

Jun 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

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CASE NO. 20-CP-22-00930  
CASE NO. 20-CP-22-00931  
CASE NO. 20-CP-22-00932

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Sunset Lodge, LLC, .....Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie  
Preservation Trust, .....Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

M. Baron Stanton, .....Appellant,

v.

Town of Pawleys Island,.....Respondent.

---

RECORD ON APPEAL  
(Including Stipulation and Certificate of Counsel)  
Vol. I of III

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April 1, 2021 Form 4 order taking cases under advisement and directing both counsel to submit proposed orders on motions of Town to halt discovery and to dismiss as moot

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion for Protection from Discovery is TAKEN UNDER ADVISEMENT.  
Defendant's Motion to Dismiss is TAKEN UNDER ADVISEMENT.

Attorneys M. Baron Stanton and William Clayton Dillard, Jr. are to submit proposed orders within 14 days.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/01/2021 .

William Clayton Dillard, Jr. for Pawleys Island Town Of  
Norwood David DuRant, Sr. for Pawleys Island Town Of  
M. Baron Stanton for Sunset Lodge Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-04-01 15:25:38 page 3 of 3

April 22, 2021 Form 4 order granting motions of Town to halt discovery and to dismiss as moot



**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 20-CP-22-00932**

Sunset Lodge, LLC,

Town of Pawleys Island,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: William C. Dillard, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

Disposition Type (Check One)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐  
Statement of Judgment by the Court:

**ORDER INFORMATION**This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

The attached Order grants Defendant's Motion to Dismiss and Motion for Protective Order Regarding Discovery; additional matters, including any attorney fee petition, may precede final dismissal of the action.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

**FOR ELECTRONIC SIGNATURE**

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton, Esquire

P.O. Box 245

Columbia, SC 29202

William C. Dillard, Jr., Esquire

P.O. Box 96

Columbia, SC 29202\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)****ATTORNEY(S) FOR THE DEFENDANT(S)****CLERK OF COURT****Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.



Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-04-21 17:11:11 page 4 of 4

April 22, 2021 order granting motions of Town to halt discovery  
and to dismiss as moot

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) | <b>ORDER</b>                      |
| v.                      | ) | <b>OF DISMISSAL</b>               |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

|                       |                                      |
|-----------------------|--------------------------------------|
| PRESIDING JUDGE:      | The Honorable Benjamin H. Culbertson |
| DATE OF HEARING:      | April 1, 2021                        |
| TIME OF HEARING:      | 1:30 p.m.                            |
| PLACE OF HEARING:     | Georgetown County Judicial Center    |
| PLAINTIFF'S ATTORNEY: | M. Baron Stanton                     |
| DEFENDANTS' ATTORNEY: | William C. Dillard, Jr.              |
| COURT REPORTER:       | Cynthia Weaver                       |

This matter came before the Court upon the Defendant Town of Pawleys Island ("Town")'s Motion to Dismiss and Motion for Protective Order Regarding Discovery. Upon due consideration of the pleadings, the arguments and submissions of the parties, and the applicable legal authorities, the Court grants Town's motions in the respects set forth hereinbelow.

This matter is related to two sets of condemnation challenge actions involving three properties, sometimes referred to informally by counsel for the parties as the "first set" of cases and "second set" of cases. The following general chronology appears in the pleadings in the respective actions:

a. In or around June 2020, Town undertook to serve on the plaintiff a Condemnation Notice through which it sought to acquire a beach renourishment easement (referred to in the pleadings herein as the "Existing Notice"). (Amended Complaint, ¶ 81, et seq.).

b. On July 21, 2020, the plaintiff and two nearby property owners parties filed separate challenge actions (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0601; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0600; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602) (referred to in the pleadings herein as the “Existing Actions”). (Amended Complaint, ¶ 180, et seq.).

c. In or around October 2020, Town undertook to deliver to plaintiff’s counsel for service a separate, new Condemnation Notice through which it sought to acquire a similar beach renourishment easement (referred to in the pleadings herein as the “New Notice”). (Amended Complaint, ¶ 352, et seq.).

d. On November 12, 2020, the plaintiff and the same two nearby property owners filed new challenge actions, including this action, challenging the “New Notices” (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0931; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0932; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0930) (referred to in the pleadings herein as the “New Actions”).

e. On January 20, 2021, Judge Michael Nettles issued orders granting plaintiffs’ motions for summary judgment in the first set of cases. Amended Orders granting summary judgment were issued on April 5, 2021.

f. On February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in this and the other “New Actions” (i.e., the second set of cases). (Answer to Amended Complaint, Exh.A).

g. On March 5, 2021, Town filed its Motion to Dismiss and Motion for Protective Order in this action.

### **Conclusions of Law**

**1.) The plaintiff's sole cause of action is moot based on Town's abandonment of the subject condemnation notice and is dismissed without prejudice pursuant to Rule 12(c), SCRCP**

“Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor.” Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). As the Court of Appeals has further explained,

When considering such motion, the court must regard all properly pleaded factual allegations as admitted. . . . On review of the motion, the court may not consider matters outside the pleadings.

[“A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.[”]

Falk v. Sadler, 341 S.C. 281, 286–87, 533 S.E.2d 350, 353 (Ct. App. 2000) (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990)) (internal citation omitted).

In this action, treating all properly pleaded allegations as admitted and regarding any inference of law or conclusions of fact that may properly arise therefrom to be embraced therein, the single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered moot by Town's filing of the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. Plaintiff alleges on page 58, Paragraph 372 of the Amended Complaint that “[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant



challenge action after awarding litigation expenses to Plaintiff.” The S.C. Eminent Domain Procedure Act specifically contemplates the power of a condemnor to abandon a condemnation. *See, e.g.*, S.C. Code Ann. §§ 28-2-230(B), -510(C). The New Notice has now been formally abandoned and withdrawn. Any condemnation action the New Notice initiated has therefore been extinguished and warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470.

Accordingly, based on the pleadings and the single cause of action asserted, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings pursuant to Rule 12(c), SCRCPP.

“Mootness has been defined as follows: ‘A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief’.” Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (citing Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). “In the civil context, there are three general exceptions to the mootness doctrine.” Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. . . . Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. . . . Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id. (emphasis added).

In evaluating whether a moot issue is capable of repetition, yet evading review, “the action must be one which will truly evade review.” Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). “[A]n action that is capable of repetition does not necessarily evade review.”

Id. (citing Seabrook v. City of Folly Beach, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). Sloan involved an appeal of a trial court ruling that a Freedom of Information Act challenge to the defendant's refusal to produce certain records became moot when the records were produced. As the Sloan Court explained,

In Seabrook, the plaintiffs brought an action against the city alleging that the city imposed conditions on a residential development for which it had no authority. 337 S.C. at 304, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal this Court found that the issue was moot, and that although the scenario was capable of repetition, it did not evade review.

The instant case is analogous to Seabrook. Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.

Sloan at 27, 630 S.E.2d at 478. In other words, a matter susceptible to “evading review” is something which by its nature “usually becomes moot before it can be reviewed.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (citing S.C. Dep't of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990)).

As indicated in this analysis, South Carolina does not apply a “stringent” analysis of “voluntary cessation” of conduct as the plaintiff asserts is applied in federal appellate courts. See Plaintiff's Memo. in Opposition (discussing Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000)). The case of Jowers v. S.C. Dep't of Health & Env't Control, 423 S.C. 343, 815 S.E.2d 446 (2018), cited by plaintiff for the proposition that South Carolina follows federal mootness principles, is in fact a case involving separate doctrines of standing and ripeness. Instead, under South Carolina law, “[t]he utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

In the present action, any future attempt to condemn a similar easement would be inherently susceptible to judicial review and would invoke statutory attorney fee protections for the plaintiff. S.C. Code Ann. § 28-2-470 (“Proceedings to challenge condemnor's right to condemn”); *see also* S.C. Code Ann. § 28-2-510(A) and (C) (providing for landowner recovery of attorney fees in successful challenge actions and withdrawn condemnation actions). This is distinguishable from a wastewater treatment plant sporadically violating effluent limitations, Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000), or a challenge to “[s]hort-term student suspensions [which], by their very nature, are completed long before an appellate court can review the issues they implicate.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996).

Under the second exception to the mootness doctrine, this case and the related actions are discrete disputes involving three properties and do not give rise to any “imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis at 568, 549 S.E.2d at 596. The third exception to mootness doctrine contemplates an appellate situation in which, because “a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Id. As this matter is not on appeal, and does not involve review of any prior trial court decision, this exception is not relevant.

The Amended Complaint, in the prayer for relief, requests that “both the ‘Existing’ and the ‘New’ Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them.” For the reasons discussed above, this claim for relief is now moot as the New Notice has been withdrawn, and the plaintiff’s substantive objections underlying the request to quash the condemnation notice, relating to public necessity, “bad faith”, and similar issues, do not need to be addressed in this action. The pleading does not

contain a request for broad preclusive relief that would permanently bar the Town from any future similar condemnation action based on past “bad faith” or similar allegations. Without prejudice to the right of the plaintiff to later assert such a claim, the Court notes that no authority has been submitted for the proposition that a court has the power to grant that type of relief (with the exception of the theory of estoppel, as discussed below). As a general matter, municipalities are authorized to exercise the power of eminent domain in order to “become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose,” S.C. Code Ann. § 5-7-50.

Although the theory of estoppel was not included in the Amended Complaint, in connection with the subject motion counsel for the plaintiff did cite to an appellate opinion that found a golf course developer was entitled to an order estopping Santee Cooper from future attempts to condemn its property for an overhead high voltage transmission tower and line route. Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993) In Southern, the basis for estoppel was that the property owner had moved forward with plans to purchase and improve the property as a golf course, with expenses in excess of \$50 million, in reliance upon inaccurate representations from a Santee Cooper official that all powerline routes on the property would be buried. In this case, while the Amended Complaint includes allegations that the Town engaged in various types of procedural missteps, as well as “misrepresentation”, “bad faith”, and “fraud” in the process associated with the first and second condemnation notices, the Court is unable to see how the plaintiff’s factual allegations encompass the required elements of an estoppel claim, including the elements of reliance and prejudicial change in position.<sup>1</sup>

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<sup>1</sup> “The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the

Accordingly, the Amended Complaint and the single cause of action asserted in the pleading, a challenge to the “New Notice,” are held to be moot and are hereby dismissed. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

**2.) Any claims related to the “Existing Challenge Action” are dismissed pursuant to Rule 12(b)(8), SCRCP**

The Amended Complaint also includes extensive discussion of the allegations underlying the plaintiff’s separate prior “Existing Challenge Action.” (See *generally, e.g.*, Paragraphs 81 through 212). Paragraph 182 specifically incorporates by reference the allegations from the Amended Complaint in the plaintiff’s Existing Challenge Action. That current action is still pending between the same parties (subject to the recent summary judgment order, with a pending fee and/or cost petition by the plaintiff). Therefore, to the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to the separate prior condemnation notice and condemnation action, any such claim in this action is hereby dismissed without prejudice pursuant to SCRCP 12(b)(8) on the ground that another action is already pending between the same parties for the same claim.

**3.) The Court declines to grant plaintiff leave to conduct further discovery and then amend the pleadings to assert new claims for relief**

At the hearing on this motion, counsel for the plaintiff expressed an interest in further amending the pleadings at an undetermined date to assert some new claims for relief. With the

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party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. . . . As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.” S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993) (internal citations omitted).

exception of indicating a desire for an adjudication that the Town be forever barred from seeking a beach renourishment easement on the subject property, the plaintiff did not directly assert which specific causes of action or claims for relief would be raised in a Second Amended Pleading. Instead, counsel for the plaintiff generally referenced different types of claims, including claims for damages, that might be asserted after additional factual discovery.

The Court declines to grant plaintiff leave to amend the pleadings to assert new claims after conducting further discovery. A pleading “sets forth a cause of action, whether an original claim, counterclaim, [or] cross-claim[.]” Rule 8(a), SCRCPP. While, generally speaking, additional claims may be permitted in an amendment after discovery of facts in the course of litigating an initial, properly stated cause of action, there is no basis under the South Carolina Rules of Civil Procedure for open-ended discovery in the absence of even a single pending claim. Allowing the action to move forward in that manner would be unfairly prejudicial to the Town, which would be subjected to the time and expense of participating in discovery without even knowing which claims might be at issue.

To the extent that such discovery may be intended to obtain evidence pertaining to potential claims for which the plaintiff presently lacks sufficient information or belief to even assert allegations, this only underscores the fact that such claims are beyond the scope of the facts pleaded in the Amended Complaint. The plaintiff must complete any additional desired factual investigation and assert any additional claims outside of this now moot action.

**4.) The Town’s request for protection from discovery is granted**

Based on the Court’s holding that the single cause of action asserted in the Amended Complaint is dismissed as moot, the Court also grants the Town’s request for protection from any obligation to respond to or comply with plaintiff’s outstanding written discovery requests and deposition notice in this action. This relief is granted on the grounds that (a) as set forth above, the

challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary; (b) such discovery would therefore be unreasonably burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and (c) such protection is necessary to protect Town from unnecessary burden and expense, Rule 26(c), SCRCP. At this time, discovery is limited to any claim that may be submitted for attorney fees or costs.

### **Conclusion**

For the foregoing reasons, Town's Motion to Dismiss and Motion for Protective Order Regarding Discovery are hereby granted in the respects set forth hereinabove, and the Amended Complaint and the single cause of action it asserts, a condemnation challenge action pertaining to the October 2020 "New Notice," are hereby dismissed without prejudice. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

Any request for fees and/or costs should be presented by separate petition/motion in this action. For purposes of this Order and any ensuing petition for fees and/or costs, the Town has stipulated that:

- (a) Delivery of the Condemnation Notice referenced as the "New Notice" in the Amended Complaint constituted service of the same and commencement of a condemnation action within the meaning of the Eminent Domain Procedure Act, and Town's filing of the *Notice of Abandonment* constituted an abandonment and withdrawal of such Condemnation Notice and action; and
- (b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action or, in the alternative and upon written notice to Town, in the separately pending "Existing Condemnation Action" referenced in the Amended Complaint.

IT IS SO ORDERED.

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The Honorable Benjamin H. Culbertson  
Circuit Court Judge

\_\_\_\_\_, 2021

Georgetown, South Carolina





Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-04-21 17:12:30 page 12 of 12

June 3, 2021 Form 4 order denying reconsideration of halting  
discovery and dismissing as moot

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Consolidate is GRANTED with consent of all parties. This case is consolidated under case number 2020CP2200932.

