STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2021-CP-10-05645
THE CHARLESTON SCHOOL OF LAW, LLC, a South Carolina limited liability company, Plaintiff, -vs- CITY OF CHARLESTON, a municipal corporation, and OMSHERA HOTEL GROUP, LLC, a North Carolina limited liability company, Defendants.	**ORDER GRANTING MOTION FOR JUDGMENT ON PLEADINGS**

This matter came before the Court on September 26, 2023, for a hearing involving Plaintiff The Charleston School of Law's ("CSOL") motion for judgment on the pleadings against Defendant City of Charleston ("City") pursuant to SCRCP 12(c). The motion seeks a partial judgment on the pleadings in favor of the CSOL and against the City as to:

> (1) the City's liability under the First, Second, and Third causes of action in the CSOL's Amended Complaint for (i) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Action for Damages; (ii) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Specific Performance; and (iii) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30, and
>
> (2) the City's affirmative defenses and/or counterclaims based on or asserting S.C. CODE ANN. § 5-7-260 as a defense or counterclaim.

Participating at the hearing were H. Brewton Hagood, Esquire, Daniel F. Blanchard, III, Esquire, and Mary Harriet Moore, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff; Brian L. Quisenberry, Esquire and Stephanie R. Sandifer, Esquire of Clement Rivers, LLP, as counsel for Defendant City; and Capers G. Barr, III, Esquire of Barr, Unger & McIntosh, LLC, as counsel for Defendant OmShera Hotel Group, LLC ("OmShera").

After careful consideration of the motions, pleadings, exhibits, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the motion for judgment on the pleadings should be GRANTED for the reasons stated herein.

STANDARD FOR MOTION

Rule 12(c) allows a party to move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay the trial." S.C. R. Civ. P. 12(c). "Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP." Ballard v. Admiral Ins. Co., No. 2019-000367, 2023 WL 4218123, at *5 (S.C. Ct. App. June 28, 2023). In deciding the motion, the court may consider the pleadings, exhibits attached thereto, and documents incorporated therein by reference. See S.C. R. CIV. PRO. 10(c); Carolina First Corp. v. Whittle, 343 S.C. 176, 190 n.7, 539 S.E.2d 402, 410 n.7 (Ct. App. 2000). The court also may consider other materials that are public records or are otherwise appropriate for the taking of judicial notice. See S.C. R. EVID. 201(f); Doe v. Bishop of Charleston, 407 S.C. 128, 135 n.2, 754 S.E.2d 494, 498 n.2 (2014).

"The standard is almost identical to the standard employed in considering a Rule 12(b)(6) motion 'with the key difference being that on a 12(c) motion, the court is to consider the answer as well as the complaint.'" Kissel v. Hess Corp., 2010 WL 2721964, at *1 (D.S.C. May 27, 2010). "When considering such motion, the court must regard all properly pleaded factual allegations as admitted." Ballard, 2023 WL 421812, at *5. While facts alleged in the pleadings are to be taken as true, the court need not adopt a party's legal conclusions based on those facts. Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 425, 559 S.E.2d 362, 364–65 (Ct. App. 2001).

A corollary is that "[i]f the allegations of a pleading 'are contradicted by documents made a part thereof, the document controls and the court need not accept as true the allegations of the [pleading].'" Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC, 127 F. Supp. 3d 156, 168

(S.D.N.Y. 2015) (quoting Sazerac Co. v. Falk, 861 F.Supp. 253, 257 (S.D.N.Y.1994)); accord Feick v. Fleener, 653 F.2d 69, 75 & n. 4 (2nd Cir.1981). "Thus, a motion for judgment on the pleadings 'can be particularly appropriate in breach of contract cases involving legal interpretations of the obligations of the parties.'" VoiceAge Corp. v. RealNetworks, Inc., 926 F.Supp.2d 524, 529 (S.D.N.Y.2013); accord Brown v. Theos, 338 S.C. 305, 313, 526 S.E.2d 232, 237 (Ct. App. 1999), aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001) ("Where the dispute is not as to the underlying facts but as to interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a 12(b)(6) motion.").

"A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). "It has been held that a judgment on the pleadings is allowable, not for lack of proof, but for lack of an issue; hence, it is proper where the pleadings entitled the party to judgment without proof, as where they disclose all the facts, or where the pleadings present no issue of fact or where the pleadings, under other circumstances, present an immaterial issue." Wooten v. Standard Life & Cas. Ins. Co., 239 S.C. 243, 249, 122 S.E.2d 637, 640 (1961).

FACTUAL AND PROCEDURAL BACKGROUND

City's Sale of Property to CSOL; 2005 Deed with Possibility of Reverter:

This action concerns a parcel of property situated at 431 Meeting Street ("Property"), which the City acquired from the U.S. Army Corps of Engineers for the purpose of selling it to the CSOL to operate a law school on the downtown peninsula. The City executed a quitclaim deed dated and recorded July 1, 2005, by which it conveyed ownership of the Property to the CSOL for a price of $875,000.00 ("2005 Deed"). See Amend. Compl. ¶ 15 & Exh. 2; City's Answer ¶ 15.

The CSOL paid $10,000.00 to the City and executed a promissory note in the principal amount of $865,000.00 with a maturity date of July 1, 2015 ("Note"), which was secured by a mortgage on the Property ("Mortgage"). See Amend. Compl. ¶ 20 & Exhs. 3 & 4; City's Answer ¶ 20.

The 2005 Deed includes an attachment labeled "Exhibit B – Possibility of Reverter and Restriction." See Amend. Compl. ¶ 15 & Exh. 2; City's Answer ¶ 15. Under the heading of "Possibility of Reverter," the attachment contains language creating a possibility of reverter ("POR") which states in part as follows:

> In the event that the property is not used solely for Law School Purposes at any point within the six (6) year period beginning as of the date this Deed is recorded in the RMC Office for Charleston County and in addition the permanent development construction to facilitate such usage is not commenced within six (6) years of the date this Deed is recorded in the RMC Office for Charleston County, all right title and interest to the Property shall automatically revert to the Grantor.

See Amend. Compl. ¶ 15 & Exh. 2; City's Answer ¶ 15.

City Council voted to specifically authorize the sale of the Property to the CSOL by virtue of Ordinance Number 2004-150 ("2004 Ordinance"). See Amend. Compl. ¶ 13 & Exh. 1; City's Answer ¶ 13. This ordinance approved the contract between the CSOL and the City. Indeed, the ordinance expressly incorporates into its terms and recites in full the Agreement of Purchase and Sale between the CSOL and City, thereby making the contract's terms part of the ordinance. Id.

