily limited to DUCIOA, the Communications Act, and 6 *Del. C.* § 3402).

206. Regal Builders engages in the aforementioned misconduct in an effort to mislead homebuyers as to their rights and responsibilities in connection with Noble's Pond.

207. Miller owns, controls, and/or manages Regal Builders, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

208. Regal Builders and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count VII – Violation of the Consumer Fraud Act**  
**(Misrepresentations and Omissions – Telecommunications Services)**  
*(Against Defendants Galaxy Networks and Miller)*

209. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

210. Galaxy Networks is involved in the sale of telecommunications services to residents of Noble's Pond.

211. In connection with the sale of telecommunications services in Noble's Pond, Galaxy Networks uses or employs deception, fraud, false pretenses, false promises, and/or misrepresentations, and conceals, suppresses, or omits material facts with intent that residents rely upon such concealment, suppression, or omission.

212. Specifically, as described above, Galaxy Networks gives Noble's Pond residents documents (including but not necessarily limited to the Order Form and

the Homeowner Communications Services Agreement) that: (1) contain misleading and contradictory statements as to its role in the provision of telecommunications services; and (2) mischaracterize the nature of the services it—as opposed to Verizon—provides.

213. Furthermore, as described more fully above, Galaxy Networks does not fully and accurately disclose to Noble's Pond residents: (1) its contractual agreements with Verizon; (2) the price disparity between what it collects from residents and what it pays Verizon; (3) certain information related to service and pricing (including but not necessarily limited to inability to qualify for benefits and promotions); (4) that Miller is its sole member/owner; and (5) that the arrangement under which it provides telecommunications services in Noble's Pond violates the Communications Act.

214. Galaxy Networks engages in the aforementioned misconduct in an effort to induce Noble's Pond residents to purchase telecommunications services without full and accurate knowledge of material facts about these services.

215. Galaxy Networks also made affirmative misrepresentations to Verizon when it executed the Bulk Services Agreement and the Marketing Agreement for Single Family Units.



216. Miller owns, controls, and/or manages Galaxy Networks, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

217. Galaxy Networks and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count VIII – Violation of the Consumer Fraud Act**  
**(Misrepresentations and Omissions – Propane Fuel Services)**  
*(Against Defendants County Propane of Delmarva and Miller)*

218. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

219. County Propane of Delmarva is involved in the sale of propane fuel services to residents of Noble’s Pond.

220. In connection with the sale of propane fuel services in Noble’s Pond, County Propane of Delmarva uses or employs deception, fraud, false pretenses, false promises, and/or misrepresentations, and conceals, suppresses, or omits material facts with intent that residents rely upon such concealment, suppression, or omission.

221. Specifically, as described more fully above, County Propane of Delmarva gives Noble’s Pond residents documents (including but not necessarily limited to the Propane Supply Agreement and Equipment Lease) that mischaracterize the nature of the services it—as opposed to County Propane, LLC—provides.

222. Furthermore, as described more fully above, County Propane of Delmarva does not fully and accurately disclose to Noble's Pond residents: (1) the role of County Propane, LLC with respect to propane fuel services in the community; (2) that Miller is its sole member/owner; (3) certain information related to service and pricing (including but not necessarily limited to the information required in a propane fuel service contract pursuant to 6 *Del. C.* § 3402); and (4) that the arrangement under which it (purportedly) provides propane fuel services in Noble's Pond violates 6 *Del. C.* § 3402.

223. County Propane of Delmarva engages in the aforementioned misconduct in an effort to induce Noble's Pond residents to purchase propane fuel services without full and accurate knowledge of material facts about these services.

224. Miller owns, controls, and/or manages County Propane of Delmarva, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

225. County Propane of Delmarva and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count IX – Violation of the Consumer Fraud Act**  
**(Misrepresentations and Omissions – Clubhouse)**  
*(Against Defendants Eddie V and Miller)*

226. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

227. Eddie V sells Clubhouse member privileges to Noble's Pond residents.

228. In connection with the sale of Clubhouse member privileges in Noble's Pond, Eddie V uses or employs deception, fraud, false pretenses, false promises, and/or misrepresentations, and conceals, suppresses, or omits material facts with intent that residents rely upon such concealment, suppression, or omission.