Plaintiff's Motion to Reconsider is DENIED. The only relief sought by the plaintiff in the Amended Complaint is "that both the 'Existing' and the 'New' Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs." The "existing" and "new" condemnation notices have been abandoned by the defendant and the issue of litigation costs remains pending.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/03/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-06-03 12:26:21 page 3 of 3

July 12, 2022 Form 4 order denying reconsideration of Form 4  
which stated that first actions by Town were also abandoned

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Pursuant to the Notice of Appeal filed 7/2/2021, this Court's order dated 6/3/2021 is appealed to the South Carolina Court of Appeals. Therefore, this Court does not have jurisdiction over the "Defendant's Motion to Correct or Amend Error in June 3, 2021 Orders" filed 6/14/2021.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/12/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2022-07-12 10:27:50 page 3 of 3

December 22, 2022 Form 4 continuing hearing on amendment of  
Form 4 which marked case ended and of petition for expenses

**FORM 4**

**STATE OF SOUTH CAROLINA**  
**COUNTY OF** Georgetown  
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2020CP2200932

Sunset Lodge Llc  
 PLAINTIFF(S)

Pawleys Island Town Of  
 DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Motion to Aler/Amend/Correct/Reconsider Form 4 and Motion for Attorney Fees by Attorney Stanton are continued until the next available term.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/22/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2022-12-22 12:02:00 page 3 of 3

January 11, 2023 Form 4 continuing trial

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Case Continued to 4-17-23 Non Jury Term of Court.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/11/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-11 15:18:04 page 3 of 3

March 9, 2023 Form 4 granting reconsideration of Form 4 marking case ended

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Alter, amend, correct and/or reconsider Form 4 by attorney Stanton is GRANTED to the extent that the Form 4 filed 7/12/2022 is amended to "does not end case."

Motion for attorney fees by attorney Stanton is CONTINUED until 9:30 a.m. on 4/14/2023.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/09/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-03-09 12:32:04 page 3 of 3

April 14, 2023 Form 4 directing both counsel to submit proposed orders on fee petition

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Expenses Including Attorney's Fees is TAKEN UNDER ADVISEMENT.

Attorneys M. Baron Stanton and William Clayton Dillard, Jr. are to submit proposed orders within 14 days.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/14/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-04-14 11:01:43 page 3 of 3

April 17, 2023 Form 4 re trial roster noting case on appeal

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Case on Appeal

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/17/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-04-17 11:20:52 page 3 of 3

June 8, 2023 order granting fees

|                                             |   |                                               |
|---------------------------------------------|---|-----------------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS                  |
|                                             | ) | FIFTEENTH JUDICIAL CIRCUIT                    |
| COUNTY OF GEORGETOWN                        | ) | CIVIL ACTION NO. 2020CP2200932                |
|                                             | ) | <i>(Consolidation of below Civil Actions)</i> |
| Sunset Lodge, LLC,                          | ) |                                               |
|                                             | ) |                                               |
| Plaintiff,                                  | ) | 2020-CP-22-00932                              |
| v.                                          | ) |                                               |
|                                             | ) |                                               |
| Town of Pawleys Island,                     | ) |                                               |
|                                             | ) |                                               |
| Defendant.                                  | ) |                                               |
| _____                                       | ) |                                               |
| Franklin D. Beattie, as trustee of          | ) |                                               |
| The Franklin D. Beattie Preservation Trust, | ) |                                               |
|                                             | ) |                                               |
| Plaintiff,                                  | ) | 2020-CP-22-00931                              |
| v.                                          | ) |                                               |
|                                             | ) |                                               |
| Town of Pawleys Island,                     | ) |                                               |
|                                             | ) |                                               |
| Defendant.                                  | ) |                                               |
| _____                                       | ) |                                               |
| M. Baron Stanton,                           | ) |                                               |
|                                             | ) |                                               |
| Plaintiff,                                  | ) | 2020-CP-22-00930                              |
| v.                                          | ) |                                               |
|                                             | ) |                                               |
| Town of Pawleys Island,                     | ) |                                               |
|                                             | ) |                                               |
| Defendant.                                  | ) |                                               |

**ORDER GRANTING ATTORNEY FEES AND COSTS**

PRESIDING JUDGE.....Honorable Benjamin H. Culbertson  
DATE OF HEARING.....April 14, 2023  
PLAINTIFFS’ ATTORNEY.....M. Baron Stanton, Esquire  
DEFENDANT’S ATTORNEY.....William C. Dillard, Jr., Esquire  
COURT REPORTER.....WebEx

These consolidated cases (“this case”) are statutory condemnation challenge actions arising from efforts by the Defendant Town of Pawleys Island (“Town”) to condemn easements for beach re-nourishment. Now before the court is the plaintiffs’ motion for attorney fees and costs pursuant to Code of Laws of South Carolina 1976 §28-2-510(C)<sup>1</sup> following the Town’s withdrawal and abandonment of the underlying condemnation notices.

Prior to the Town serving condemnation notices in this case, previously filed attempts for condemnation filed by the Town were still pending (“first condemnation”). Condemnation notices in this case were served by the Town on the plaintiffs while the plaintiffs challenged the first condemnation. After the Court granted summary judgment in favor of the plaintiffs in the first condemnation, thus quashing that first set of condemnation notices, the Town formally abandoned this second set of condemnation notices.

By order filed April 22, 2021, this Court granted the Town’s Motion to Dismiss this action as moot with the parties’ stipulation that the plaintiffs could seek attorney’s fees. The plaintiffs opposed the Town’s Motion to Dismiss even though they sought to quash the condemnation notices in their Amended Complaint.<sup>2</sup>

The plaintiffs filed this motion for attorney fees and costs on October 21, 2022. In support of their motion, the plaintiffs submitted the affidavits of their attorney, which were updated and amended on March 8, 2023, and on June 8, 2023. The Town submitted a memorandum in opposition to the petitions as well as the affidavits of Town Attorney N. David Durant, Sr. and counsel of record William C. Dillard, Jr. In response, the plaintiffs filed a reply memorandum as

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<sup>1</sup> The Court denies the plaintiffs’ proffer of Code §15-77-300 as an additional grounds for attorney fees and costs in these condemnation actions.

<sup>2</sup> The plaintiffs have appealed the Court’s order granting the Town’s Motion to Dismiss. That appeal is still pending.



well as affidavits, previously filed in the first condemnation. Plaintiffs seek attorney fees in a combined total amount of \$53,694.00 based on proportionate amounts of a total of 282.6 hours of attorney time alleged to have been spent in this case. Plaintiffs also seek \$751.71 in litigation costs. Specifically, each plaintiff seeks a separate award of \$18,148.57, being one-third of the requested attorney fees and costs.

Based upon the affidavits and memorandums submitted by the parties, the arguments of counsel and the record of this case, I do hereby find the following salient facts and conclusions of law:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiffs' motion for attorney fees and costs was filed more than a year after they filed notice of appeal of the underlying dismissal. The Town, citing Rules 54(d) and 59(e), SCRCF, argues that the fee petition was not timely submitted and, therefore, not within the subject matter jurisdiction of the Court. However, the Court notes that the underlying dismissal did not prohibit the plaintiffs from seeking attorney fees and costs incurred prior to the dismissal. Therefore, the Court finds that, based on intervening procedural motions, the motion was timely and is within its subject matter jurisdiction.

Determination of an appropriate award is governed by the fee-shifting provision of the *South Carolina Eminent Domain Procedure Act* ("the Act"). Specifically, the Act includes the following provision for an award of attorney fees where a condemnation is abandoned:

If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.

S.C. Code Ann. § 28-2-510(C). The Act defines litigation expenses as "the **reasonable** fees, charges, disbursements and expenses **necessarily incurred** from and after service of the

Condemnation Notice, including, but not limited to, **reasonable** attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participating in condemnation actions...." (emphasis added).

Pursuant to the express terms of Code §28-2-510, a court is authorized to either award reasonable attorneys' fees to a prevailing landowner or deny the award in its entirety depending on the circumstances surrounding the litigation. If the court determines that an award is warranted, it must then consider a constellation of factors in calculating the amount of the award. Initially, the court must consider the itemized statement submitted by the landowner's attorney in support of the requested amount of litigation expenses. Once the court reviews this statement in conjunction with the circumstances surrounding the litigation, it may then determine a reasonable award of attorneys' fees. *S.C. Dept. of Transportation v. Revels*, 411 S.C. 1 766 S.E.2d 700 (2014).

The Court finds that the plaintiffs are entitled to an award of attorney fees and costs in this case. However, the Court finds that the fees and costs sought by the plaintiffs are unreasonable in relation to the nature, extent, duration, and difficulty of the litigation.

As conceded in the affidavit of plaintiffs' counsel, this case was handled in tandem with the issues, theories, pleadings, and other filings that were effectively identical with the first condemnation. The plaintiffs' prayer for relief in this case was for the Court to quash the condemnation notices and award the plaintiffs litigation costs. The plaintiffs filed their original Complaint in this case on November 12, 2020. The Town voluntarily withdrew the condemnation notices on February 10, 2021. Except for the plaintiffs' prayer for litigation costs, this case effectively ended with the filing of Notices of Abandonment on February 10, 2021, ninety-one days after the plaintiffs filed their original Complaint. During this time, the Complaint, the Answer, and the Amended Complaint were filed but, as documented in the affidavits of attorneys

Durant and Dillard, little else occurred; no motions were filed, no depositions were taken, no subpoenas were issued, no discovery records were exchanged, and, other than a set of interrogatories and a deposition notice served by the Plaintiffs, no other discovery was conducted. Extensive discussion in the Plaintiffs' fee affidavit of motions, discovery, depositions, and document production actually relates to the first condemnation that was already subject to a fee petition and award. Furthermore, much of the plaintiffs' factual and legal position came directly from the first condemnation that were pending at the time this case was filed. Accordingly, the necessary work for Plaintiffs' counsel in this case was greatly reduced because of work that had already been performed in the first condemnation.

Despite the record of this case having little activity before the Town willingly withdrew the condemnation notices, the plaintiffs seek attorney fees for 282.6 hours of legal services. Notably, while the plaintiffs' fee affidavit does not detail how specific entries of time were spent in this case, the daily time totals included in the final fee affidavit show that 221.3 hours are being claimed subsequent to February 10, 2021, when the Town abandoned its notice of condemnation. The Court also notes that the plaintiffs filed a notice of appeal of the order granting the Town's Motion to Dismiss on July 2, 2021. Hours of legal services incurred subsequent to February 10, 2021, could only relate to work on the motion currently before the Court or to matters arising from the plaintiffs' unsuccessful opposition to the motion to dismiss.

The Court finds that the reasonableness and necessity of the claimed attorney time is unsupported by the evidence. The claimed hours are excessive in light of the actual needs of this brief litigation, even factoring in reasonable time for the fee petition itself. Further, the record does not support the plaintiffs' assertion that the Town's approach to the litigation created some need or justification for plaintiffs' counsel to work the claimed number of hours.

The Court also finds that the plaintiffs are not entitled to recovery of fees and expenses associated with opposing the Town's motion to dismiss and ensuing procedural motions arising from the dismissal. This includes all work following the Town's filing of the Notice of Abandonment other than a reasonable amount of time for the motion currently before the Court.

Plaintiff counsel's hourly rate of \$190.00 in this matter is reasonable based upon his professional standing and experience. The circumstances of this case, involving the consolidation of three separate actions in which the essentially identical claims of three plaintiffs were pursued jointly, make it reasonable and in line with customary billing practices for the total fees to be divided in thirds to each of the three plaintiffs. The Court finds reasonable that the attorney fee award be handled in the same way, with each plaintiff being entitled to one-third of the total reasonable fee for the combined litigation.

The Court finds that the reasonable amount of attorney time necessary for the plaintiffs in this case is 57.5 hours devoted to this case prior to the Town's abandonment of this condemnation and an additional 8 hours for preparation and prosecution of this motion for fees and costs for a total of 65.5 hours. At \$190.00 per hour, I find that the plaintiffs are entitled to a total award of \$12,445.00 in attorney fees.

The Court further finds that the plaintiffs' request for expenses overstates the amount that was reasonably and necessarily incurred in this case. Specifically, the claims for mileage for travel to the motion to dismiss hearing (\$52.05), filing fees for the motion to reconsider (\$31.74 x 3), and filing fee for the motion to correct Form 4 (\$31.74) all relate to the plaintiffs' unsuccessful efforts to avoid dismissal and continue discovery. The plaintiffs are entitled to recover their filing fees (\$180.32 x 3) and consolidated fee petition filing fee (\$31.74), for total expenses of \$572.70.

**CONCLUSION**

The Court finds that the plaintiffs are entitled to a total award of \$13,017.70 in attorney fees and costs. Divided equally between the plaintiffs, the Court finds that each plaintiff is entitled to an award of attorney fees and litigation costs in the amount of \$4,339.23.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the plaintiffs' Motion for Attorney Fees and Litigation Costs is GRANTED; it is further

ORDERED, that the plaintiff Sunset Lodge, LLC, is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23; it is further

ORDERED, that the plaintiff Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23; it is further

ORDERED, that the plaintiff M. Baron Stanton is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23.

AND IT IS SO ORDERED.



## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Attorney Fees

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-06-08 15:39:12 page 8 of 8

June 8, 2023 Form 4 entering judgments for fees

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-22-00932

Sunset Lodge, LLC; Franklin D. Beattie, as trustee of  
The Franklin D. Beattie Preservation Trust; and  
M. Baron Stanton, PLAINTIFF(S)

Town of Pawleys Island

DEFENDANT(S)

Submitted by: William C. Dillard, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This order applies to the cases consolidated in C/A 2020-CP-22-0932 from the cases numbered 2020-CP-22-0930, -0931, and -0932.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Sunset Lodge, LLC                                                                                         | Town of Pawleys Island                   | \$ 4,339.23                                                 |
| Franklin D. Beattie, as trustee of The<br>Franklin D. Beattie Preservation<br>Trust                       | Town of Pawleys Island                   | \$ 4,339.23                                                 |
| M. Baron Stanton                                                                                          | Town of Pawleys Island                   | \$ 4,339.23                                                 |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                             |



|  |
|--|
|  |
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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Judge Code

\_\_\_\_\_  
Date

### For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
M. Baron Stanton, Esquire

\_\_\_\_\_  
P.O. Box 245

\_\_\_\_\_  
Columbia, SC 29202

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
William C. Dillard, Jr., Esquire

\_\_\_\_\_  
P.O. Box 96

\_\_\_\_\_  
Columbia, SC 29202

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** WebEx

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

### ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

|  |
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## Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Form 4

Resident Circuit Court Judge, 15th Judicial Circuit

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-06-08 15:40:33 page 3 of 3

June 28, 2023 Form 4 denying reconsideration of amount of fee  
award

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Georgetown  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc  
PLAINTIFF(S)

Pawleys Island Town Of  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Plaintiff Landowners' Motion To Reconsider Fee Award To Landowners, Amended Plaintiff Landowners' Motion To Reconsider Fee Award To Landowners and Second Amended Plaintiff Landowners' Motion To Reconsider Fee Award To Landowners are DENIED.