Section 3 of the Agreement of Purchase and Sale, made part of the 2004 Ordinance, provides in part as follows:

> The Buyer [CSOL] shall be prohibited from selling or otherwise transferring the Property to a third-party or entity *without the Seller's [City's] prior written consent*, unless such sale or transfer is to facilitate an exchange of property by Buyer or other good faith accommodation with the owner of the Mid-Town Development, which is generally described as that certain block of land lying generally between Meeting, King, Wolfe and Spring Streets.

Id. (emphasis added). The 2005 Deed reiterates this language on "Exhibit B" attached thereto

under the heading of "Restriction." See Amend. Compl. ¶ 15 & Exh. 2 (Book J543/Page 039); City's Answer ¶ 15 (Grantee is "prohibited from selling or otherwise transferring the Property … to a third-party or entity without the Grantor's prior written consent ….").

By making the terms of the Agreement of Purchase and Sale part of the 2004 Ordinance, the ordinance contemplates the CSOL could sell the Property to any third party *with the City's written consent*. The 2005 Deed confirms this point. In sum, both the 2004 Ordinance and 2005 Deed specifically permit the CSOL to sell or transfer the Property to any third party with the City's written consent.

As explained below, that is precisely what happened in the instant case—*i.e.*, the City gave its written consent to the CSOL's sale of the Property to a third party (OmShera). In contracts referred to as the 2017 Modification Agreement and 2019 Modification Agreement, which the City Council approved by resolution, the City consented to the CSOL's sale of the Property to a third party provided the City receives a designated share of the sales proceeds.

The 2004 Ordinance further gave the City's Mayor full authority to act as follows:

> *The Mayor is hereby authorized to execute the necessary documents to enter into that certain Agreement of Purchase and Sale* between the City of Charleston and the Charleston School of Law for the property … *and to undertake and perform the transactions contemplated thereby*, said Agreement of Purchase and Sale being … attached hereto and incorporated by reference herein.

Id. (emphasis added). As a result, once the City gave its written consent to the CSOL's sale of the Property to a third party, the City ordinance authorizes the Mayor "to undertake and perform" the transactions contemplated by the Agreement of Purchase and Sale, which would include a deed or release of the POR so the CSOL can close on a sale of the Property to such third party.

To complete the CSOL's sale of the Property to a third party, the "Mayor is hereby authorized to execute the necessary documents ... to undertake and perform the transactions

contemplated thereby." This includes executing documents consenting to the CSOL's sale of the Property to a third party and releasing the POR. The Mayor, pursuant to the authority granted in the ordinance, has full authority to execute the necessary documents to facilitate the City's consent to the CSOL's sale or transfer of the Property to a third party (OmShera). Specifically, the Mayor was given the authority to release the POR to accomplish the sale.

2017 Modification of Note, Mortgage, and POR:

In 2017, the CSOL negotiated an agreement with the City allowing it to sell the Property to any third party. On July 20, 2017, following several extensions of the parties' agreements,[1] the City's Council unanimously approved a modification to the POR, which was memorialized in a written agreement executed by the City and the CSOL entitled "Agreement: 431 Meeting Street" ("2017 Modification Agreement"). See Amend. Compl. ¶ 24 & Exh. 8; City's Answer ¶ 24. This 2017 Modification Agreement allows the CSOL to sell or exchange the Property to any third party and, in return, the CSOL will share the sale proceeds with the City pursuant to a distribution formula, and the City will execute and file a quitclaim deed to make clear on the public record the POR is null, void, and of no further force or effect.[2]

This 2017 Modification Agreement, which the City's Council unanimously approved by

[1] By document entitled Modification of Promissory Note and dated November 16, 2009, the City extended the Note's maturity date to July 1, 2017 ("2009 Note Modification"). See Amend. Compl. ¶ 21 & Exh. 5; City's Answer ¶ 21. The City also made a corresponding modification to the Mortgage by virtue of a Mortgage Modification Agreement dated November 16, 2009 ("2009 Mortgage Modification"). See Amend. Compl. ¶ 22 & Exh. 6; City's Answer ¶ 22. By a document dated on its face as November 16, 2009, but not executed until March 25, 2010, the City extended the POR in the 2005 Deed from July 1, 2011 to July 1, 2017 ("2010 Extension"). See Amend. Compl. ¶ 23 & Exh. 7; City's Answer ¶ 23.

[2] As discussed below, the City and the CSOL also subsequently executed another agreement dated July 19, 2019, which the Mayor signed and the City Council unanimously approved, confirming the CSOL's ability to sell or exchange the Property to a third party, to divide the resulting proceeds between the CSOL and City pursuant to a distribution formula, and to eliminate the POR ("2019 Modification Agreement"). See Amend. Compl. ¶ 58 & Exh. 31; City's Answer ¶ 58.

resolution and the Mayor signed, significantly increases the monies the City is to receive from the CSOL. It ensures the City will receive a minimum of $1 million (in excess of the Note payoff) for the release of the POR if the Property is sold or exchanged to a third party. It further ensures the City will receive an even larger share of the proceeds if the Property is sold or exchanged for a price exceeding $7.46 million, which was the approximate amount for which a nearby property had recently been sold. See Amend. Compl. ¶¶ 25-27; City's Answer ¶¶ 25-27.

Section 2.1 of the 2017 Modification Agreement includes, *inter alia*, an agreement by the CSOL and City to have the Property appraised by a professional MAI appraiser (assuming no POR) and to allow for the CSOL to immediately market the Property for sale or exchange upon completion of the appraisal, with the City having the right to approve any real estate broker or agent employed by the CSOL. See Amend. Compl. ¶ 28; City's Answer ¶ 28. Section 3.1 states that if an offer meets or exceeds the appraised value of the Property, the CSOL shall have the right to accept the offer and close the transaction. See Amend. Compl. ¶ 29; City's Answer ¶¶ 29.

During the term of the 2017 Modification Agreement, Section 2.3.1 further specifically authorizes and permits the CSOL to sell or exchange of the Property to any third party upon the payment to the City of the greater of (a) the $865,000.00 principal amount of the Note plus an additional $1 million (a total of $1,865,000.00) or (b) 25% of the sales price (net of the real estate commission, appraisal costs, and deed stamps), with the remaining balance of the sale proceeds to be retained by or distributed to the CSOL. See Amend. Compl. ¶ 30; City's Answer ¶ 30. Section 2.3.1.3 expressly requires the City to satisfy the Note and Mortgage in the event of a sale of the Property during the term of the 2017 Modification Agreement and the payment to the City of the amount set forth above. Id.