229. Specifically, as described more fully above, Eddie V collects "Club Charges" from Noble's Pond residents on the strength of: (1) a false pretense that the Clubhouse is a community amenity; and (2) a false promise of "unlimited access" to the Clubhouse.

230. Furthermore, as described more fully above, Eddie V does not fully and accurately disclose to Noble's Pond residents: (1) how it spends "Club Charges" it collects; and (2) whether such use is compliant with DUCIOA and other law.

231. Eddie V engages in the aforementioned misconduct in an effort to induce Noble's Pond residents to pay "Club Charges" without full and accurate knowledge of their rights and responsibilities in relation to the Clubhouse.

232. Miller owns, controls, and/or manages Eddie V, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

233. Eddie V and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2513.

**Count X – Violation of the Uniform Deceptive Trade Practices Act**  
**(Marketing of Homes/Lots)**  
*(Against Defendants Regal Builders and Miller)*

234. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

235. Regal Builders markets homes/lots in Noble's Pond as part of a business, vocation, or occupation.

236. As described more fully above, in the course of marketing homes/lots in Noble's Pond, Regal Builders: (1) represents that community features (including but not necessarily limited to utility services and amenities) have characteristics, uses, or benefits that they do not have; (2) represents that community features (including but not necessarily limited to utility services and amenities) are of a particular standard, quality, or grade, when in fact they are not; (3) advertises community features (including but not necessarily limited to utility services and amenities) with intent not to sell them as advertised; and (4) engages in other conduct that similarly creates a likelihood of confusion or of misunderstanding as to the nature of community features (including but not necessarily limited to governance, utility services, and amenities).

237. Miller owns, controls, and/or manages Regal Builders, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

238. Regal Builders and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2532.

**Count XI – Violation of the Uniform Deceptive Trade Practices Act**  
**(Telecommunications Services)**  
*(Against Defendants Galaxy Networks and Miller)*

239. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

240. Galaxy Networks is involved in the provision of telecommunications services in Noble’s Pond as part of a business, vocation, or occupation.

241. As described more fully above, in the course of its involvement with telecommunications services in Noble’s Pond, Galaxy Networks: (1) passes off Verizon’s telecommunications services as its own; (2) causes likelihood of confusion or of misunderstanding as to the source of telecommunications services in the community; (3) causes likelihood of confusion or of misunderstanding as to its affiliation, connection, or association with Verizon; (4) represents that telecommunications services in the community have characteristics, uses, or benefits that they do not have; (5) represents that telecommunications services in the community are of a particular standard, quality, or grade, when in fact they are not; and (6) engages in other conduct that similarly creates a likelihood of confusion or of misunderstanding as to the nature of telecommunications services in the community.

242. Miller owns, controls, and/or manages Galaxy Networks, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

243. Galaxy Networks and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2532.

**Count XII – Violation of the Uniform Deceptive Trade Practices Act**  
**(Propane Fuel Services)**

*(Against Defendants County Propane of Delmarva and Miller)*

244. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

245. County Propane of Delmarva is involved in the provision of propane fuel services in Noble’s Pond as part of a business, vocation, or occupation.

246. As described more fully above, in the course of its involvement with propane fuel services in Noble’s Pond, County Propane of Delmarva: (1) passes off County Propane, LLC’s propane fuel services as its own; (2) causes likelihood of confusion or of misunderstanding as to the source of propane fuel services in the community; (3) causes likelihood of confusion or of misunderstanding as to its affiliation, connection, or association with County Propane, LLC; (4) uses deceptive representations or designations of geographic origin in connection with propane fuel services in the community; (5) represents that propane fuel services in the community have characteristics, uses, or benefits that they do not have;

(6) represents that propane fuel services in the community are of a particular standard, quality, or grade, when in fact they are not; and (7) engages in other conduct that similarly creates a likelihood of confusion or of misunderstanding as to the nature of propane fuel services in the community.