These motions are decided on the contents of Plaintiff Landowners' motions without oral arguments.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/28/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Georgetown Common Pleas

**Case Caption:** Sunset Lodge Llc VS Pawleys Island Town Of

**Case Number:** 2020CP2200932

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-06-28 12:40:49 page 3 of 3

[The April 5, 2021 order of Judge Nettles in Challenge I re-entering January 20, 2021 24-page order granting Landowner summary judgment, with exception of adding a footnote is accessible under the “other papers” header as Exhibit D to the October 21, 2022 fee petition.]

[October 16, 2020 Town condemnation notice to Sunset is included once as Exhibit A to Exhibit 1 (December 6, 2020 affidavit of papers first served) to the amended complaint.]



November 12, 2020 Landowner summons and complaint, with Exhibit A, the amended complaint in the prior challenges to the prior condemnation attempts

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS)     |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-_____ |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | SUMMONS                           |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
| _____                   | ) |                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

**TO: THE ABOVE NAMED DEFENDANT: YOU ARE SUMMONED AND REQUIRED**

to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer upon the undersigned at P. O. Box 245, Columbia, SC 29202 (1230 Richland Street, 29201), within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
Stanton Law Offices, P.A.  
PO Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
Attorney for Sunset Lodge, LLC

11/12/20

|                         |   |                                                   |
|-------------------------|---|---------------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS)                     |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-_____                 |
|                         | ) |                                                   |
| Sunset Lodge, LLC,      | ) |                                                   |
|                         | ) | COMPLAINT                                         |
| Plaintiff,              | ) | (Challenge of Authority to Condemn and Challenge  |
|                         | ) | to Subsequent Condemnation Notice Delivered       |
| v.                      | ) | Without Leave of Court While Challenge to Earlier |
|                         | ) | Notices is Still Pending)                         |
| Town of Pawleys Island, | ) |                                                   |
|                         | ) | (Nonjury)                                         |
| Defendant.              | ) |                                                   |
|                         | ) |                                                   |
| _____                   | ) |                                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

Plaintiff alleges as follows and requests the relief thereafter prayed for:

1. Plaintiff is an individual citizen of South Carolina who owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.
2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.
3. On July 21, 2020, Plaintiff commenced an action against the Town in which Plaintiff challenged on numerous grounds, the right of the Town to condemn a certain interest in real property on Pawleys Island at the address aforestated.

4. Attached as Exhibit A is the Amended Complaint in that action, Case 2020-CP-22-00602 (the “Existing Challenge Action”).

5. All of its allegations are incorporated herein.

6. The Existing Challenge Action, by law, stays any and all further acts and actions in condemnation proceedings which were commenced by the Town by serving a condemnation notice on Plaintiff.

7. The Existing Challenge Action is still pending.

8. While the Existing Challenge Action was still pending, and all condemnation proceedings under the previously served notice (the “Existing Notice”) were stayed, the Town Council held a public meeting, live-streamed, on October 12, 2020.

9. On the agenda was public comment, and consideration of a resolution concerning condemnation.

10. As alleged in the Existing Challenge Action, the Town’s attempt to condemn under the Existing Notice suffers from numerous incurable defects depriving the Town of the power to condemn what it seeks to condemn. These include, but are not limited to (1) failing to get, before commencing proceedings, authorization of Town Council to condemn anything other than an easement “basically, simply to put sand on the beach,” as opposed to the easement the Town thereafter actually pursued, which, instead, was one granting public access to substantial portions (if not all) of the owner’s property, empowering the Town or the federal government to thereafter “operate a public beach” on substantial portions (if not all) of the owner’s property, empowering the Town or the federal government to limit the owner’s access to broadly and vaguely described portions of the owner’s property, empowering the Town or the federal government to destroy the owner’s improvements on portions (or all) of the owner’s property,

etc.; (2) failing to have the appraiser, prior to commencing proceedings, put a value on what the Town actually seeks to condemn, rather than on some fictional interest in property which produces a different appraisal value; (3) failing to offer to pay the landowner the value of the correct interest in property so appraised, rather than the value of a fictional interest in property based on oral representations of the Town Administrator; (4) failing to provide the appraisal to the landowner before serving the notice which commenced the proceedings, as opposed to providing the appraisal only after serving the notice; (5) failing to negotiate in good faith for purchase of the interest in property sought, at the price indicated by the appraisal of the correct interest in property, so that during the statutory time for offer and negotiation, the landowner, would have an appraisal, at the condemnor's expense, of the correct thing, and could either knowingly and knowledgeably accept a fair price for the right thing, or knowingly and knowledgeably point out the defects before being sued; and (6) failing to seek to condemn only what is reasonably needed, which in this case, for example, does not include a blanket grant of public access 24/7/365 up to a few feet from the owner's house and door, including now private decks, steps, patios, etc.

11. At the meeting, just as it failed to do in the public May 18, 2020 Town Council meeting, the Council never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire, never once discussed any of the objecting three property owner's concerns with the terms, never once discussed any balancing of the harm to the property owner against any legitimate needs for a concrete, legitimate, existing project, if any, and never once discussed any of the true circumstances of the property owners' efforts to cooperate with the Town or the misrepresentations of Town officials.

12. Instead, the Town Council recognized, simply on the say-so of the Town Attorney, that the resolution, which included attached exhibits designated “A,” “B,” and “C,” needed only further “tweaking” in terms of defining public use.

13. The Town Council then conditionally approved the incomplete resolution, then abdicated its decision-making duties as a body completely, and then attempted to delegate these nondelegable duties to a private later decision of only the mayor and Town Administrator, who is not a Council member, without a quorum and without further action in a transparent public meeting as required by law.

14. After the October 12, 2020, public, meeting, the “Town Council,” in the above described fashion, privately, revised and issued a document (the “Private Resolution”).

15. The map which is part of Exhibit C of the Private Resolution was swapped out for a different one than the one in the proposed resolution on record for the public Council Meeting.

16. Upon information and belief, the Private Resolution, including its three exhibits, was never publicly debated or voted on or publicized for comment.

17. The Private Resolution falsely stated that the proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits “A,” “B” and “C” were “previously proposed to” and previously “sent” to the three property owners respectively affected thereby.

18. None of the documents represented in Exhibits “A,” “B,” and “C” of the Private Resolution were previously proposed to Plaintiff or the other two property owners.

19. The Private Resolution is fraudulent in the above respect, among possible others, and is part of the continuing series of bumbles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

20. None of the documents represented in Exhibits “A,” “B,” and “C” of the Private Resolution were previously sent to Plaintiff or the other two property owners.

21. The Private Resolution, in keeping with the alleged “say anything” modus operandi of the Town, is fraudulent in the above respect, among possible others, and is part of the continuing series of bungles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

22. The Private Resolution also states, “the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment,” thus falsely implying that the thereafterdescribed proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits “A,” “B” and “C,” and which were stated to have been previously “proposed” and “sent,” were the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020.

23. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits “A,” “B” and “C,” were not, as implied by the Private Resolution, the subjects of the Existing Notices served months earlier, in June 2020.

24. The proposed easements originally served as part of the Existing Notices are not the same as the easements attached to the Private Resolution.

25. The Private Resolution is fraudulent in the above respect, among possible others, and is part of the continuing series of bungles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

26. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits “A,” “B” and “C” (the “Revised Easements”) are different from the

proposed agreements in the Existing Notices because, among other things (such as moving the PEL in one), the Revised Easements alter the description of the interest in property sought to be acquired, by adding a 9-line footnote.

27. The highly unusual footnote discusses only the Town's ostensible perception or ostensible understanding of one of the words used in the Existing Notice.

28. The footnote addresses the second occurrence of the word, "public."

29. The footnote strangely states only that the word "should" be defined to mean certain confusingly stated things for purposes of this proposed formal, perpetual title document, instead of stating that the word is defined to mean these confused things, and states this under various unconfirmed arcane conditions and legal circumstances of questionable applicability. This tepid preface and the ensuing gobbledygook is an apparent attempt to add a provision the Town can later sell to the Corps of Engineers as meaningless and can simultaneously sell to duped property owners as meaningful.

30. The footnote thus provides what can only be described as a bizarre nonsensical conveyancing passage either somehow thought to make things confusing enough to "water down" the easement, or to partially ameliorate the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be bungling, to be sloppy, to be unnecessary, to be overreaching, to be without authority, and to be a horrible cloud and blight on title now imposed in an apparent act of municipal treachery.

31. To wit, the footnote in its entirety states:

"Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of



plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

(Absence of closing quotation marks in original.)

32. The footnote does not define at all what is being granted. The footnote instead unnecessarily injects an untested legal argument from unknown sources as to what exists in the absence of the grant expressly stated in the proposed easement. The document grants “public use and access.” Even under its errant approach, the footnote is silent as to what “should” be the definition of “public use” when, as here, the Town does not “retain” an easement by virtue of continuous public use by the public. The footnote then states that reference to the plat attached to the proposed deed of easement does not create an “implied easement” for “unrestricted” public access, when the printed language of the proposed deed of easement, without reference to the plat, expressly grants complete, unqualified, perpetual, public access. The footnote then states that uses by the public are “limited to the uses set forth” in “the terms of the easement document,” but the easement document does not describe any particular, limited, uses by the public. The document describes the public’s uses as “public use and access” in general, with no limitation whatsoever. The footnote does not state anywhere that the public’s access is limited to the purpose of showing up with shovels to assist in distributing sand pumped from offshore. If this were the limited purpose, it would be a simple matter to state that the public are granted access for the purpose of assisting in the renourishment work and associated work. However, the Town is afraid to do it, because the Corps of Engineers makes no such pretense in any of its publications elsewhere and would reject such clarity. The whole footnote is a ridiculous ruse of providing a confusing and illusory piece of verbiage the Town may hope to sell to the Corps as meaningless and ineffectual to limit public access to the owner’s private property in any way.

This is the same Town and Council which will simultaneously tell its constituent owners it has helped them by limiting the scope of an easement they have already granted.

33. Following the October 12, 2020 Town Council meeting and the subsequent revision of the resolution which was supposed to be considered publicly there, while the Existing Challenge Action was still pending and all condemnation proceedings under the Existing Notice were stayed, the Town then “issued” a new condemnation notice (the “New Notice”).

34. The Town Attorney formally delivered and presented this New Notice to Plaintiff’s counsel.

35. The New Notice is similar to the Existing Notice, but among other possible differences, the New Notice attempts, without leave of court, to alter the Existing Notice by adding the aforescribed 9-line footnote in the description of the property sought to be acquired.

36. The New Notice is falsely dated June 9, 2020.

37. It is dated the same as the Existing Notice, but upon information and belief, did not exist on that date and was not prepared until after the October 12, 2020 Town Council meeting.

38. The New Notice is fraudulent in the above respect, and is an attempt, like other aforescribed activities, to create a false public record and a morass of official-looking paperwork to obscure the delicts and derelictions of the various Town actors involved; the New Notice is part of the continuing series of bumbles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

39. Plaintiff’s counsel pointed out to the Town Attorney in writing that the caption of the New Notice was the same as the caption of the Existing Notice (neither yet having a case

number) and obviously was not the caption of the existing challenge action, and that the New Notice therefore did not purport to be a proposed filing or operative document in the existing challenge action.

40. Plaintiff's counsel pointed out that the existing challenge action stays all further proceedings under the existing condemnation notice, precluding any amendment until the existing challenge has been assessed.

41. Plaintiff's counsel pointed out that, even in the absence of a stay, the Eminent Domain Procedure Act makes no provision for the condemnor's unilateral "amendment" of the scope of the property description in the condemnation notice or a "do-over" of conditions precedent which the notice states were done, but which were not.

42. In the context of the overall required exclusive procedure, no such amendment is possible.

43. Under the EDPA, when served, the notice commences condemnation proceedings of a specifically identified interest in property, which, in turn, are predicated on the appraisal and the negotiations for that specific interest in property having already occurred, which, in turn, are based on there first having been an appropriate description of the interest in property sought to be acquired.

44. Obviously, the description of the property interest also cannot be composed without a full and complete discussion and weighing by the condemning authority and a knowing and untainted approval of it.

45. The root of many of the Town's present frauds and the past ones is that the Town Administrator and some others insist on pretending that provisions in the proposed easements are not in the proposed easements. The Town has carried on this pretense in selling the easements to

other property owners, covering up the matter afterwards, misrepresenting to the public, the objecting landowner's positions, and even in having the wrong interest in property appraised, and then trying to condemn something entirely more onerous. The Town now takes it a step further, wanting other owners to think that the Town, as a mere municipality, can change the legal effect of past and present executed conveyances by local legislative act and even that the language of a proposed grant by one (or three) landowners can somehow change the legal effect of past executed conveyances by others. It is preposterous. It will not work.

46. Plaintiff's counsel asked what the procedural purpose and status of the New Notice is intended to be, but time has not afforded a response; yet, without ever withdrawing the Existing Notice, the Town has simply bucked all law and procedure and has attempted to sue Plaintiff yet again in a new proceeding and shoehorn in an attempted cure to obvious defects raised in the Existing Challenge Action without acknowledging them in the Existing Challenge Action, all in spite of the existing statutory stay.

47. The New Notice violates Rule 12(b)(8), SCRCP (regarding commencing another action on the same subject when another action is already pending) and principles of subject matter jurisdiction and judicial economy and management, in that the Existing Notice already commenced proceedings on the same subject matter. The Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant additional challenge action after awarding litigation expenses to Plaintiff.