Section 2.5 of the 2017 Modification Agreement provides that if the agreement's term expires before the Property is sold or exchanged, then the CSOL shall pay the principal and all accrued interest and unpaid interest on the Note. See Amend. Compl. ¶ 31; City's Answer ¶ 31. Section 2.5.1.2 also provides that if the CSOL transfers the Property after the term of 2017 Modification Agreement expires, then, at the closing of such transfer, the City will be paid a share of the transfer proceeds calculated as follows:

> [T]wenty-five percent (25%) of the portion of the sales price attributable to the land (but not the value of any improvements on the land), or twenty-five (25%) of the then-appraised value of land value of the Property pursuant to an appraisal dated within six months of closing (but not the value of any improvements) less (a) the amounts set forth in Section 2.5.1.1 [the real estate commission, appraisal costs, and deed stamps] and (b) Eight Hundred Sixty Five Thousand and No/100 Dollars ($865,000.00).

See Amend. Compl. ¶ 24 & Exh. 8 § 2.5.1.2; City's Answer ¶ 24. The remaining balance of the sale proceeds to be retained by or distributed to the CSOL. Id.

Section 2.6 of the 2017 Modification Agreement states that at the closing of any sale of the Property, the City shall execute and file a quitclaim deed (a) to delete, eliminate, and render null and void the POR contained in the 2005 Deed and (b) to acknowledge satisfaction of any and all rights or claims that the City has under the 2017 Modification Agreement. See Amend. Compl. ¶ 32; City's Answer ¶ 32. The maturity date for the CSOL's repayment of the principal indebtedness evidenced by the Note was extended to July 1, 2019, and the CSOL and City agreed to make corresponding modifications to the Mortgage and POR in the 2005 Deed. See Amend. Compl. ¶ 33; City's Answer ¶ 33.

2017 Appraisal and Listing Agreement for Sale of Property:

In accordance with the 2017 Modification Agreement, the CSOL retained the services of Charleston Appraisal Service, Inc. ("CAS"), a MAI appraiser, to conduct a professional appraisal of the Property. See Amend. Compl. ¶ 34; City's Answer ¶ 34. CAS provided a written appraisal

report with an "as of" date of August 14, 2017. See Amend. Compl. ¶ 35 & Exh. 9; City's Answer ¶ 35. The report states that the Property's fair market value was $10,759,000.00 as of the valuation date based on the assumption the Property's use would not be restricted by the POR in the 2005 Deed. Id. On September 26, 2017, the CSOL entered into a Listing Agreement with Clement, Crawford & Thornhill, Inc., professional real estate brokers, to sell the Property for an asking price of $12.5 million. See Amend. Compl. ¶ 36 & Exh. 10; City's Answer ¶ 36.

2018 Purchase Agreement with Vanderking Acquisition Co., LLC:

On March 29, 2018, the CSOL entered a Real Property Purchase Agreement with a potential third-party buyer, Vanderking Acquisition Co., LLC, for a sales price of $10,800,000.00 ("Vanderking Purchase Agreement"). See Amend. Compl. ¶ 37 & Exh. 11; City's Answer ¶ 37. The agreement disclosed the 2017 Modification Agreement between the CSOL and City. See Amend. Compl. ¶ 38; City's Answer ¶ 38. Section 29 of the Vanderking Purchase Agreement includes the CSOL's representations and warranties to Vanderking involving the 2017 Modification Agreement, including that the CSOL is in compliance with the agreement and has not received any notice of default thereunder. Id.

Section 29 of the Vanderking Purchase Agreement further states: "At Closing, a portion of the Purchase Price shall be paid to the City pursuant to the terms of the [2017 Modification Agreement], and [the CSOL] shall cause the City to comply with the terms of the [2017 Modification Agreement], including without limitation, Section 2.6 thereof." See Amend. Compl. ¶ 39; City's Answer ¶ 39. As stated above, Section 2.6 of the 2017 Modification Agreement provides that at the closing of the sale of the Property, the City shall execute and file a quitclaim deed (a) to delete, eliminate, and render null and void the POR contained in the 2005 Deed and (b)

to acknowledge satisfaction of any and all rights or claims that the City has under the 2017 Modification Agreement.

On May 14, 2018, the City's then-Corporation Counsel (Frances I. Cantwell, Esquire) addressed a letter to Ed Bell, as the CSOL's President, confirming on the City's behalf the contract between the CSOL and Vanderking to sell and purchase the Property for the sales price of $10,800,000.00 complied with the 2017 Modification Agreement. See Amend. Compl. ¶ 41 & Exh. 12; City's Answer ¶ 41. The letter states in part: "Since the Purchase Price exceeds the appraisal [of $10,759,000.00 by CAS], pursuant to Section 3.1 of the [2017 Modification Agreement], the [CSOL] has the right to close the transaction pursuant to the [2017 Modification Agreement]." The letter also states the City had reviewed the Vanderking Purchase Agreement and it "acknowledges that the representations and warranties of [the CSOL] in Section 29 concerning the [2017 Modification Agreement] are true and correct." Ms. Cantwell ended her letter with: "We look forward to the closing."

The closing of the sale to Vanderking ultimately did not occur. The Vanderking Purchase Agreement was not consummated and expired. See Amend. Compl. ¶ 42.

2018 Purchase Agreement with OmShera Hotel Group, LLC:

On November 26, 2018, the CSOL entered a new Purchase Agreement with OmShera Hotel Group, LLC, for an initial sales price of $12.5 million ("OmShera Purchase Agreement"). The price was later increased to $12.85 million. See Amend. Compl. ¶ 43 & Exhs. 13-29; City's Answer ¶ 43.

The OmShera Purchase Agreement likewise disclosed the 2017 Modification Agreement. See Amend. Compl. ¶ 44; City's Answer ¶ 44. Section 9.26 of the OmShera Purchase Agreement includes the CSOL's representations and warranties to OmShera involving the 2017 Modification

Agreement, including that the CSOL is in compliance with that agreement and has not received any notice of default thereunder. See Amend. Compl. Exh. 13 § 9.26. Section 9.26 further states: "At Closing, a portion of the Purchase Price shall be paid to the City pursuant to the terms of the [2017 Modification Agreement], and [the CSOL] shall cause the City to comply with the terms of the [2017 Modification Agreement], including without limitation, Section 2.6 thereof." Id. As noted above, Section 2.6 of the 2017 Modification Agreement provides that at the closing of the sale of the Property, the City shall execute and file a quitclaim deed (a) to delete, eliminate, and render null and void the POR contained in the 2005 Deed and (b) to acknowledge satisfaction of any and all rights or claims that the City has under the 2017 Modification Agreement. See Amend. Compl. Exh. 8 § 2.6.