247. Miller owns, controls, and/or manages County Propane of Delmarva, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

248. County Propane of Delmarva and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2532.

**Count XIII – Violation of the Uniform Deceptive Trade Practices Act**  
**(Clubhouse)**  
*(Against Defendants Eddie V and Miller)*

249. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

250. Eddie V owns, controls, and/or manages the Clubhouse as part of a business, vocation, or occupation.

251. In the course of owning, controlling, and/or managing the Clubhouse, Eddie V creates a likelihood of confusion or of misunderstanding among Noble’s Pond residents by collecting “Club Charges” without disclosing: (1) how it spends these funds; and (2) whether such use is compliant with DUCIOA and other law.

252. Miller owns, controls, and/or manages Eddie V, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

253. Eddie V and Miller know or should know that their conduct is of the nature prohibited by 6 *Del. C.* § 2532.

**Count XIV – Violation of the Health Spa Regulation**  
**(Failure to Register, Post Bond, and Pay Annual Fee)**  
*(Against Defendants Eddie V and Miller)*

254. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

255. Pursuant to 6 *Del. C.* § 4202(5), a “health spa” includes “any . . . club or association engaged in the sale of memberships in a program of physical exercise, physical fitness, weight control or figure reduction, which offers the use of . . . a whirlpool, weight lifting room, steam room, exercising room or exercising or weight loss device.”

256. 6 *Del. C.* §§ 4203(b) and (c) require a health spa to register with the CPU and post bond before selling its services.

257. 6 *Del. C.* §§ 4204(b) obligates a health spa to pay the CPU an annual fee for purposes of the Health Spa Guaranty Fund.

258. The Clubhouse constitutes a health spa under 6 *Del. C.* § 4202(5).

259. Eddie V, which owns and operates the Clubhouse, sells Clubhouse memberships to Noble’s Pond residents.



260. In violation of 6 *Del. C.* §§ 4203 and 4204, Eddie V has never registered the Clubhouse with the CPU, posted the requisite bond, or paid the mandatory annual fee.

261. Miller owns, controls, and/or manages Eddie V, and actively directs, participates in, orders, approves, and/or consents to the misconduct alleged herein.

262. Eddie V and Miller know or should know that their conduct is not compliant with 6 *Del. C.* §§ 4203 and 4204.

**Count XV – Violation of the Health Spa Regulation**  
**(Failure to Include Mandatory Contract Provisions)**  
*(Against Defendants Eddie V and Miller)*

263. The State incorporates by reference paragraphs 1 through 170 as if restated fully herein.

264. Pursuant to 6 *Del. C.* § 4202(5), a “health spa” includes “any . . . club or association engaged in the sale of memberships in a program of physical exercise, physical fitness, weight control or figure reduction, which offers the use of . . . a whirlpool, weight lifting room, steam room, exercising room or exercising or weight loss device.”

265. 6 *Del. C.* §§ 4205, 4206, and 4214 require a contract for the sale of health spa services to be in writing and to contain certain provisions, including but not limited to notices regarding cancellation of the contract and preservation of the buyer’s rights.

266. The Clubhouse constitutes a health spa under 6 *Del. C.* § 4202(5).

267. Eddie V, which owns and operates the Clubhouse, sells Clubhouse memberships to Noble's Pond residents.

268. In violation of 6 *Del. C.* §§ 4205, 4206, and 4214, Eddie V does not provide Noble's Pond residents with written contracts that contain the aforementioned provisions.

269. Eddie V and Miller know or should know that their conduct is not compliant with 6 *Del. C.* §§ 4205, 4206 and 4214.

**Count XVI – Violation of the Health Spa Regulation**

**(Duration of Contract)**

*(Against Defendants Eddie V and Miller)*

270. The State incorporates by reference paragraphs 1 through 156 as if restated fully herein.

271. Pursuant to 6 *Del. C.* § 4202(5), a “health spa” includes “any . . . club or association engaged in the sale of memberships in a program of physical exercise, physical fitness, weight control or figure reduction, which offers the use of . . . a whirlpool, weight lifting room, steam room, exercising room or exercising or weight loss device.”