48. If the New Notice is not so quashed, the Court should declare the Existing Notice and the proceedings commenced by it abandoned by Defendant, and award Plaintiff the litigation costs incurred by Plaintiff in the Existing Challenge Action in causing the Town to thus admit it had no right to pursue condemnation under the Existing Notice, for, among other apparent

reasons, lack of power because of noncompliance with the Eminent Domain Procedure Act, lack of authorization from Town Council, seeking more than was reasonably necessary, failing to even consider what was reasonably necessary in light of the real burdens imposed, and being misled on the facts and the law, if not participating in a bad faith fraud and sham.

49. The Town has issued a backdated and amended notice without calling it one, and has formally presented it to Plaintiff in freestanding fashion, and the terms of the document announce an intent to proceed with a new condemnation and a deadline to make a challenge to same.

50. This is that challenge.

WHEREFORE, Plaintiff prays that both the “Existing” and the “New” Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

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*Attorney for Sunset Lodge, LLC*

11/12/20

|                         |   |                                              |
|-------------------------|---|----------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS                 |
|                         | ) |                                              |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00600            |
|                         | ) |                                              |
| Sunset lodge, LLC,      | ) | AMENDED                                      |
|                         | ) | COMPLAINT                                    |
| Plaintiff,              | ) | (Challenge of Authority to Condemn and In    |
|                         | ) | the Alternative, for Other Remedies)         |
| v.                      | ) |                                              |
|                         | ) | (Nonjury, except as to possible cause of     |
| Town of Pawleys Island, | ) | action arising in the alternative, for which |
|                         | ) | jury trial is demanded, so as not to be      |
| Defendant.              | ) | waived)                                      |
|                         | ) |                                              |
|                         | ) |                                              |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously served, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

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in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

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(The South Carolina Eminent Domain Procedure Act is the “exclusive procedure” for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of “shall” and “must,” and the Town’s failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRCP and other applicable authorities.)

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF .....59

(If, despite the Town’s prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

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(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

PRELIMINARY STATEMENT

Plaintiff brings this action pursuant to S.C. Code Ann. § 28-2-470 and the common law to challenge the Town of Pawley’s Island’s attempt to condemn an easement on Plaintiff’s oceanfront land which is improved with a private residence.

There being no project requiring an easement, acquisition is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited. The scope of the proposed acquisition is also broader than is necessary to accommodate any legitimate project and need for the easement, if there were any project and need. Procedural deficiencies, deliberate vagueness



and confusion in the documents served by the Town, and the Town's noncompliance with law also require a remedy of dismissal of its condemnation attempt, or at minimum, correction. All of the foregoing facts are more than a little imbued with, if not the Town's fraudulent acts, its bad faith and abuse of discretion. These matters are set forth with more particularity herein.

There is no project for which the proposed acquisition is necessary, because the Town rejected the project for which the acquisition was originally proposed, and elected to complete, and did complete, a larger, substitute, project, requiring no easements, before the Town ever attempted the threatened condemnation. Consequently, the condemnation attempt should be dismissed as a matter of law.

The "sand placement" easement the Town nevertheless seeks to acquire has always been overbroad and unnecessary for any renourishment project, whether past, present or hypothetical.

Among the serious problems with the easement that the Town now seeks to acquire is an unpublished issue the Town has tried for over a year to conceal, ignore, obscure or misrepresent. A term contained in a block of text the Town says was required by the Corps of Engineers when a previous project was proposed by the Corps of Engineers, which was similar to the project recently completed by the Town, dictates that the owner signing the document does not merely grant permission to deposit sand on the owner's property, but grants public access to the owner's property, and more. There is no demonstrated legal justification or authority for such a despotic third-party exaction.

The good faith of three property owners including Plaintiff is demonstrated by the fact that over a year ago, all three separately offered signed easements to the Town. These were offered for the now moot, unperformed, Corps of Engineers beach renourishment project. In response to the needs which the Town had actually officially stated for the now moot project,

these owners offered, and in some cases, recorded, signed easements, which were more than sufficient for such stated needs.

These purposes stated by the Town were placement and maintenance of sand on the beach and on part of the owner's property. The three owners fully complied.

The Corps of Engineers project was later rejected by the Town with no possibility of resurrection because the Town completed its own larger project instead of the Corps project. In doing so, the Town officially, expressly, determined that the requested easements were "not necessary."

The bad faith or abuse of discretion of the Town is demonstrated by Town Council and its agents never disclosing that these owners had signed and proffered easements.

In bad faith, Town Council and its agents shamed and defamed the owners, and instead presented the matter publicly – in statements to the newspaper, and in official, broadcasted, deliberations -- as if these owners would not sign "an easement," which the Town consistently represented as being essentially for the limited purpose of sand placement on the beach, including the owner's adjacent private property.

The bad faith or abuse of discretion of the Town is further demonstrated by the fact that not one single Town Council member has publicly acknowledged even reading the subject easements proposed by the Town. The scope of the proposed acquisition is a major issue.

Not one single Town Council member acknowledges knowing, or even asking, what it was in the proposed easements the owners objected to, much less, why they objected. These issues are not contained in a single deliberation by Town Council.

Instead, the Town Council was either misled that the owners had outright declined to sign an easement of any kind allowing sand placement on their property, or Town Council knew the

contrary and itself misled the public that the owners had declined to give any easement at all. The Town Council was accordingly also either misled about the contents and scope of the proposed document, or Town Council knew the contents and scope and owner concerns, pretended lack of such knowledge, and made no consideration of such matters.

In either case, deliberation concerning the excessive, unnecessary and illegally “required” exactions in the document was completely omitted. The Town not only made no factual conclusions at all on these factors it should by law have considered, but also had no evidentiary support for any facts it did consider, and proceeded under errors of law on which Town Council was uninformed or misinformed. Town Council’s decision making process was, accordingly, if not in bad faith, an abuse of discretion.

These considerations are eclipsed, of course, by the Town already deciding that the easements are categorically “not necessary.” If the easements are not necessary, it is per se bad faith and abuse of discretion to condemn something totally unnecessary, and condemnation cannot be allowed at all.

Returning to the fact that there is no still pending project at all for which the easements are now necessary, the Town may now assert the condemnation is now necessary for some other, future, hypothetical renourishment “project” of the Corps. The condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town’s own calculations, most probably unnecessary for as much as twenty-two years, and that even if a project arises then, the Corps cannot be relied upon, and Corps involvement is speculative.

To say that condemnation is necessary under a legally questionable after-the-fact scheme under which the Corps does some followup to the completed \$14.8 million dollar Town Project

by planting some “beach grass” and maybe putting up sand fence, is fiction. In any event, proceeding on this premise is not even an attempt by the Town to determine whether the scope of the proposed acquisition and the injury to the owner exceeds what is necessary for the mischaracterized “project.” At minimum, this is an abuse of discretion.

To state that using “beach grass” and sand fence to fictionally self-label the actually Town-completed project as “a completed Army Corps project” provides an “insurance policy” for which condemnation is necessary, is insufficient and is facially incorrect. Condemnation is not provided for a supposed “insurance policy,” instead of for a public project, and the Town thus admits the lack of necessity to condemn for any actual public project. Even the thin purpose of “insurance” is plainly inaccurate, which becomes more apparent when the Town explains on May 18, 2020 that -- more in the nature of a lottery ticket than an insurance policy -- “down the road, if money ever does become available, or if the Corps can get it,” the unpredictable and unreliable Corps may be able to use it or work out what will at that time still be unclear financial sharing.

The Town’s bad faith and abuse of discretion in attempting to condemn property for this “purpose” is all the more apparent when the Town admits on May 18, 2020 that it never would have even asked for easements for such a purpose two years earlier because of its speculative nature, but that, now, after having completed all desired renourishment without the Corps, the Town still has about 100 easements it had obtained back when a prospect of a Corps project existed. These were easements collected through the misrepresentations described herein and in no way justify condemnation to get more, just to play some odds.

In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has still been sought through knowing, intentional

misrepresentation, lack of honesty in fact, spite (e.g., requiring things previously acknowledged to be unnecessary, requiring things not required of others, etc.), caprice, arbitrariness, and illegality (e.g., including third party exactions based only on secretive bureaucratic whim), and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it (e.g., that the owner will have the same rights after acquisition of the easement as before, that the easement is for no more than putting sand on the beach, etc.).

In no way could it be successfully contended that the “project” (which is nonexistent) incorporating the easement which is professed to be necessary is designed in a way to enable sufficient public benefit while resulting in the least private injury.

The bad faith continues in that the easement is also being sought through bad faith noncompliance with statutes and procedural rules, which also obfuscates what is being sought. By serving condemnation notices, the Town began attempts to condemn without providing an appraisal at the time required by the exclusive, statutory procedure. The Town , falsely certified in the formal notice (which serves as the operative court pleading) that an appraisal had been timely provided. Contrary to statutory procedure, the Town provided conflicting information about the scope of the easement the Town seeks to acquire. This conflicting information took the form of either (in two notices) completely omitting from the notice, “an appropriate legal description of the interest to be taken,” or (in one of the three notices) sending subsequent documents contradicting the description given, so as to indicate that the easement sought was now even broader than as described in the actual condemnation notice.

Yet, despite its prior errant actions and misleading statements having been repeatedly called politely to its attention over the course of the recent year, the Town continued to act in bad faith, in keeping with its year-long practice of (i) misinforming the public (including other owners, neighbors and others in the small community), (ii) needlessly publicizing personal and private information, (iii) defaming the owners (and now disparaging their property), and (iv) depriving the owners of timely and accurate information. In this vein, after unlawfully delaying and withholding the hereinafterdescribed flawed appraisals from the owners until after serving the flawed and incomplete condemnation notices, the Town, upon information and belief, provided the flawed appraisals of the owners' specific properties (or the conclusions therein) to the newspaper for July 16, 2020 publication. When, after polite demand, the owners did receive the appraisals, the appraisals revealed, among other things, the not-reported fact that the proposed easement documents themselves had never been provided to the appraiser, whose task was to determine the loss in value and other damage caused by the imposition of such easements.

In the Condemnation Notice served upon Plaintiff, the Town does not describe the scope of the easement at all. The Town only states that it seeks to condemn "an easement for public purpose," describes Plaintiff's property (the entire lot, as well as an additional described part), and attaches a map showing the geographical area of the easement (which conflicts with the earlier statement that the entire lot is "subject to the condemnation notice"). Without the name given to the attached map, the easement description in the Condemnation Notice would not even indicate the general type of project the easement is for. The purpose of an easement, rather than acquisition of complete fee simple title, is to acquire only the limited right to occupy the subject land in a certain specified way or perform only certain specified activities on the subject land. The Condemnation Notice does not specify at all, what powers and activities are included in the

easement sought, i.e., the notice does not say the easement allows construction, piling of spoil material, public access, limiting access including that of the owner, allowing Town “operation” of a public beach, restriction of walkover structures, removal of Plaintiff’s property in the area, or anything else. A later paragraph alleging the “public purpose” of the easement limits it to being for “the Condemnor’s beach nourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.” A separate, unincorporated document was simply sent with the Notice, with no explanation, and was not part of it. This unexplained document is also incomplete, missing the “Exhibit A” it states is attached to it. Plaintiff is not required to guess or decide for itself what the Town must mean to include in the drastic measure of condemning property.

Despite its voluntary participation in providing “information” to the paper for July 16, 2020 publication, upon information and belief, as of July 19, 2020, the Town also has failed to respond as legally required – or respond at all -- to a request under the Freedom of Information Act, pertaining to, among other things, the contents of easements accepted from others, and the bona fides of communications with the Corps. (Such failure continues as of July 31, 2020.) All these facts constitute “fraud, bad faith or abuse of discretion,” and the Town’s contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

In the further alternative that the Town later shows in good faith, any actual necessity for any easement at all across Plaintiff’s land and improvements, it is still necessary to first limit any condemnation to what is actually reasonably necessary to the “project” (which is nonexistent), causing the least private injury necessary. Whatever the result of that exercise, it is also

necessary to clearly define the easement being sought, including its limitations and consequences, so that it and the damage it would cause can be actually properly valued.

To do so requires correction of the Town's persisting legal error as to not only the nature of the easement that is sought, but also the lack of basis, or legal or practical need, for the easement attributes the Town either recklessly or deliberately attempts to include, and as to the consequences of Plaintiff granting the easement or the Town taking the easement.

Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and orderly procedure for assessing value, including knowing exactly what is or is not proposed to be valued and what is or is not proposed to be taken.

In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

#### PARTIES, PEOPLE, AND FACTUAL BACKGROUND

1. Plaintiff is a limited liability company organized under the laws of the state of South Carolina, which owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.

2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.



3. The Town purports to be governed by a council form of government, requiring a mayor and four council members.

4. This action concerns proposed easements formerly proposed for a prospective project which did not occur. That project was followed by a different project, which has now been completed. The now proposed easements are not for an actual, concrete, prospective proposed project. These easements, sometimes hereinafter referred to as the “Public Access Easements,” are, in reality, for, among other things, completely speculative, putative future construction and installation activities on Plaintiff’s land and improvements, putative future deposit on Plaintiff’s land and improvements of large volumes of dredged ocean spoil material, ongoing, perpetual broad ability of the Town to restrict the owner’s access to and use of the owner’s own land and improvements, open-ended perpetual public access to the owner’s land and improvements, and broad, ambiguous powers of the Town itself, as opposed to the public, to engage in endeavors on the owner’s land including “operating a public beach.”

5. Brian Henry is an individual owning an interest in property on Pawleys, but upon information and belief, owns no property in the area of the island in which owners are requested to execute the Public Access Easements. Henry owns, lives at least part of the time at, and may have previously resided at, property outside the Town of Pawleys Island elsewhere in Georgetown County, but in running for mayor, swore to reside on the Island at a seasonal inn in which he has an interest, within the Town of Pawleys Island. Henry acts as mayor. Henry was acting as mayor on Town Council at the time of its unanimous vote to condemn Plaintiff’s property, and at the time of the Town serving the Notice of Condemnation.