On November 15, 2018, the City's then-Corporation Counsel (Susan Herdina, Esquire) addressed a letter to Mr. Bell confirming on the City's behalf that the OmShera Purchase Agreement for the initial sales price of $12.5 million complies with the 2017 Modification Agreement and that the CSOL has the right to close on the sale of the Property to OmShera. See Amend. Compl. ¶ 46 & Exh. 30; City's Answer ¶ 46. Ms. Herdina's letter states in part: "Since the Purchase Price meets the requirements set forth in the [2017 Modification Agreement], pursuant to Section 3.1 of the [2017 Modification Agreement], the [CSOL] has the right to close the transaction pursuant to the [2017 Modification Agreement]." She ended her letter with: "We look forward to the closing." The CSOL thereafter tendered a copy of Ms. Herdina's letter to Omshera, which then executed the OmShera Purchase Agreement dated November 26, 2018. See Amend. Compl. ¶ 47; City's Answer ¶ 47.

CSOL's 2019 Payment of Note and City's Satisfaction of Mortgage:

On April 29, 2019, Ms. Herdina addressed another letter to Mr. Bell stating the City was providing notice to the CSOL pursuant to Section 4 of the 2017 Modification Agreement that the City will not extend or renew the term of the 2017 Modification Agreement, which was set to expire on July 20, 2019. See Amend. Compl. ¶ 48 & Exh. 38; City's Answer ¶ 48. This letter states in part: "Further, pursuant to Section 2.5 [of the 2017 Modification Agreement], if the property is not sold or exchanged by July 20, 2019, please pay on that date the principal amount of the Note ($865,000.00) and all accrued and unpaid interest on the Note. Thereafter, if the Charleston School of Law transfers the Property, following the closing please transfer funds to the City according to the division of proceeds set out in Section 2.5.1 [of the 2017 Modification Agreement]."

The letter's reference to the "division of proceeds" refers to Section 2.5.1.2 of the 2017 Modification Agreement, which provides that if the CSOL transfers the Property after the term of 2017 Modification Agreement expires, then, at the closing of such transfer, the City will be paid a share of the transfer proceeds equaling:

> [T]wenty-five percent (25%) of the portion of the sales price attributable to the land (but not the value of any improvements on the land), or twenty-five (25%) of the then-appraised value of land value of the Property pursuant to an appraisal dated within six months of closing (but not the value of any improvements) less (a) the amounts set forth in Section 2.5.1.1 [the real estate commission, appraisal costs, and deed stamps] and (b) Eight Hundred Sixty Five Thousand and No/100 Dollars ($865,000.00).

See Amend. Compl. ¶¶ 24 & 50 & Exh. 8 § 2.5.1.2; City's Answer ¶¶ 24 & 50. The remaining balance of the sale proceeds to be retained by or distributed to the CSOL. Id.

On July 18, 2019, the CSOL paid the City the principal amount of the Note ($865,000.00) and all accrued and unpaid interest. See Amend. Compl. ¶ 51; City's Answer ¶ 51. The CSOL paid a total of $317,751.23 in interest to the City in addition to paying the principal amount of

$865,000.00. The Note has been paid in full by the CSOL and the Mortgage on the Property has been fully satisfied by the City. Id.

2019 Modification Agreement:

By virtue of a document dated July 19, 2019 ("2019 Modification Agreement"), the CSOL and City further modified the POR. See Amend. Compl. ¶ 58 & Exh. 31; City's Answer ¶ 58. This agreement was also approved unanimously by resolution of the City's Council. Id. It modified the POR in the 2005 Deed to conform that document to the terms and provisions of the 2017 Modification Agreement. It confirms or affirms the CSOL's ability to sell or exchange the Property, divide the proceeds of the sale between the CSOL and City pursuant to a distribution formula, and eliminate the POR in the 2005 Deed. Id.

In exchange for the City's release of the POR, the 2019 Modification Agreement provides the City is to be paid valuable consideration. See Amend. Compl. ¶ 60; City's Answer ¶ 60. Specifically, the 2019 Modification Agreement added a section to the POR stating that if the CSOL transfers the Property, either directly by deed, or indirectly (such as, without limitation, through a long term ground lease or sale or exchange at the corporate or entity level), then, at the closing of such transfer, the City will be paid a share of the transfer proceeds calculated as follows:

> [T]wenty-five percent (25%) of the portion of the sales price attributable to the land (but not the value of any improvements on the land), or if the transfer is an exchange, twenty-five (25%) of the then-appraised value of land value of the Property pursuant to an appraisal dated within six months of closing (but not the value of any improvements), but in either case, less (a) the amount of the real estate commission, the appraiser (if applicable), and deed stamps and (b) Eight Hundred Sixty Five Thousand and No/100 Dollars ($865,000.00).

See Amend. Compl. ¶ 58 & Exh. 31; City's Answer ¶ 58. The remaining balance of the sale proceeds to be retained by or distributed to the CSOL. Id.

The 2019 Modification Agreement also added another section to the POR as follows:

> At closing of any such sale or exchange and payment of the aforesaid amounts to the City, the City of Charleston will execute and file a quit-claim deed (a) to delete, eliminate and render null and void the Possibility of Reverter … as contained in [the 2005 Deed], and (b) to acknowledge satisfaction of any and all rights or claims the City of Charleston has under the [2017 Modification Agreement].

Id.

Under this language, the POR is rendered null and void and has been replaced with the obligation to divide the proceeds upon sale of the Property. If the Property is never sold, title remains in the CSO and does not revert to the City. The 2019 Modification Agreement was recorded with the Charleston County Register of Deeds on August 15, 2019, and is part of the chain of title for the Property. See Amend. Compl. ¶ 58 & Exh. 31; City's Answer ¶ 58.

CSOL's Payment to City of Share of OmShera's Earnest Money Deposit:

On March 31, 2020, OmShera paid a total of $700,000.00 in earnest money funds to the CSOL, with these funds to be non-refundable to OmShera and to be credited towards the purchase price at closing. See Amend. Compl. ¶ 52; City's Answer ¶ 52. On May 5, 2020, the CSOL paid $166,250.00 to the City to honor the CSOL's obligations under the 2017 Modification Agreement and 2019 Modification Agreement. See Amend. Compl. ¶ 53; City's Answer ¶ 53. This amount reflected 25% of the net proceeds ($700,000.00 - $35,000.00 real estate commission = $665,000.00 x .25 = $166,250.00) the CSOL had received thus far from OmShera.

The City did not object to the payment or the CSOL's calculation of the payment. The City accepted the $166,250.00 from the CSOL without objection or reservation of rights and has not returned or repaid any of the funds. See Amend. Compl. ¶¶ 55-56; City's Answer ¶¶ 55-56.