272. 6 *Del. C.* § 4207 provides that “[n]o health spa contract shall have a duration for a period longer than 36 months.”

273. The Clubhouse constitutes a health spa under 6 *Del. C.* § 4202(5).

274. Eddie V, which owns and operates the Clubhouse, sells Clubhouse memberships to Noble's Pond residents.

275. In violation of 6 *Del. C.* § 4207, Eddie V requires Noble's Pond residents to pay Clubhouse membership fees in perpetuity (i.e. as long as they own homes/lots in the community).

276. Eddie V and Miller know or should know that their conduct is not compliant with 6 *Del. C.* § 4207.

**Prayer for Relief**

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- A. Enter judgment in favor of Plaintiff and against Defendants on each count of this Complaint.
- B. Order Defendants Eddie I, Eddie VI, and Eddie VII to cease and desist from disseminating or enforcing provisions in the Declarations and other documents pertaining to Noble's Pond that are: (1) contrary to state or federal law; (2) unreasonably confusing; and/or (3) inconsistent with Regal Builders' advertisements for the community.
- C. Order Defendant Regal Builders to cease and desist from advertising Noble's Pond in a manner that misrepresents or omits material facts about the community.

- D. Order Defendants Regal Builders, Eddie I, Eddie VI, Eddie VII, and Miller to provide prospective homebuyers with all disclosures concerning Noble's Pond required under DUCIOA and other applicable laws, including but not limited to a public offering statement.
- E. Order Defendants Galaxy Networks and County Propane of Delmarva to cease and desist from employing contracts that misrepresent or omit material facts about the services they provide.
- F. Reform the Declarations and other documents pertaining to Noble's Pond to remove provisions that are: (1) contrary to state or federal law; (2) unreasonably confusing; and/or (3) inconsistent with Regal Builders' advertisements for the community.
- G. Order Defendants Regal Builders, Eddie I, Eddie VI, Eddie VII, and Miller to allow telecommunications and propane fuel service providers other than Galaxy Networks and County Propane of Delmarva to provide services in Noble's Pond.
- H. Order Defendant Eddie V to register the Clubhouse, post the requisite bond, and pay all required fees pursuant to the HSR.
- I. Order Defendant Eddie V to provide Noble's Pond residents who use the Clubhouse with written contracts that comply with the HSR.

- J. Order Defendant Eddie V to stop collecting mandatory “Club Charges” from Noble’s Pond residents who do not use the Clubhouse.
- K. Issue a declaratory judgment clarifying the present and future rights and responsibilities of Noble’s Pond residents, Defendant Eddie V, Defendant Homeowners Association, and all other relevant parties with respect to the Clubhouse.
- L. Rescind the Sales Agreements of all Noble’s Pond residents who wish to move out of the community, and order Defendant Regal Builders to extend home/lot buyback packages to these residents based on the higher of original price or present value.
- M. Order Defendants to disgorge all profits obtained by means of CFA, UDTPA, CCA, and HSR violations.
- N. Order Defendants to provide Noble’s Pond residents with: (1) full and complete restitution with respect to all CCA, CFA, UDTPA, and HSR violations; and (2) treble damages with respect to all CCA and UDTPA violations.
- O. Order Defendants to pay: (1) civil penalties of \$10,000 per violation with respect to each CFA, UDTPA, CCA, and HSR violation; and (2) enhanced civil penalties of \$10,000 per violation for each CFA and

UDTPA violation committed against an elder person or a person with a disability.

- P. Order Defendants to pay attorney fees and investigative costs incurred by the State in connection with this matter.
- Q. Order Defendants to pay pre-judgment and post-judgment interest on all sums of money awarded to the State and to Noble's Pond residents in connection with this matter.
- R. Grant such other relief as the Court finds just and appropriate.

Dated: June 26, 2019

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ David Weinstein

David Weinstein (No. 6099)  
Michael Clarke (No. 6347)  
Deputy Attorneys General  
Delaware Department of Justice  
820 North French Street, Fifth Floor  
Wilmington, Delaware 19801  
(302) 577-8600  
*Counsel for Plaintiff*