6. Henry, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Henry, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

7. Ashley Carter is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, Carter owns and has owned alternative residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but has sworn to reside on the Island in order to run for and hold office in the Town. Carter is a real estate salesman affiliated with Pawleys Island Realty. Carter was on Town Council at the time of his, Henry's and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

8. Carter, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Carter, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately,

presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

9. Sarah Zimmerman is an individual owning an interest in property on Pawleys, but upon information and belief, none for which the owner is requested to execute the Public Access Easements. Zimmerman is a real estate saleswoman affiliated with RE/MAX Beach & Golf, which upon information and belief is actually Beach and Golf Properties of the Carolinas, LLC. Zimmerman was on Town Council at the time of her, Henry's, Carter's, and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

10. Zimmerman, upon information and belief, has at least a primary school education, speaks English as her native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of her own statements or those of others in which she concurs by word or action. Upon information and belief, Zimmerman, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, falsely presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

11. Guerry Green is an individual owning an interest in property offered for rent on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, since approximately 2013

or before, Green has owned residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but swore to reside on the Island in order to run for office in the Town. Green is a principal of a companies located in Georgetown County known as Screen Tight and GreenCore Materials. Green was on Town Council at the time of his, Henry's, Carter's, Zimmerman's, and the other member's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

12. Green, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Green, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

13. Lawrence "Rocky" Holliday is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Holliday was on Town Council at the time of his, Henry's, Carter's, Green's, and Zimmerman's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

14. Holliday, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Holliday, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

15. Ryan Fabbri is an individual, upon information and belief, not owning an interest in property on Pawleys. Nor does Fabbri live on the Island. Fabbri is a hired administrator of the Town. Fabbri is Town Administrator of the Town and reports to Town Council. Fabbri has worked directly with an engineering company and a contractor for the completed Town renourishment project which the Town decided did not require easements, has advised Town Council concerning the now completed project and other matters, has, with Town consent, made public and private presentations of the Town's promises and intentions regarding the project and its effects on property owners, has liaised with the United States Army Corps of Engineers ("USACE" or the Corps) on the earlier, later abandoned, possibility of USACE doing the now completed project instead of the Town, has upon information and belief, provided information and directives to the Town Attorney on the details, nature and requirements for potential and actual renourishment projects, has dealt with property owners and given legal advice in requesting and obtaining easements for earlier purposes of the possibility of USACE performing the now Town-completed project, and has performed other administrative and, it appears, executive, functions for the Town. Fabbri was present at and participated in the Town Council

meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was the direct contact of the Town for the Town Attorney at the time of the Town serving the Notice of Condemnation.

16. Fabbri, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Fabbri, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's and other parties' objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

17. David Durant is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Durant is a hired Town Attorney of the Town. Durant, upon information and belief, lives in the Town of Surfside Beach. Durant was present as Town Attorney at and participated in the Town Council meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was Town Attorney at the time of the Town serving the Notice of Condemnation.

18. Durant has a postgraduate degree, and therefore at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon

information and belief, Durant, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's and other parties' early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

19. Gladys Oranga is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Oranga is a paralegal employed in Surfside Beach by and acting for the Town Attorney of the Town of Pawleys. Upon information and belief, Oranga has at least a primary school education, speaks English, and is able to read, write and understand English in spoken and written form.

20. After the Town sent a packet of loose leaf papers including a Condemnation Notice (but no appraisal), Oranga,, upon information and belief, confirmed in writing to another owner that the easement the Town wished to make an offer for and negotiate for would have different terms and a map attached to it (without amendment of the condemnation notice to that owner) which was materially different (being more disadvantageous to the owner) from the terms and map attached to the condemnation notice served on that owner. Upon information and belief, the new terms and map to be attached to the offer had previously been agreed by the Town to require and include more than was necessary for the contemplated "project," and had thus previously been agreed by the Town to be revised in a less onerous manner.

21. Plaintiff's property is on the southernmost mile of Pawleys Island (sometimes hereinafter "the south end") and is bounded on the east by the mean high water mark of the Atlantic Ocean.

22. The mean high water mark is not an actual mark on the beach itself.

23. The mean high water mark is an average measurement defining a potentially moving boundary line of the property owned by Plaintiff, extending the area of Plaintiff's fee simple title so that it always remains oceanfront.

24. Under the deeds from which Plaintiff's title derives, if the beach builds up or erodes or the ocean recedes or rises, in such a manner that the mean high water mark does not move, Plaintiff's eastern property boundary does not move.

25. Under the deeds from which Plaintiff's title derives, if the beach builds up or the ocean recedes in such a manner that the mean high water mark moves eastward, Plaintiff's eastern property boundary also moves eastward, so that it always remains oceanfront.

26. Since the 1950s or before, Plaintiff's land has been taxed on the basis of an area extending forty-nine (49') feet more or less oceanward of the current oceanwardmost (easternmost) part of Plaintiff's home on the premises constructed in the 1950s, this easternmost part being stairs providing access to the home. This area extends fifty-six (56') feet more or less oceanward of the location of the current most eastern main pilings of the structure of Plaintiff's home, which was constructed on the land in the 1950s.

27. The mean high water mark in the proposed Public Access Easements which are the subject of this action is shown in the foregoing approximate locations relative to the above-mentioned features of the structure.

28. The original and current construction of the house of Plaintiff is two stories.



29. Sometime before 2008, the Town began consideration of attempting to artificially build up the natural beach on the Island through excavation, dredging or other available or permitted means, and depositing large volumes of the dirt, sand, mud, shells, rocks or other spoil materials on the beach, which materials would be certified as ecologically and structurally compatible “sand.” (This general process is hereinafter referred to as “nourishing” the beach or, to use a slight misnomer, “renourishing” the beach.)

30. Beach “nourishment” has its pitfalls and detractors. Complaints include mudballs, rock, shells and dark, dirty sand virtually replacing beautiful white-sand beaches and the feeling of something like sharp aggregate underfoot when attempting to wade or swim. A walk on the beach then produces not sandy, but dirty, feet, and brings not just sand, but rock and dirt onto decks and porches and into the house. The effect is worse when children, or adults, dig, turning up dark sediment, and coming in with dirt under their fingernails. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

31. Complaints also include an altered foreshore, resulting in a steeper, if not cliff-like, descent of the beach and surf bottom into the water at the immediate shore, resulting in waves breaking immediately at shore and slamming into the steeply rising bottom just a few feet from the end of water, strong undertows and rip currents. These features have generated observations and complaints in North Carolina and other places ranging from making surf walking and “beach sitting” less convenient, less scenic and less pleasant (“We were like cows on a hillside [(like mythic Sidehill Dodgers)]”), to causing increased cervical injuries to surfers, creating drowning hazards for toddlers and others, causing poorer surfing and swimming conditions, creating an impediment to sea turtle reproduction, and posing a danger to already

living sea turtles. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

32. Complaints also include “sand” deposits exterminating entire existing populations of coquina clams and molecrabs (“sand fleas,” but not the type that fly) in the shallow surf, which provide food to some shorebirds and marine organisms.

33. Larger complaints include obstruction of view, in the case of construction of artificial dunes. Also included are physical limitation of beach access and a longer distance to the water from beachfront homes, and large scale geological and ecological consequences (e.g., silting and clogging of inlets and creeks) from removing large volumes of “sand” from one place, and putting it in another where it has not previously existed, only to find out later the magnitude of the unintended consequences of its removal, deposit, or later migration or overwash elsewhere. Other projects which can be performed without renourishment, but which are sometimes performed after a renourishment project, may include planting of vegetation and installation of structures such as sand fence, and these projects, too, are not without drawbacks or cause for weighing, if not apprehension. Complaints or problems may include installed sand fence being of low utility or completely ineffectual based on contraindicated site conditions, while endangering nesting animals such as sea turtles, becoming debris on the beach or in the water when dislodged, presenting injurious sharp features (e.g., cut wire and nails) for humans and animals, altering bird and other animal habitat or blocking use or access. Complaints or problems with unthinking – or thinking --introduction of invasive non-native species of plants include those pertaining to *Vitex rotundiflora* (“beach vitex”) which was heavily promoted by coastal authorities in South Carolina in the 1980s, but which has become the subject of a complete eradication campaign by the same authorities after the plant choked out other dune-

building plants, failed to contribute to significant dune building or preservation, and contributed to the entanglement and deaths of hatchling sea turtles. The high-dune-building propensities of non-native *Ammophila arenaria* (European beach grass) have been known to result in high, steep, brushy-topped and brush-filled, and brush-choked, dunes, unnatural for the area, at the expense of view and indigenous plant scenery, sand volume and natural protective low dunes on the adjacent beach, and sand volume to areas behind the primary dune, as well as habitat for native plants and animals such as arthropods (e.g., ghost crabs). Non-native *Ammophila breviligulata*, (American beach grass) with intermediate-height dune-building propensities, is nevertheless invasive in some applications, and has created unforeseen monoculture and morphological changes with attendant loss of native plants and alteration of physical animal habitat, such as where introduced on northwestern beaches where it is being eradicated with bulldozers, herbicides and other means in an attempt to restore the plover habitat it destroyed.

34. As of July 9, 2020, scores of owners on the south end of Litchfield, the immediately neighboring beach to the north of Pawleys, filed objections to a proposed renourishment on the south end of Litchfield using offshore “sand,” because, among other reasons, their property was governed by a homeowner’s association which could assess them hundreds of thousands of dollars to primarily benefit others. One concern raised by owners opposing use of offshore sand was the quality of sand placed on Pawleys Island in the course of the completed renourishment eventually described below. It contained mud and shell. The proposed Litchfield project has been revised to use trucked-in sand from an inland source.

### Early Corps Plans

35. In or around 2004 (some report 2006), the United States Army Corps of Engineers designed a project to renourish the beach on the south end of Pawleys Island, where Plaintiff's property is located.

### Nonaction by Corps

36. The Corps's project was approved by the decision structure of the Corps and by any other required governing entities, but was not funded by the United States Congress.

37. For approximately fourteen years, Congress declined to include appropriations in the annual federal budget to fund the approved project. As the then acting mayor of Pawleys Island reported on October 25, 2011, the status of renourishment in October 2011 was "No change. No funding. No Progress!"

### Town Plans

38. In or around 2015, the Town designed its own nourishment project and began preparations to do and pay for a nourishment project on its own, for the greater part of the Island, including the parts where then members of Town Council, and present members of Town Council (Henry, Green, Holliday, and Carter), owned property.

### Re-emergence of Corps Plans

39. In or around 2018, the Corps announced it had funding to proceed with a project to renourish the south end, as approved in or around 2004 but not funded for around fourteen years.

40. The Town had to decide whether to delay commencement of its own project, which was for both mid-island and the south end, while waiting on the Corps to decide in what manner and with what timing it would do the south end project, or whether the Town should proceed without the Corps entirely and not miss another hurricane season.

41. The Town decided to wait on the Corps.

42. The Town did so under the expectation that the Corps would do its south end project and the Town would do the mid-island project it had planned, using the Corps as the Town's agent for supervision and contracting.

#### Request for "Sand" Easements

43. In early 2019, the Town announced to property owners that because the Corps would be doing the south end renourishment project, easements for "renourishment" would be needed, but only from south end owners, for 113 properties.

44. In March 2019, the Town, through Fabbri, stated that proposed easement grant documents had already been prepared and that the Town had begun to mail them out. The Town, through Fabbri, represented to all south end owners: "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

45. No mention was made by the Town of owners providing an easement, not only to the Town, but to the general public. No mention was made in the latter case, of "public access" over the owner's entire lot, or, at minimum, two (2') feet from the remaining portions of the owner's house not destroyed in the course of the renourishment. Public access, while generally

considered beneficial to the public who want it, is generally not considered beneficial to those whose rights are taken in order to provide it, nor is public access generally considered beneficial to the value of property either subjected to it or adjacent to it. Public access, when provided, may include general traffic and occupation, frolic, day camping, inadvertent littering, immaculate pet exercise, cheerful and celebratory yelling, admiration of the occupants inside the adjacent house or their belongings, playing favorite tasteful music, showing sweet physical love of each other, putting up large beautiful tents, breathing only through face masks at a distance downwind, or gathering to respectfully and peacefully picket and protest regarding important issues of a socioeconomic nature, or pertaining to political party or elections, or relating to gender, sexual, or public-access matters, or others. No mention was made by the Town of the owners granting access to the public, permitting the above-described activities by the general public (i.e., strangers) within two (2') feet of the owner's private residence, if not on the owner's whole lot and improvements. No mention is made of this item of scope, which has nothing to do the public doing any work to deposit sand, to construct beach profiles, to erect sand fence or to plant sea oats.

46. No mention was made by the Town of encroachment of the easement (including public access) onto property improvements of owners, like previously private decks, steps, walkways, etc.

47. No mention was made of allowing the foregoing access of the general public, deposit of sand, creation of artificial dirt and rock dunes, and destruction of the owner's improvements – all, up to two feet from the main pilings of the owner's house.

48. No mention was made by the Town of subjecting not just the “work” area, but the entire lot of the owner, to general public access.

49. At this same time in March 2019, the Town, through Fabbri, represented to all south end owners, “The easement provides the town and its contractors with the ability to work in the area of the beach.”

50. In early 2019, the Town, through Fabbri, sent proposed easement grant documents to south end property owners, not offering to pay anything for the grant of partial interest in the subject real estate, stating, again, as to the scope of the proposed easement: “The easement will be used to construct and maintain the improvements authorized under the Pawleys Island Coastal Storm Risk Management Project. Only the work specifically authorized under this easement and under the Pawleys Island Project as authorized by Congress, will be performed.”

51. However, the proposed documents sent by Fabbri in or around March 2019 differed from all the Town’s foregoing representations regarding the simplicity and limited nature of the requested easement. The document reflected something far in excess of what was “required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project,” as represented by the Town.