City's Refusals to Eliminate POR to Allow Closing of Sale of Property to OmShera:

The CSOL and OmShera performed due diligence towards an anticipated closing of the sale of the Property. See Amend. Compl. ¶ 62; City's Answer ¶ 62. The CSOL and OmShera have

since notified the City they desire and intend to close the sale of the Property pursuant to the OmShera Purchase Agreement and that, as part of such a closing, the CSOL intends to disburse and divide the sales proceeds to the CSOL and City in accordance with the 2017 Modification Agreement and 2019 Modification Agreement. See Amend. Compl. ¶ 63; City's Answer ¶ 63.

Despite the prior November 15, 2018 letter from the City's Corporation Counsel assuring the CSOL the OmShera Purchase Agreement "meets the requirements" of the 2017 Modification Agreement, the CSOL "has the right to close the transaction pursuant to the [2017 Modification Agreement]," and the City "look[s] forward to the closing" of the sale, the City has since refused to execute and deliver a quitclaim deed releasing the POR so the sale can close. See Amend. Compl. ¶¶ 46 & 84 & Exh. 30; City's Answer ¶¶ 46 & 84.

Commencement of this Action:

The CSOL commenced this action to enforce its contracts with the City so the sale of the Property to OmShera can close. On December 22, 2021, the CSOL filed an Amended Complaint stating causes of action as follows:

1. Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Action for Damages – as to the City,
2. Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance – as to the City,
3. Declaratory Judgment – as to all Defendants,
4. Estoppel--Equitable and Promissory Estoppel – as to the City,
5. Temporary, Preliminary, and Permanent Injunction – as to the City, and
6. Attorneys' Fees and Costs pursuant to S.C. CODE ANN. § 15-77-300.

The CSOL asserts the closing could have taken place and the net proceeds of $9,478,906.00 disbursed to the CSOL by February 16, 2021, if the City's actions had not thwarted the sale of the Property. The CSOL calculates that prejudgment interest totaling $2,147,361.75 has already accrued on the net proceeds as of September 26, 2023, pursuant to S.C. CODE ANN. § 34-31-20(A).

The City's Answer and Counterclaim:

As justification for its refusal to deliver the quitclaim deed and as a defense against the CSOL's claims, the City's Answer argues the 2017 Modification Agreement and 2019 Modification Agreement are "illegal and unenforceable" because the City's release of the POR assertedly requires authorization by an ordinance pursuant to S.C. CODE ANN. § 5-7-260. See City's Answer. Section 5-7-260 states in pertinent part as follows:

> In addition to other acts required by law to be done by ordinance, those acts of the municipal council shall be by ordinances which: . . .
>
> (6) Sell or lease or contract to sell or lease any lands of the municipality; and
> (7) Amend or repeal any ordinance described in items (1) through (6) above.
>
> In matters other than those referred to in this section council may act either by ordinance or resolution.

S.C. CODE ANN. § 5-7-260(6)-(7).

The City argues these sections mandate that its City Council must pass a second ordinance before the Mayor can execute a document releasing the POR in the 2005 Deed. The City argues that because its Council did not pass such an ordinance, the supreme court's decision in Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 417 S.E.2d 579 (1992), means the 2017 Modification Agreement and 2019 Modification Agreement (although approved by resolution of City Council and executed by the Mayor on the City's behalf) cannot be enforced and are illusory agreements, even despite the fact the City accepted $166,250.00 in payments from the CSOL under those very same agreements and has never returned or repaid those funds.

This argument predicated on § 5-7-260(6)-(7) is the linchpin of the City's refusal to deliver a quitclaim deed releasing the POR so the CSOL can close on the sale of its Property to OmShera and is the centerpiece of the City's defenses against the CSOL's claims in this suit. The City's Answer repeats sixty-five or more times the identical claim that the 2017 Modification Agreement

and 2019 Modification Agreement were "not approved by ordinance and [are] therefore illegal and unenforceable pursuant to S.C. Code Ann. § 5-7-260." See City's Answer pp. 1-47.

The CSOL's Motion for Judgment on Pleadings:

On November 7, 2022, the CSOL filed the instant Motion for Judgment on the Pleadings. The grounds for the motion are summarized as follows:

1. The Agreement of Purchase and Sale between the CSOL and the City relating to the Property was merged into the 2005 Deed, which extinguished any antecedent agreements between the CSOL and the City involving the Property by operation of law.

2. The agreements between the CSOL and City subsequent to the 2005 Deed render the POR in the 2005 Deed null, void, and of no further force or effect.

3. The POR in the 2005 Deed and the amendment, extension, modification, or release of such POR do not involve the sale or lease or contract to sell any lands of the municipality subject to the requirements of § 5-7-260 because the POR is not an estate in land and, as such, it can be amended, extended, modified, or released without the necessity of an ordinance or approval by ordinance.

4. The POR in the 2005 Deed and the amendment, extension, modification, or release of such POR do not involve the amendment or repeal of any ordinance described in § 5-7-260 and are not subject to the requirements of that section. The 2004 Ordinance incorporated into its terms and recited in full the terms of the Purchase and Sale Contract between the CSOL and the City, which became part of the ordinance and gave the City's Mayor full authority to "undertake and perform the transactions contemplated thereby." The transactions contemplated by the Purchase and Sale Contract, which was incorporated into and became part of the 2004 Ordinance, include the release of the POR.

5. The agreements between the CSOL and the City subsequent to the 2005 Deed involving the POR were not required to be accomplished or enacted by ordinance and did not require approval by ordinance pursuant to § 5-7-260. These agreements include the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement.

6. The 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement are not illegal or unenforceable pursuant to § 5-7-260; instead, they are legal, valid, binding, and enforceable obligations of the City.

ARGUMENT AND ANALYSIS

The CSOL's Amended Complaint and motion raise issues relating to the interpretation and effect of the parties' written contracts involving the POR, copies of which are attached as exhibits to the pleadings. When the case presents a question as to the construction of a written contract and the contract's language is clear and unambiguous, the question is not one of fact but one of law. Stanley Smith & Sons v. D.M.R. Inc., 307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992). "Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." Koontz v. Thomas, 333 S.C. 702, 511 S.E.2d 407, 410 (Ct. App. 1999).

The Court finds the parties' contracts are clear and unambiguous. The City's Answer does not dispute the authenticity or execution of these contracts. Rather, the City argues the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement, even though approved by resolution of City Council and executed by the Mayor, are nevertheless illegal, void, or unenforceable pursuant to S.C. CODE ANN. § 5-7-260(6) and (7) because the City's Council did not enact a second ordinance approving those agreements. The controlling issue for the Court to decide in the present motion is whether § 5-7-260(6) or (7) required these contracts to be accomplished or approved by City ordinance. Discovery is unnecessary to resolve this issue of law. It can be disposed of based on the parties' pleadings and the exhibits attached thereto.