52. The requested Public Access Easement grant was excessive, injurious, contrary to the representations of the Town, and unnecessary to the described project in the following particulars, among others:

- a. The grant, which was forever, was not just to “the Town.” It was to the Town “or its assigns,” e.g., USACE or potentially others.
- b. Shockingly, it was also to the “public,” for “public access.”
- c. The grant was not limited to being active and valid only when renourishment work, maintenance, sand fence erection or sea oats planting was being

done. It was “perpetual” and had no limitation language to indicate it was anything but continuous as to much more than allowing a deposit of “sand” to remain. It in fact provided not only for “maintenance,” which is an unlimited ongoing activity, but also “public access” and such things as “patrolling” and “operating a public beach.”

d. The grant included a map/plat showing the boundaries of the allowed project work, which encompassed the land and improvements two (2’) feet from the main pilings of Plaintiff’s house, and included components of Plaintiff’s house such as portions of the stairs -- and this proposed grant explicitly, in plain English, provided for the ability of the Town or its assigns to destroy things within the easement area.

e. Despite the attached map/plat showing a smaller area, the plain English language of the written proposed grant was devoid of appropriate relational language (e.g., “the premises subject to this easement is ....”) and described the entire lot of Plaintiff as being subject to the easement, and the easement scope language of the document went on in other passages to describe the rights of the grantees – the Town, and its assigns, and the public -- to do various things in the “described” property, which literally was the whole lot.

f. The grant included the right of the Town or its assigns to exclude the owner from the owner’s land under a broadly worded right to “limit access” to “dune areas” in order to “facilitate preservation” of vegetation or dunes.

g. The grant included the right of the Town to engage in broad activities on Plaintiff’s land, including “patrolling,” “operating” and “maintaining” a “public beach a[nd] dune system.”



h. The grant, after clarifying the right of the Town and its assigns to destroy Plaintiff's owned improvements constructed on Plaintiff's land in the mapped area (and the rest of the lot), and the right of the Town and its assigns to limit Plaintiff's access to Plaintiff's property, also restricts Plaintiff to building only such walkovers as may be "approved" by "a designated representative" of the Town, without any statement of standards anchored to state or local law or anchored to any language in the grant itself. That is, rather than leave Plaintiff subject only to such lawful restrictions as may be imposed under state or local law, the grant adds an additional private-law layer of restriction in the conveyancing document, which restriction can be exercised by whim of some unknown Town's or "project sponsor's" "designated representative," without regard to other law or regulation.

53. Assuming the gravely serious and perpetual document to be the result of haste, ignorance of its permanence and gravity, or inattention, or to drafting by an unlicensed person, Plaintiff eventually set about preparing an easement grant which was responsive to the Town's previously publicly explained needs. Plaintiff tried to prepare a document which was as close as possible to the document requested by the Town, but one which corrected, among others, the above defects. Plaintiff prepared its own proper plat and an easement which was more than that "required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project," this being the purpose stated by the Town.

54. Into the spring, the Town continued to represent that the easement was for limited purposes, activities and powers, but, unbeknownst to Plaintiff, several other owners, too, had read and understood the gravity of the proposed document.

55. On April 20, 2019, in a Town meeting for property owners, Fabbri, speaking for the Town, acknowledged that “the project” had “taken many turns” and had “changed a lot in two years.” Fabbri reported that of the 113 easements sought, he had 70, with about 40 to 45 to go.

56. In the April 20, 2019 meeting, Fabbri, speaking for the Town (at about time stamp 16:19 of the video record of the meeting), emphasized that there would be “no work on or under decks, patios, or porches.” Fabbri continued, “People are concerned about the easements. Are we going to tear up their walkway? Are we going to tear up their stairs? The idea is to do our best to work under and around.” The proposed perpetual easement grant Fabbri sent to Plaintiff in March made no exception for such items and affirmatively showed them in the mapped area.

57. Speaking for the Town, Fabbri continued April 20, 2019 (at time stamp 17:59): “I know it is private property and I don’t want anyone to sign anything they are not comfortable with. \*\*\* At the end of the day, this is an easement to the Town, not the federal government.”

58. Fabbri continued, “This easement will always be controlled by five council members who live here, who live here full time – who, I cannot imagine for the next fifty years or however long this easement is in place, that they are going to do something to violate your rights, or to screw you over. I cannot see that happening.”

59. The proposed easement grant sent by Fabbri to Plaintiff in March 2019 was perpetual and was not limited to the Town – it was to the Town or its assigns, which could include the federal government; the composition of Town Council changed within the next year; Town Council included then, and still includes, members who do not live full time on the Island and the next mayoral election involved a legal dispute over the actual residency of the challenger to Braswell; Upon information and belief, Town Council has made as close to zero effort as is

possible to advocate for Plaintiff's property rights and reasonable concerns to USACE; and the present Town Council has now, upon information and belief, knowingly voted to condemn a clearly excessive and unnecessary "easement" on Plaintiff's property, while making false public pretenses about the nature and scope of the requested easement, about their lack of knowledge of the nature and scope of Plaintiff's objections to it, and about the extent of Plaintiff's efforts to cooperate in providing, free of charge, an easement within what have been publicly touted by the Town as the limits of the necessary scope.

60. Contrary to Fabbri's assurances, Town Council has done little or nothing to protect Plaintiff's property rights and may actually be the sponsor of their violation. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property, while, with the exception of emergency vehicles, driving on the public beach in the Town is prohibited by Town ordinance, and driving on Plaintiff's land is a trespass. As described hereinbelow, the Town now has an appraisal report on Plaintiff's property but has never contacted Plaintiff to obtain any permission to enter onto Plaintiff's property as required by statute.

61. Speaking for the Town on April 20, 2019, in response to questions about public access language in the proposed documents, Fabbri represented that the project would be complete and at an end when the sand fill was in place, and at that point, all the public access rights in the proposed easement would also be at an end: "It will only be used for this project," he stated (at time stamp 29:42). "It will never be used for anything else." As demonstrated further herein, the Town's later and current insistence on public access -- if necessary, even through condemnation -- even after the Corps project was rejected and the Town's project has been completed, renders Fabbri's assurance totally and utterly false.

62. Fabbri explained (at time stamp 29:48), “I can promise you that and can say it with one hundred (100%) percent confidence, because it is to the Town.” (Emphasis Fabbri’s.)

63. Fabbri continued, “And I cannot imagine,” Fabbri stated (at 29:48), “under any scenario, where five council members decide they’re going to go do something that is going to violate your property rights. Zero.” The easement the Town sought in March 2019 is not limited to the Town. The Condemnation Notice, as mentioned above, is incomplete. The proposed project by the Corps for which the easements were solicited in 2019 did not occur. Instead, the Town did its own project and the Town project is now complete. Even the Town project, done with no easement from several owners, is at an end, and yet the Town Council, with no actual proposed project pending, has authorized and directed that a Public Access Easement, completely unnecessary by the Town’s own previous statements, be obtained on Plaintiff’s property by the drastic measure of condemnation.

64. At the same April 20, 2019 meeting, then mayor Jimmy Braswell, who was later succeeded in a contested, and disputed, Town election, stated (at 1:11:17), “I would have bet anything we would not be hit by four hurricanes in four years. \*\*\* Who is to say we won’t go another twenty years and not be hit hard.”

65. At the same April 20, 2019 meeting, Bill Otis, the mayor preceding Braswell, clarified (at 1:29:51) that the projects at hand were going to last only the few months necessary for the act of putting a specified volume of fill sand on the beach: “Today’s decision is renourish or not – not what we’re going to do ten, twenty, thirty years from now ... if we get to nine years and stop, we’re better off.” Otis emphasized (at 1:30:44), “Just separate [the two questions]: Do we do the beach project or not.” Braswell concurred (at 1:32:26), “Once we do this first project, it’s done.” (Emphasis Braswell’s.)

66. Unbeknownst to Plaintiff until later, on or about April 28, 2020, Fabbri received from another owner, the Beattie trust, a revised easement document intended to correct many of the same abovedescribed defects in the proposed Public Access Easement, and for which Beattie had included and recorded his own plat, prepared for him. However, upon information and belief, Fabbri requested a correction to a matter of form occurring on the signature page, and Beattie executed another page, authorizing it to be attached only to the easement grant Beattie had submitted. Upon information and belief, unbeknownst to Beattie at the time, Fabbri thereafter attached the signature page to a Public Access Easement and filed it in the title records for Georgetown County. Upon information and belief when Beattie weeks later discovered these actions, he was in touch with both Fabbri and Durant, and eventually had the inauthentic document cancelled.

67. On April 30, 2019, speaking for the Town, Fabbri wrote by e-mail to another owner:

The intent of this letter is to clarify the purpose of the perpetual easement the Town is seeking for beach renourishment and how it will impact your property. The easement will be used only by authorized personnel solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project. Additionally, this activity is confined to the easement area only and not the remainder of your lot. The easement is and always will be for the purpose of constructing and maintaining the project. It does not change the boundaries of your property, convey property to the Town, or change your ability to access or use the property as you currently do, except in limited instances during the construction phase of the project. You will still maintain private access to the beach.

Fabbri is not a licensed attorney. Fabbri is not the mayor (who would also not have authority to make such statements binding on the Town). Fabbri did not cite any Town resolution or ordinance making such statements. Fabbri did not make such statements in an enforceable filed conveyancing document altering the wording or enforceability of the proposed permanent

easement grant document. He cited no legal opinion from licensed counsel willing to make such a statement, nor did he offer a title insurance company which would insure such conditions.

68. Many parts of the statement in Fabbri's April 30, 2019 e-mail letter are patently false, and the Town will not agree to put any of them in writing in the requested easement grant itself.

69. The proposed Public Access Easement grant, by its statements in plain English, will and can be used by the public at any time. In plain English, the document proposed in March 2019 provides for patrolling, "operating," and maintaining a "public beach a[nd] dune system," which is different and greater in scope than merely piling sand, maintaining it, planting on it and putting sand fence on it. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property.

70. The proposed March 2019 document states that the easement does lie "over, upon, through and under" what is stated in plain English as "the following described premises," and this phrase is followed by a description of Plaintiff's whole lot.

71. The document does convey property to the Town. It is a proposed "grant" of a perpetual easement. An easement is a property interest, and in this case, if it is the perpetual right to both exclude the owner from the land, and a perpetual evisceration of the owner's right to exclude others (the public) from the land, it is a very big property interest, close to taking the entire "bundle" of rights constituting property ownership.

72. The document does change, or allows the Town, or its assigns, to change, the manner in which Plaintiff accesses and uses the property, in that it allows, among other things, destruction of Plaintiff's access structures, then permits a "walkover" only as approved by the Town with no standards set forth for such approval, and includes a broadly stated express ability

of the Town, or its assigns, to “limit access,” which includes access of the owner. “Limit access” means to limit access.

73. Fabbri, who is not a lawyer, and who, upon information and belief, claims that in dealing with the Corps, he “never worked with a lawyer,” still must know his lay representations are false, unless he has received legal advice elsewhere that the document does not mean what a grade-school reader of English would know it to mean. He also must know that one cannot describe an easement in purposefully broad or sloppy language, or even specific language, and then just “say,” on the side, what it means, or that it does not mean what it says.

74. The easement grant or the easement condemnation must explicitly say within the operative document – not in a “side letter” -- what the document means and does not mean. Otherwise, a purchaser, title insurance company, appraiser, or present owner, must assume the worst, and must at least assume what the document plainly says. This is the only basis for assessing whether to make the grant, and in a condemnation action, is the only basis on which to assess the value of what is taken and the damage done by the taking.

75. The Town’s hereinbelowdescribed repeated and continuous insistence on including sloppiness and deliberate ambiguity, if not express overreaching, permanently in Plaintiff’s chain of title, is in bad faith and is an abuse of discretion.

76. Under the proposed Public Access Easement, Plaintiff will not, as stated by lay fiat of Fabbri alone, “still maintain private access to the beach,” when in fact the document expressly grants to others, rights to engage in sweeping activities on Plaintiff’s land and improvements, “together with the right of public use and access.”

77. Upon information and belief, some time after another owner sent a proposed easement grant document to the Town on April 8, 2019, signed and in recordable form, and

responsive to the actual stated needs of the proposed project, the Town rejected it. Here again, the Town was on acute notice of the fact that the easement the Town was actually trying to obtain was different from the easement the Town publicly and privately stated the Town needed.

78. Having consistently publicly misrepresented the scope of the easements sought by the Town to be minimal short-term authorizations to simply bring in equipment and deposit sand for a few months, Fabbri thereafter publicly (in the newspaper and Town published communications) represented in references to certain other owners, that these owners had not sent Fabbri an easement or had not signed an easement, implying outright refusal rather than diligent cooperation. Fabbri did so rather than risk publicizing the inaccuracies of his own prior public statements and the problems with the excessive, overreaching, and in many ways, reckless or sloppy, proposed document.

79. Upon information and belief, the Town represented directly to another owner that the Town had never worked with an attorney at USACE and that USACE would not allow the Town to alter the defective draft document the Town had prepared and proposed, which included incomplete sentences, punctuation errors affecting intelligibility and meaning, misspellings, and typographical errors in addition to the other defects recounted herein. The Town represented that the wording and format of the document was “standard” and not susceptible to any exception.

80. cursory research and a facial inspection of the document, however, reveals that the Corps has on other projects, employed similar language in only one block of text of the overall easement grant document, which the Corps refers to as “Standard Estate 26,” which is a further identification and description of the scope and nature of easement interest being conveyed. The remaining components of the document, such as the premises (identification of parties, the consideration, the granting clause), the description of the property subjected to the



easement conveyed, the habendum clause, any reddendum clause, the execution and the probate or modernized acknowledgement or proof of execution, are clearly and necessarily left to the document assembler. Standard Estate 26 accounts for many, but not all, serious problems presented by the proposed Public Access Easements, including the sneaked-in grant of public access.

81. Further, Standard Estate 26 is anything but standard, or legitimate.

82. Standard Estate 26 has not been established by statute.

83. Upon information and belief, Standard Estate 26, as opposed to some other USACE Standard Estates, has never been adopted as, or in, a regulation in accordance with the federal Administrative Procedures Act.

84. Upon information and belief, Standard Estate 26 does not have the status of actually adopted written policy by USACE. There is no readily accessible record of who came up with its contents, or why, or who approved them. Further, other versions of this nonstandard “estate” contain blanks for insertions of exceptions, making it, per se, not standard.

85. Upon information and belief, continuing to try to resolve the matter, another owner, against constant dissuasion attempts by the Town, insisted on contacting the parties at USACE in Savannah perceived to be involved in the proposed project, D. Steinbeiser and J. Hinely. Upon information and belief, that owner provided them information about nonstandard, nonrequired Standard Estate 26, including a different version used elsewhere, and set up a phone call with one of them and a USACE lawyer.

86. Upon information and belief, in the May 1, 2019 call, the excessive and injurious nature of the proposed document was discussed, as were the public shaming and misinformation tactics employed by the Town to try to stampede remaining owners (under a falsely stated

deadline) into signing the damaging document. Upon information and belief, USACE resolved to look into changing some of the more injurious aspects of the document, likely by employing an exceptions clause in the different version found by the other owner.

87. Upon information and belief, meanwhile and subsequently, the Town publicly falsely represented that the other owner was among a few of an inaccurately stated number, who “had not signed an easement,” or from whom the Town “had not received an easement” (e.g., “Lawyers with the Army Corps of Engineers were scheduled to talk Wednesday with one of two property owners who declined to sign easements to allow the federally-funded beach renourishment project on the south end”), attempting to defame and shame the other owner and others and intimidate them into signing the sloppily drafted, defective, excessive, overreaching, permanent easement grant described hereinabove. By early May, the Town, through Fabbri, was also already publicly threatening condemnation in statements to the newspaper.

88. Upon information and belief after the May 1, 2019 telephone conference, the Corps ignored the other owner’s request to work with him on the revision before sending anything to the Town. Upon information and belief, instead, after the Corps had some communication with the Town, in which the owner was not included, the Corps had the Town draft something to send the owner. Upon information and belief, it took the Town and USACE until around June 18, 2019 to respond, although Fabbri had previously represented April 30 as a drop dead date for owners to provide easements. Upon information and belief, then USACE responded, not to the owner, but to the Town, who would in turn send a re-drafted document with no record of whose drafting was involved or whose decisions went into what was presented.

89. Upon information and belief, meanwhile, the owner worked with the Town to alter other portions of the document, presumably not requiring Corps input, or otherwise being

approved by USACE in communications not including the owner. Upon information and belief, one of these changes, agreed and proposed by the Town in writing around June 18, 2019, was to move the project line on the proposed attached map a few feet so that it did not envelope the owner's concrete foundation in the project area.

90. Upon information and belief, the putative Corps changes the Town drafted to other parts of the proposed document were inadequate to address all the other owner's concerns. Upon information and belief, for example, they excepted the owner's deck from destruction, but not from all aspects of the easement, such as public access, and also made no other effort to preserve the owner's rights to maintain, repair, replace or relocate the deck or other improvements. Upon information and belief, the owner promptly sent the Town a suggested further revision in June 2019.

91. Upon information and belief, despite the urgency for which the request for an easement was first presented to the other owner and others, for weeks and months, the owner never got a response.

92. Upon information and belief, it would be eight months before the other owner would hear anything further about a request for an easement, and about nine and a half months before the owner would hear anything further about the agreed substance of any proposed easement.

93. On July 26, 2019, Plaintiff recorded a proper easement and plat responsive to the Town's publicly stated needs, correcting many of the same abovedescribed defects,

Nonaction by Corps, Decision of Town That Corps is Unreliable

94. By early July 2019, for reasons of deciding to do a cost-benefit study of the potential Corps project, USACE put the proposed project on hold, with no promise of when it would be pursued or on what basis with regard to levels of sand or money.

95. By early July 2019, the Town, through Fabbri, was publicly claiming in statements to the paper that the Town had acquired all 113 easements sought. He also stated that the entire initial decision to let the Corps do the south end project was based on a waiver, in writing, stating that a new cost-benefit analysis would not be needed and that the Town was exempt from it.

96. Then-mayor Braswell said, “[T]hey’re not holding up their end of the bargain ...They are leading us down the primrose path.” Holliday said, “We can’t rely on them.” Holliday later stated, “the question for council is, will they do it at all? That’s the biggest concern I have.” Carter stated, “There’s so much uncertainty in trying to deal with the Corps.” And again, Holliday stated that although he thought the benefits of Corps involvement were huge, “You have to weigh that against the potential that they won’t do anything at all.”

Town Plans, Action, Formal Decision That Easements Are Unnecessary, Rejection of Corps Project, and Completion of Town Project with No Easement

97. In or around July 2019, the Town rejected the Corps project. The Town decided to do its originally designed project, on its own, for both the south end and mid-island.

98. On July 29, 2019, the Town stated, “The easements that were collected were necessary for the Army Corp of Engineers to do our project.” However, the Town Council officially acknowledged, “...but if we decide to go with Marinex the easements are not necessary.”

99. Town Council decided to go with Marinex. As Fabbri, stated it August 1, 2020, “In light of the uncertainty clouding the future of the USACE option, council decided to forgo the federal project and move forward with Marinex and the construction of our original project.”

100. The Town's “Town of Pawleys Island South Carolina Local Comprehensive Beach Management Plan August 2011” is adopted by Town ordinance but is absent from the codified ordinance itself and is there said to be available at Town Hall. It is also available at <https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/local-comprehensive-beach>. There, the Town claimed at page 47, that while the beach in the vicinities of some of the properties of the 2020 Town Council members had relatively stable beach and a low or negative long term erosion rate (measured in feet of shoreline change per year), the beach in the vicinity of Plaintiff's property (at Monument 4200C) had a long term erosion rate which was actually a positive accretion rate (presented as a positive number) of one and forty-one one hundredths (1.41) feet of positive beach accretion per year. These rates are shown in the Plan at Table 3 and in Figure 17, which is mislabeled as “Figure 4.”

101. In August 2020, the Town continued to consider the various amounts of sand it could include in the Town project, which would be done without involvement of the Corps. On August 27, 2019 Rocky Holliday stated in the Town Council meeting that the Town now understood and acknowledged that they were not thinking about the timing of future projects correctly. Originally, he explained, the Town was looking at doing a project every ten 10 years. Now, in working with the Town's engineers and discussing it among Council members and Town “staff,” there was another scenario reviewed with a much longer time span between projects. Holliday presented a graph showing that if the project added one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand to the beach, it would be twenty-two (22) years

before the additional sand eroded down to four hundred thousand (400,000 c.y.) cubic yards of sand more than was presently on the beach. According to Holliday and the engineers and Council and Town “staff,” four hundred thousand (400,000 c.y.) cubic yards more than was then on the beach would be a “trigger point” for another renourishment project. I.e., it might be twenty-two (22) years before another renourishment project, assuming one were done even then.

102. In early September 2019, the Town decided to contract for the option providing the maximum amount of sand for the project, one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand, at a forecasted price of fourteen million, eight hundred thousand (\$14,800,000.00) dollars.

103. With no easement from Plaintiff different from the proper one Plaintiff had recorded July 26, 2019, between late October 2019 and late April 2020, the Town did all the renourishment in its own project, on its own, from stem to stern, with a contractor paid by the Town. By March 16, 2020, the full contracted volume of one million, one hundred thousand cubic yards of “sand” fill was in place and complete, from the south end north to just north of the pier, about three miles from Plaintiff’s house.

104. The renourishment on the south end was largely completed before mid-February 2020, and placed a large artificial dune-like berm of spoil material directly on the ocean side of Plaintiff’s house.

105. In February 2020, in an e-mail to all owners, echoing Holliday’s August 27, 2019 estimates of twenty-two (22) years of sand, Henry stated sand in place would last fifteen (15) years, with a substantial volume still remaining at that time.

106. The executed, engineer-designed-and-supervised project avoided Plaintiff’s stairs and bent the berm around a nearby owner’s deck to avoid the deck and other features. The berm,

full of rocky material, shells, mud balls, rocks, and blackish-grey dirty sand, was high enough to completely block the view of the ocean from the under the house, and required the building of a walkway out from the deck to get up over it to get to the ocean.

107. The spoil material of the completed renourishment also built the beach up to where the high tide in early April 2020 generally did not rise or encroach closer than about seventy-seven yards from the eastern edge of Plaintiff's stairs.

108. About a block south of Plaintiff's property, the engineer-designed-and-supervised project also moved the berm about thirty (30') feet seaward from its originally designed location. Upon information and belief, this was done simply to have the berm further from the public parking area already existing at that location.

#### Re-emergence of Corps Interest in Possible Future Projects

109. In late February 2020, after all renourishment under the Town's project was complete on Plaintiff's end of the beach and for miles to the north, Fabbri began contacting some owners to discuss obtaining either an easement or a revised easement because the Town wanted the Corps possibly to be available to do future renourishment projects and money swapping under a contrivance characterizing the Corps as a participant in the already completed project costing over fourteen million (\$14,000,000) dollars, on which the Corps had done nothing.

110. The contrivance was to let the Corps do as much as \$40,000 to \$80,000 worth of work erecting sand fence and planting "beach grass" on the already completed spoil berm and be "deemed" to have done the project. ("Beach grass" is now assumed to NOT refer to the iconic, southern, native, dune-building grass, *Uniola paniculata* (sea oats), a food producer for the red-winged blackbird, but rather, to either *Ammophila breviligulata* ("American beach grass," with a

range from Maine to North Carolina) or *Ammophila arenaria* (“European beach grass,” with a wide northern range), both of which are non-native and can be invasive.) Upon information and belief, Fabbri admitted that if the Town obtained “the easements” and had the Corps enter the contrived relationship, given the Corps’s and Congress’s track records, there was absolutely no guarantee the Corps would ever do anything. However, he pointed out that if the Town did not get the Corps into such a relationship, there was a 100% chance the Corps would never do anything. This is the same principle which prevents one from winning a dollar in poker if one never sits at the table to take a chance, and dictates that one might not catch any fish at all in a boat, but one certainly won’t if one is sitting on the couch.

111. Upon information and belief, after such a discussion, another owner, on February 24, 2020, yet again sent the Town a proposed easement grant, updating the owner’s prior unresponded-to, June 18, 2019 revisions to correct previously unnoticed broad language allowing the Town or its assigns to exclude the owner from his own property, and clarifying, in light of adverse experiences in other jurisdictions suffered years after similar easements were signed, that the scope and nature of the Town’s activities in the subject part of the owner’s land were not to broaden or change, and that owner’s access to and use of the beach would not be hindered or changed.

Requests for Easement for Speculative Possibility of Future Projects When No Actual Project is Any Longer Proposed or Pending

112. Upon information and belief around March 31, 2020, Fabbri contacted the other owner with what was represented to be the Corps’s response to the revisions requested by the owner about nine and a half months earlier, on June 18, 2019, before the Corps project was rejected. Upon information and belief, according to Fabbri, with one exception, the Corps



refused any changes beyond those the Town had sent the owner in June 2019 back before the Town elected not to involve the Corps and completed the renourishment project on its own. Upon information and belief, according to Fabbri, the Corps did now agree to adding one word, “public,” requested by the owner in the easement the owner offered February 24, 2020. Upon information and belief, Fabbri, however, represented that Fabbri himself cleaned up the document in some particulars and also had the map/plat changed to move the project line (the so-called “Perpetual Easement Line”) itself seaward. Upon information and belief, in his e-mail, Fabbri stated that he had “incorporated an alternate perpetual easement line that removes all structures.”

113. Upon information and belief, Fabbri attached an updated proposed easement grant, but inadvertently failed to add the agreed added word, “public,” in what he sent. Who Fabbri copied on this written communication is unknown, but, upon information and belief, the map/plat in document he e-mailed also did not move the PEL to remove all structures. It did move the PEL off the concrete foundation system, further from the main pilings of the house, but it left the deck and stairs fully enveloped.

114. Upon information and belief, on April 8, 2020, now, like the rest of the populace, fully submerged in the COVID-19 pandemic crisis and widespread quarantining-lockdown issues, the owner wrote to Fabbri again.

115. Upon information and belief, in the April 8, 2020 e-mail, the owner explained specifically and at length, again, what was unreasonable, excessive, and injurious about the documents the Town had sent and kept sending.

116. Upon information and belief, in the April 8, 2020 e-mail, the owner explained in eight items, that the document the owner sent February 24, 2020 was properly expressed and

would have granted more than was actually or reasonably needed, but that the March 31, 2020 proposed grant prepared by Fabbri unreasonably sought far more. The easement grant Plaintiff had recorded July 26, 2019 bore a similar relationship to the documents the Town had proposed, correcting many of the same concerns.

117. Upon information and belief, the other owner subsequently again reminded Fabbri, that it was not correct to state that he had “failed to get an easement” from the owner, but had, rather, he had failed to get an unreasonable easement from the owner. Upon information and belief, the owner reminded Fabbri, the Town Administrator of Pawleys Island, who reported to Town Council, in writing:

Those unreasonable features include encumbering our improvements in a manner which might prevent their repair and might remove our ability to exclude others from them, lack of clarity that our rights to access the ocean from our property are not affected, granting the public an easement across our property which is not legally necessary for renourishment, not explicitly limiting the scope and nature of the Town's future use of the easement area to renourishment-related activities, and requiring permission to build access structures to be obtained by whomever the Town designates without requiring the person to be appointed by law and to apply standards applicable to all owners.

118. Upon information and belief, later in April 2020, the other owner contacted Henry directly, explained the situation, and offered Henry and the rest of Town Council an opportunity to understand, directly, what had been going on and do the right thing. Upon information and belief, at Henry’s suggestion, on April 21 and 24, 2020 the owner sent Henry a history of the matter and a specification of the repeated unreasonableness and excessiveness of the Town’s requests along with corrective revisions.

119. Upon information and belief, Henry forwarded it to the Corps, not advocating for the owner in the least. Upon information and belief, despite all the information provided to Fabbri, and now directly to Henry, Henry stated to the Corps that he “[did]’nt claim to fully

understand the legalese associated with some of the language in question,” and asked if the Corps could have a conversation with the owner.

120. Upon information and belief, the Corps had no conversation with the owner.

Town’s and Corps’s Capricious or Spiteful Insistence That Property Owner Relinquish to Town and Others in Easement, Property Rights Previously Agreed in Writing Not to Be Necessary to Any Proposed Project, Whether Past, Future, Moot, or Completely Speculative

121. Upon information and belief, on May 7, 2020, Henry reported to the owner third hand that Fabbri, not Henry, had spoken to the Corps “again” and that Fabbri advised that the Corps had advised that the Corps was not in agreement with any changes, including any previously agreed.

122. Upon information and belief, the changes to which the Corps allegedly retracted its agreement, to add ambiguity, were allegedly called “minor” by the Corps, according to Henry, according to Fabbri. Upon information and belief, the changes were, however, verified later to be all those that were previously agreed in writing to be unnecessary to the earlier, moot, Corps project, and to be unnecessary to any speculative possible future project. Upon information and belief, the retracted changes included some which were made for other owners, thus confirming they were per se unnecessary to exact from the other owner or Plaintiff, and spiteful or for purposes of some misguided negotiating pressure, which is bad faith.