As discussed herein, the Court finds and concludes the City's defenses based on § 5-7-260 fail as a matter of law (1) because the statute has no application to a POR, which is *not* an estate in land, and (2) even assuming *arguendo* the statute could be construed to apply to the POR, the

2004 Ordinance already authorizes the Mayor to execute the necessary documents to facilitate the CSOL's sale of the Property to a third party, which include a quitclaim deed releasing the POR.

For these reasons, the Court grants the CSOL's motion and renders a partial judgment in favor of the CSOL and against the City solely as to (1) the City's liability under the First, Second, and Third causes of action in the CSOL's Amended Complaint for (i) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Action for Damages; (ii) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Specific Performance; and (iii) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30, and (2) the City's affirmative defenses and/or counterclaims based on or asserting S.C. CODE ANN. § 5-7-260 as a defense or counterclaim. Section 5-7-260 has no applicability to the CSOL's claims in this case as a matter of law.

I. Section 5-7-260 Is Inapplicable to the POR Because it is Not an Estate in Land.

Sections 5-7-260(6) & (7) require a municipal ordinance for the City to "sell or lease or contract to sell or lease any lands of the municipality" or to "amend or repeal any ordinance" involving the sale or lease or contract to sell or lease any lands of the municipality. S.C. CODE ANN. § 5-7-260(6) & (7). However, as a matter of law, those sections are not applicable to the POR or the release of the POR.

"The possibility of reverter is the interest remaining in the grantor after conveying a fee simple conditional or a fee simple determinable." 27 S.C. JUR. Mortgages § 19 (2023) (citing Waller v. Waller, 220 S.C. 212, 66 S.E.2d 876 (1951) and Purvis v. McElveen, 234 S.C. 94, 106 S.E.2d 913 (1959)). For centuries, South Carolina's courts have consistently ruled that a POR is not an "estate in land" which can be conveyed, alienated, or devised—rather, it is a mere right of possibility. "The possibility of a reverter, after the termination of a fee conditional, being a mere possibility, is not an estate." Vaughn v. Lanford, 81 S.C. 282, 62 S.E. 316, 317 (1908). "The

possibility of reverter is a mere right, at most, and … it cannot be of grant, devise or inheritance." Adams v. Chaplin, 10 S.C. Eq. 265, 279 (S.C. App. L. & Eq. 1833). "The possibility of reverter is this mere floating right of possibility." Id.

In Purvis, the South Carolina Supreme Court discussed many older cases holding that "[t]he interest remaining in the grantor after he has conveyed land in fee simple determinable or conditional is a possibility of reverter." 234 S.C. at 99, 106 S.E.2d at 916. The Court concluded that this possibility of reverter "is not an estate, but a mere possibility of acquiring one." Id. "It cannot be the subject of devise or inheritance" Id. "Nor can it be conveyed." Id. This is because a conveyance of land in fee simple determinable or conditional leaves "nothing in the grantor that can be the subject of devise or inheritance." Id. at 100, 106 S.E.2d at 916. The Court further said:

> [T]he grantee's estate may continue forever, but is liable to termination upon the happening of an uncertain event. . . . But the inalienability of the possibility of reverter . . . results from the fact that the whole estate has passed from the grantor, and the only interest remaining in him, viz.: the possibility of reverter, is an interest too nebulous, under the common law concept, to be devised or conveyed.

Id. at 100-01, 106 S.E.2d at 916; see also Hull v. Hull, 24 S.C. Eq. 65, 78 (S.C. App. Eq. 1850) ("This reverter is not considered in law as an estate. It is too small and remote an interest to have that character impressed upon it. It is too remote and contingent to be valued. There is no appreciable interest left in the donor."); 27 S.C. JUR. Mortgages § 19 (A possibility of reverter "is neither a present nor future estate, but a mere possibility of acquiring one. It may not be the subject of inheritance or devise. South Carolina follows the common law rule that the possibility of reverter is not alienable, and therefore, may not be the subject of a mortgage." (footnotes omitted)).

Similarly, in Waller, the South Carolina Supreme Court held that "[t]he possibility of a reverter, after the termination of a fee conditional, being a mere possibility, is not an estate." 220 S.C. at 220-21, 66 S.E.2d at 881. The Court further said:

> It is neither a present nor a future right, but a mere possibility that a right may arise upon the happening of a contingency, which is not the subject of either devise or inheritance. This is because the grant or devise of a fee conditional passes the whole estate to the tenant in fee, leaving nothing in the grantor or devisor which can be the subject of devise or inheritance . . . .

Id. (quoting Blount v. Walker, 31 S.C. 13, 9 S.E. 804, 807 (1889)). "[H]e who has the possibility of reverter, has no present interest, either in law or in fact, and the presumption is, that he will never have any, the whole estate, according to the cases, is in the tenant in fee conditional." Deas v. Horry, 11 S.C. Eq. 244, 249 (S.C. App. L. & Eq. 1835); see Crawford v. Masters, 98 S.C. 458, 82 S.E. 793, 794 (1914) ("Such a right [possibility of reverter], according to the views before expressed, is not regarded as property; it is a mere possibility, analogous in some degree to an heir apparent's right of succession.").

These decisions have never been overruled and remain the law in South Carolina. In the more recent case of S.C. Dep't of Parks, Recreation, & Tourism v. Brookgreen Gardens, 309 S.C. 388, 424 S.E.2d 465 (1992), several grants of property had been made to Brookgreen Gardens, an eleemosynary corporation, in fee simple determinable with a possibility of reverter if the property was used for any purpose other than what was allowed in Brookgreen's corporate charter. Id. at 390, 424 S.E.2d at 466. Speaking for a unanimous Court, Justice Toal applied the holding in Purvis and recognized that "[t]he future interest which accompanies the fee simple determinable is the possibility of reverter." Id. at 392, 424 S.E.2d at 467 (citing Purvis). Justice Total noted that "[a] possibility of reverter has been held in South Carolina as non-transferable by will to a non heir, or by *inter vivos* alienation to a third party; however, it may be released to the party holding the fee simple determinable." Id. A "release [by the holder] serves to eliminate the condition on the fee simple determinable estate, rendering the possessory interest a fee simple absolute." Id. at 393, 424 S.E.2d at 467; see Burnett v. Snoddy, 199 S.C. 399, 19 S.E.2d 904, 907 (1942) (holding

possibility of reverter may be released to the tenant in fee conditional, so as to make his estate an absolute fee simple).

In the present case, it is undisputed that the City's 2004 Ordinance expressly authorized the sale of the Property to the CSOL. This sale or transfer of the Property was completed at the closing when the City executed and delivered the 2005 Deed to the CSOL. At that point, the City no longer had any estate in the Property because it was transferred to the CSOL. Rather, the City conveyed the whole of its fee interest to the CSOL and the CSOL held title to the Property in fee simple—*i.e.*, with a fee simple determinable interest. As the older cases explain, the 2005 Deed conveyed a "fee simple determinable" to the CSOL and the "whole estate was gone" from the City. Waller, 220 S.C. at 220, 66 S.E.2d at 876.

As owner of a fee simple determinable interest, the CSOL was the only party with a present interest in the Property and thus had full control over the Property. In contrast, the City retained a possibility of reverter, which is neither a present nor future estate, but a mere possibility of acquiring one in the future. All of the City's fee interest or estate passed to the CSOL in 2005, leaving nothing in the City which could be the subject of a sale or conveyance. The City merely held a POR, which does not constitute an estate in land and is an interest too nebulous to be conveyed. It follows that the City's release of the POR or its agreement to do the same do not involve a sale of municipal land. The agreements between the CSOL and City subsequent to the 2005 Deed did not involve a sale or lease or contract to sell or lease municipal land.

Because the POR is not land or an estate in land, the POR can be amended, modified, or released without the necessity of an ordinance or approval by ordinance. This is precisely what the 2017 Modification Agreement and 2019 Modification Agreement accomplished. By virtue of those agreements, the City agreed to allow the CSOL to sell the Property to a third party and to

release the POR in exchange for the City's receipt of a portion of the sales proceeds. These agreements do not involve the "[sale] or lease or contract to sell or lease any lands of the municipality" under S.C. CODE ANN. § 5-7-260(6) because the POR held by the City was not an estate in land. Those agreements also do not involve the amendment or repeal of any ordinance involving the sale or lease or contract to sell or lease any lands of the municipality covered by § 5-7-260(7). Because the POR is not land or an estate in land as a matter of law, the modification of the POR could not involve the amendment or repeal of any ordinance involving municipal land.

In sum, § 5-7-260(6) & (7) have no applicability to the 2017 Modification Agreement and 2019 Modification Agreement and it was unnecessary to have a municipal ordinance authorizing the City to execute those agreements. After 2005, because the City no longer had any estate in the Property, a new ordinance was not legally required for the City to release the POR or to enter into the 2017 Modification Agreement or 2019 Modification Agreement. As a matter of law, § 5-7-260 does not require that the agreements, amendments, and modifications between the CSOL and the City subsequent to the 2005 Deed (including the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement) be accomplished or enacted by ordinance or approved by ordinance.

Because an ordinance was unnecessary for the City to amend, modify, or release the POR, the Berkeley Elec. Co-op. case relied upon by the City is distinguishable from the present case. There, the court held a municipal ordinance was necessary for a town to enter a contract with an electric utility granting it a franchise to provide electrical services to customers located within the town's limits. Section 5-7-260(4) provides an ordinance is necessary for a municipality to "grant, renew or extend franchises." S.C. CODE ANN. § 5-7-260(4). However, Berkeley Elec. does not control this case because it is uncontroverted the 2005 Deed does not involve a contract to grant,

renew, or extend a franchise. Further, as explained above, § 5-7-260(6) & (7) are inapplicable because the release of the POR does not involve the City's land or the amendment or repeal of any ordinance involving the City's land. The POR is not land. Berkeley Elec. does not control here.

II. The 2004 Ordinance Satisfies the Requirements of § 5-7-260.

Alternatively, even assuming for argument's sake that § 5-7-260(6) & (7) could apply to the POR, the 2004 Ordinance authorized the Mayor "to execute the necessary documents … to undertake and perform the transactions contemplated thereby." See Amend. Compl. Exh. 1. The ordinance authorized the Mayor to complete the sale of the Property to CSOL pursuant to the terms in the Agreement of Purchase and Sale between the City and CSOL. The terms of that agreement authorized the Mayor to execute the necessary documents to facilitate the CSOL's transfer of the Property to a third party, which include a quitclaim deed or document releasing the POR.

The 2004 Ordinance gave the Mayor full authority to act as follows:

> *The Mayor is hereby authorized to execute the necessary documents to enter into that certain Agreement of Purchase and Sale* between the City of Charleston and the Charleston School of Law for the property … *and to undertake and perform the transactions contemplated thereby*, said Agreement of Purchase and Sale being … attached hereto and incorporated by reference herein.

Id. (emphasis added).

Section 3 of the Agreement of Purchase and Sale between the City and CSOL, which is attached to the ordinance and became a part thereof, further provides in part as follows:

> The Buyer [CSOL] shall be prohibited from selling or otherwise transferring the Property to a third-party or entity *without the Seller's [City's] prior written consent*, unless such sale or transfer is to facilitate an exchange of property by Buyer or other good faith accommodation with the owner of the Mid-Town Development, which is generally described as that certain block of land lying generally between Meeting, King, Wolfe and Spring Streets.

Id. (emphasis added). The 2005 Deed further reiterates this language on the "Exhibit B" attached thereto under the heading of "Restriction." See Amend. Compl. ¶ 15 & Exh. 2 (Book J543/Page

039); City's Answer ¶ 15 (Grantee is "prohibited from selling or otherwise transferring the Property … to a third-party or entity without the Grantor's prior written consent ….").

The 2004 Ordinance approved the City's contract with the CSOL under the terms of which the CSOL could sell the Property to a third-party *with the City's written consent*. As noted above, this same language appears again in the 2005 Deed. The 2004 Ordinance and 2005 Deed clearly contemplate and permit the CSOL to sell or transfer the Property to any third party with the City's written consent. That is precisely what happened in this case—*i.e.*, the City gave its written consent to the CSOL's sale of the Property to a third party. The 2004 Ordinance further authorized the Mayor "to undertake and perform" the transactions contemplated by the Agreement of Purchase and Sale, which would embrace the City's execution of a quitclaim deed or release of the POR so the CSOL can close its sale of the Property to such a third party with the City's consent.

Both the 2017 Modification Agreement and 2019 Modification Agreement contain the City's agreement or consent for the CSOL to sell the Property to a third party with the City to receive a share of the proceeds. See Amend. Compl. ¶¶ 24 & 58 & Exhs. 8 & 31; City's Answer ¶¶ 24 & 58. The City's Council approved both of these agreements by resolution and the Mayor signed them on the City's behalf. Id. Additionally, before the OmShera Purchase Agreement was completed, the CSOL submitted the proposed contract to the City for review and approval. On November 15, 2018, the City's Corporation Counsel confirmed in a letter sent to the CSOL's President that the CSOL's sale of the Property to OmShera complies with the CSOL's contracts with the City and that the CSOL has the right to close on the sale of the Property to OmShera. See Amend. Compl. ¶ 46 & Exh. 30; City's Answer ¶ 46. The City's letter "look[ed] forward to the closing." Id. In short, the uncontroverted terms of the agreements show the City consented in writing to the CSOL's sale of the Property to OmShera.

To complete the CSOL's sale of the Property to OmShera, the 2004 Ordinance says the "Mayor is hereby authorized to execute the necessary documents ... to undertake and perform the transactions contemplated thereby." This includes executing documents consenting to the CSOL's sale of the Property to OmShera and releasing the POR. The Mayor, pursuant to the authority granted in the 2004 Ordinance, has full authority to execute the necessary documents to facilitate the City's consent to the CSOL's transfer of the Property to OmShera. To accomplish such a transfer, the Mayor has authority to release the POR. The terms of the 2017 Modification Agreement and 2019 Modification Agreement, which the City Council approved and the Mayor signed, memorialize the City's consent to the CSOL's sale of the Property to OmShera as well as the City's agreement to release the POR so the CSOL can complete such this sale. The execution of these agreements is within the Mayor's authority granted by the 2004 Ordinance.

When City Council passes an ordinance authorizing the Mayor to undertake and perform a contract on the City's behalf, it is unnecessary to have another ordinance authorizing the Mayor's every step during the contract's performance. Because the 2004 Ordinance authorized the Mayor to execute documents releasing the POR, it was unnecessary to have yet a second ordinance authorizing the Mayor to execute those agreements or to amend the 2004 Ordinance for the City to perform its contractual obligations with the CSOL. The Court rejects the City's assertions that the 2004 Ordinance is ambiguous or that the Mayor's authority under the ordinance is a question of fact for the jury. To the contrary, these issues are matters of law for the Court to decide. See Anadarko E & P Co. LP v. Northwood Energy Corp., 970 F. Supp. 2d 764, 773 (S.D. Ohio 2013) (granting motion for judgment on the pleadings as to the liability portion of plaintiff's breach of contract and declaratory judgment claims and defendant's breach of contract counterclaim when claims involved matter of contract interpretation for court to determine).

III. The Terms of the 2017 Modification Agreement and 2019 Modification Agreement Render the POR Null and Void.

As a matter of law, the Agreement of Purchase and Sale between the CSOL and the City relating to the Property was merged into the 2005 Deed. The execution, delivery, and acceptance of the 2005 Deed extinguished any antecedent agreements between the CSOL and the City involving the Property by operation of law. Wilson v. Landstrom, 281 S.C. 260, 264, 315 S.E.2d 130, 132 (Ct. App. 1984); Charleston & W. C. Ry. Co. v. Joyce, 231 S.C. 493, 504, 99 S.E.2d 187, 192 (1957). Further, as explained above, § 5-7-260 does not require the agreements, amendments, and modifications between the CSOL and the City subsequent to the 2005 Deed involving the POR be accomplished or enacted by ordinance or approved by ordinance.

Because the 2017 Modification Agreement and 2019 Modification Agreement are not illegal, invalid, or unenforceable under S.C. CODE ANN. § 5-7-260(6) or (7), the POR, as modified and replaced by those agreements, is null, void, and of no further force or effect under the terms and provisions of those agreements. Accordingly, partial judgment in favor of the CSOL and against the City is appropriate as to liability only (1) under the First, Second, and Third causes of action in the CSOL's Amended Complaint for (i) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Action for Damages; (ii) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Specific Performance; and (iii) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30, and (2) the City's affirmative defenses and/or counterclaims based on or asserting S.C. CODE ANN. § 5-7-260 as a defense or counterclaim.

The Court is cognizant the City argued in its opposition memorandum and at the motion hearing that even if the 2017 Modification Agreement and 2019 Modification Agreement are not illegal or invalid under § 5-7-260(6) or (7), the City has raised additional affirmative defenses, including fraudulent inducement, that do not depend on the applicability of § 5-7-260(6) or (7)

and, which if the City proves, could defeat the CSOL's claims. See City's Opposition Memo. p.13; City's Answer ¶¶ 192-208.. This Order leaves unresolved for now the City's affirmative defenses to the extent they are *not* based on § 5-7-260(6) or (7). Those other affirmative defenses will be determined by future adjudication of the Court. Accordingly, for the forgoing reasons,

IT IS ORDERED that the Motion for Judgment on Pleadings filed by Plaintiff on November 7, 2022, is hereby GRANTED; and

FURTHER ORDERED that the possibility of reverter retained by the City in the 2005 Deed is not an "estate in land" or municipal land and, accordingly, agreements to modify or release the possibility of reverter are not required by S.C. CODE ANN. §5-7-260(6) or (7) to be authorized by an ordinance of the City's Council; and

FURTHER ORDERED that S.C. CODE ANN. § 5-7-260 does not require the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, or 2019 Modification Agreement to be accomplished or enacted by ordinance or approved by ordinance; and

FURTHER ORDERED that the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement are not illegal, invalid, void, or otherwise unenforceable by virtue of any failure to comply with S.C. CODE ANN. § 5-7-260(6) or (7); and

FURTHER ORDERED that the 2009 Note Modification, 2009 Mortgage Modification, 2010 Extension, 2017 Modification Agreement, and 2019 Modification Agreement are legal, valid, binding, and enforceable obligations of the City; and

FURTHER ORDERED that the possibility of reverter retained by the City in the 2005 Deed, as modified and replaced by the CSOL's obligation to share or split the proceeds of sale of

the subject Property with the City as set forth in the 2017 Modification Agreement and 2019 Modification Agreement, was rendered and is hereby declared to be null, void, and of no further force or effect; and

FURTHER ORDERED that, subject to the Court's future adjudication of the City's affirmative defenses that are not predicated on § 5-7-260(6) or (7), partial judgment on the pleadings in favor of the CSOL and against the City is hereby entered as to liability only (1) under the First, Second, and Third causes of action in the CSOL's Amended Complaint for (i) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Action for Damages; (ii) Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing—Specific Performance; and (iii) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30, and (2) the City's affirmative defenses and/or counterclaims based on or asserting S.C. CODE ANN. § 5-7-260 as a defense or counterclaim. To the extent the City's Answer & Counterclaim raises or asserts defenses or counterclaims that are predicated on § 5-7-260(6) or (7), those defenses or counterclaims are hereby dismissed with prejudice; and

AND IT IS SO ORDERED.

[*Electronic Signature Page to Follow*]

Charleston Common Pleas

Case Caption: Charleston School Of Law Llc The VS Charleston City Of , defendant, et al

Case Number: 2021CP1005645

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134