123. Upon information and belief, these previously agreed, but now retracted, changes for the other owner and some others included:

a. those agreed to by the Town preceding owner’s June 18, 2019 requested revisions, which included an insufficient, but very material, not “minor,” statement that the

owner's improvements in the shaded area on the proposed map would not be subject to destruction or removal by the easement holder;

b. the "cleanup" in the March 31, 2020 proposed grant Fabbri sent to the owner, which included the very material, not "minor," clarification that the easement – with all its attributes, including public access – did not run over the owner's entire lot;

c. the very material, not "minor," moving of the PEL in the map attached to that same document, four to five feet further away from the main pilings of the house; and

d. the very material, but not "minor," addition of the word "public" as a qualifier of the type of access the Town or later owners of the easement would be able to limit from accessing the property. That is, a change removing the ability of the holder of the easement to keep the owner off his own property.

124. Including in any proposed easement, the following attributes in favor of the grantee, if not absolutely required for the purpose of the proposed project, is unnecessary as a matter of law; doing so is also, if not fraudulent, then spiteful and in bad faith, or capricious, or arbitrary, or done out of such indifference, ignorance or lack of training as to be an "abuse of discretion" on multiple levels of the definition of that term:

- a. the right to destroy owner improvements in the shaded area;
- b. an implication or statement that the attributes of the easement apply to the entire lot;
- c. showing a shaded area for work, sand piling, and public access two (2') feet from the main body of the house, if not also enveloping foundation elements; and

d. an ability to exclude the owner from the owner's own land in dune "areas" under an overbroad power to "facilitate preservation" of "dunes" or "vegetation," which could be just about anything.

Town Council's Punitive and Bad Faith Vote to Condemn Wholly Unnecessary Easements With Features Agreed to Be Unnecessary to Anything, Under False Pretenses, Continuing to Conceal or Misrepresent the Features Sought, or Under Abject Failure to Understand or Attempt to Inform Itself of the Meaning of Plain English in the Easement

125. Upon information and belief, neither Henry, nor Fabbri, nor anyone on Town Council, despite having a Town Attorney available and involved, despite Fabbri's reports to Council, despite having at least one other owner's explanation of the matter numerous times in writing, and despite being fully aware of Plaintiff's and other owners' concerns with the very real, legal and real-life consequences of the unreasonable, overreaching, overbroad and intentionally sloppy and ambiguous granting document the Town kept proposing, did anything to advocate for their constituent and its property.

126. What the Town Council and Fabbri did was take rapid public steps to approve an attempted condemnation of an interest in Plaintiff's property, and publicly misrepresent the approved measure as condemning an easement "only to put sand on the beach," and publicly represent the measure to be necessary because, for reasons Town Council pretended not to know, Plaintiff simply had not signed "an easement."

127. On May 18, 2020, after, upon information and belief, plans already made and pursuant to an agenda already set, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

128. There, the Council, consisting NOW of Henry, Green, Holliday, Carter, and Zimmerman, joined by Fabbri as Town Administrator, first have an off-the-record "executive session" with the lawyer, Durant to get "legal advice."

129. They then go through an exercise of ostensibly thorough and thoughtful and hesitant discussion about the nature of the problem and whether to condemn the properties of four of their fellow citizens.

130. The theme is they can't understand why everybody wouldn't "sign" "an easement," and the implication is that certain people simply would not grant one. In reality, and truth, however, these are two different things.

131. Fabbri assures the Council on the record that he has worked diligently on the matter for "a year and a half." Fabbri knew full well that, of three of the owners: one had actually sent a proper executed easement to him over a year earlier and had followed numerous times, in writing, with exactly the reasons certain aspects of the easement sought by the Town were unnecessary and unreasonable; another had prepared and hand delivered an easement in April 2019, which Fabbri subsequently altered without authorization, resulting in the Town filing a cancellation in July 2019 and that owner filing a clearer cancellation in October 2019; and Plaintiff had prepared and filed an easement and plat in late July, 2019. Yet, Fabbri states to Town Council and the viewing public (at 59:10) that "for whatever reasons," the owners in question had not "signed." Despite having received a very full explanation, Fabbri does not disclose this fact and adds, "they do not owe us an explanation," clearly implying, falsely, that no explanation was given and no reason was known. The then-mayor, Henry, states that he has gone to bat for concerned owners, but doesn't state what he did. Not one mention is made by any Council member of having read the proposed easement or of knowing its contents. Not one

mention is made of at least three of the subject owners having offered easements of different scope. The written resolution Council eventually votes on, despite its liberal recitations and “whereas”s, makes no mention of the actual nature of the easement or any concern expressed about its unnecessary scope.

132. Durant, the lawyer advising the Town, simply states and advises Council on the record that the owners "would still have all the same rights they had before granting the easement."

133. Administrator Fabbri says he had a “dialogue” with all 4 owners to get an easement to deposit spoil/sand in front of their respective houses and “doesn’t know why they won’t sign.”

134. Town Lawyer, Durant, of Surfside, adds: “property owners will still have title to the property.”

135. Zimmerman, at time stamp [1:02:35](#), asks Town Lawyer Durant, on the record in the publicly broadcast session, "and the easement basically is simply to put sand on the beach, right, David?" Durant officially replies, advising Council, "Yes, that is correct." The three aforementioned owners had all offered easements to put sand on the beach.

136. No mention is made of the cooperative efforts or the nature of the objections, if any, of the citizens whose property is the subject. No mention is made of the tenuous nature of Corps involvement.

137. No mention is made that one subject owner actually gave Fabbri/The Town an easement to deposit spoil/sand in front of his house, in person, on or about [April 25, 2019](#), at Fabbri's office, and that what happened after that was that Fabbri requested and was provided a

corrective signature page, and then attached the signature page to a different, unauthorized document, and recorded it in the title records of Georgetown County.

138. No mention is made of the owner's later discovery of the more-than-a-little-inauthentic document, letter to Fabbri, and efforts to get his title corrected.

139. No mention is made of another owner's extensive, if not exhaustive, efforts to accommodate the Town, give it every chance to do the right thing, and do the job it should have done or at least should have backed.

140. No mention is made that Plaintiff had, at its own expense, actually signed and directly recorded an easement responsive to the publicly professed needs of the Town for an "easement basically simply to put sand on the beach."

141. Upon information and belief, contrary to the implication of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those reporting to Council, three of the owners referenced had been willing, since the previous year, to grant the Town the right to renourish in front of their homes, and indeed, do more than "simply to put sand on the beach."

142. No mention is made that for months, the Town abandoned any effort to obtain, or iron out any questions about, the remainder of the previously sought 113 easements, because the Town determined to not get easements. The Town determined to do the project on its own, which it did and completed. After plunging itself into a huge, long term debt, the Town then sought an angle to possibly get some money. After the actual renourishment was already done, the Town then began a last-minute resumed courtship with the Corps and now, under the bad faith pretense that there was a project yet to be done, the Town Council presented the matter as if it were one of great urgency. The Town also presented this matter of needlessly condemning the



property of its own citizens as if the citizens had plenty of time to get this done, when in truth the matter was presented by the Town, both the first time and a second time, as an emergency under falsely stated deadlines.

143. Also not emphasized in the Town Council's comments on the subject, as the present council purports to agonize over condemnation of its citizens' properties, is that easements are only sought from roughly the last mile of property owners on the south end. Neither the mayor, the other council members, the town attorney, nor the town administrator have signed such an easement. The Council do not even publicly claim to have read or understood the Public Access Easement, although they are charged with understanding Town affairs, are educated people, are reported to by Fabbri, are advised by a Town attorney, and condemning their own neighbors' property is certainly a grave and drastic matter, costing those neighbors time, stress, and legal and other expense, if nothing else.

144. The renourishment which is also already done for the roughly two miles to the north will be paid for by the Town with whatever different help the Town can get, but with no help from the Corps. What the Town may or may not get back from the Corps someday perhaps twenty-two (22) years hence with respect to the south end, and whether, if so, the Town would re-allocate the benefit to all, are speculative matters. If the Town had not begun courting the unreliable Corps again, the south end would simply be in the same situation the two miles to the north is in -- with beach renourishment, already completed, and paid for by the Town of Pawleys Island with long term debt and whatever non-Corps help it can come up with.

145. While Durant states: "Property owners will still have 'title' to the property," no mention is made of the fact that Durant, with Fabbri's approval, drafted an easement unequivocally granting "public access" up to within a few feet of all the owners' houses, as

indicated by the PEL. This public access includes decks, stairs, and other improvements shown as being on the owners' land, some being original appurtenances to houses built over 50 yrs. ago. In its pretended thoroughness, the Council does not acknowledge that the Town's proposed easements also include the ability of the Town, or others coming to control and use the easement, to "limit access" to the easement area - without any qualification as to whose access may be limited. In plain English, this means the Town would have power to exclude people, including the owner, from the property.

146. Nor does the Council acknowledge in its pretended careful deliberation, that the proposed easements do not provide or reserve any right to the owner to repair, rebuild, or maintain any improvements of the owner's, located now or in the future, within the area the Town wants.

147. Nor does the Council let slip to the public that the proposed easements include the affirmative right of the Town to remove "obstructions" -- in plain English this means tear down the owner's improvements, in the area the Town wants. Instead, in an abuse of discretion, the Council votes on something it professes not to have read and not to understand. Shockingly, Carter states in the May 18, 2020 meeting, simply, "I can't understand it."

148. Upon information and belief, on May 21, 2020, one of the other owners asked Henry, directly, whether Henry himself had ever gotten a written a response from the Corps to Henry's own e-mail in which Henry forwarded the Corps the details provided by the owner, of the serious issues presented and solutions for them. Upon information and belief, when Henry did not respond, the owner asked again by e-mail on June 4, 2020, and Henry did not respond in any way.

149. Upon information and belief, on May 27, 2020, the other owner asked Fabbri, directly, since the only information the owner had received as to the Corps's response was third hand from Henry, whether Henry got it right in describing the Corps's communication with Fabbri on the subject, whether there was any more detail or reasoning given by the Corps, and whether there was anything in writing as to what the Corps meant. Upon information and belief, Fabbri did not respond, the owner followed up on June 4, and Fabbri did not respond.

Condemnation Notice Purposefully Obscuring Nature and Extent of the Easement Sought and What Is Being Valued, Including False Certifications, Sent Without Ever Having Made Appraisal Available or Having Negotiated in Light of Appraisal; Later-Obtained Appraisal Similarly Murky About What the Attributes of the Subject Easement Include; Missing Elements From Loose Leaf Papers

150. In Late June 2020, the Town sent Plaintiff a condemnation notice in which:

- a. The Town falsely stated, in contravention of express statutory procedure and Rule 11, SCRCF that the Town had first made an appraisal report available to Plaintiff and falsely certified that the Town had negotiated in good faith with respect to that appraisal report for the purchase of an easement prior to serving the condemnation notice;
- b. The Town offered to pay zero dollars because of the reasoning and opinion of the appraiser in the appraisal report, which had never been provided;
- c. The Town gave Plaintiff two (2) thirty-day deadlines: (1) thirty days from service to respond to the offer in the Condemnation Notice, and (2) thirty days from service to file a separate action challenging the ability of the Town to condemn the subject property, in whole or in part;
- d. The Town did not, even then, include a copy of an appraisal; and
- e. The Town did not describe the attributes of the easement it sought to condemn.

151. Not in the Condemnation Notice itself, another partial proposed Public Access Easement document was simply included in the envelope with the mailed Condemnation Notice. The additional document was not part of the Condemnation Notice, nor referred to in it, nor referenced in any transmittal letter. The unexplained partial Public Access Easement document had approximately the same language used in the proposed Public Access Easement proposed by the Town around March 2019.

152. Plaintiff had to contact the Town after having been served with the Condemnation Notice in order to obtain the appraisal report upon which the time-sensitive Notice and the offer therein was supposedly based, and which was required by law to have been sent to Plaintiff before serving a condemnation notice. The appraisal report indicates that the appraiser was never provided a copy of the proposed easement which was the sole subject of his appraisal.

Clarification of Town Punitive and Bad Faith “Intent” to Be Unclear and Maybe Pursue Wholly Unnecessary Easements With, Not Just Some, But All Features Previously Agreed to Be Unnecessary While Having Publicly Concealed or Misrepresented Features Sought

153. Upon information and belief, subsequently to another owner’s receipt of a condemnation notice, upon information and belief, Oranga sent to the other owner, another separate Public Access Easement document, this time complete with attached map, the document being the one proposed by Fabbri to that owner March 6, 2019 (the one with maximum defects, before any of the changes of the past year had been made).

154. Upon information and belief, the owner asked Oranga why this separate document was sent and what its purpose was, and Oranga responded in writing on behalf of the Town that this was the original version of the proposed easement grant document and to please consider all other versions withdrawn “at this time.”

155. Upon information and belief, the document conflicted materially with the easement described by the condemnation notice sent to that owner.

156. Upon information and belief, no amendment of the condemnation notice or its exhibit was sent to the other owner, however, nor was any extension or reset of time mentioned. Plaintiff objects to the Town constantly creating vagueness and unintelligibility in serious legal documents which are supposed to require professional valuation opinions, and does not agree to the Town changing its position on time-sensitive legal matters unilaterally without leave of court, by simply sending more or different things.

FOR A FIRST CAUSE OF ACTION AND REQUEST FOR RELIEF

(Any necessity for the easement requested for the Corps project and any other, ceased, when the proposed Corps project for which an easement was requested was rejected, the Town officially determined that an easement was not necessary, the work was not done by the Corps, and the work was completed by the Town.)

157. The foregoing facts and allegations are incorporated herein.

158. The contemplated condemnation is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited, and the Town of Pawley's Island's attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained.

FOR A SECOND CAUSE OF ACTION AND REQUEST FOR RELIEF

(Because no new Corps project is proposed in good faith, an easement is also not necessary for a merely speculative project that may or may not occur many years in the future.)

159. The foregoing facts and allegations are incorporated herein.

160. In the alternative that the Town asserts the condemnation is for some other, future, hypothetical project, the condemnation is still unnecessary and in bad faith in that any

such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years.

FOR A THIRD CAUSE OF ACTION AND REQUEST FOR RELIEF

(If a new Corps project were proposed, the Town's insistence that the easement is only for placement of sand when all the sand has already been placed, and the Town's own bad faith, if not fraud and abuse of discretion, in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

161. The foregoing facts and allegations are incorporated herein.

162. In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality, and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it. The easement is also being sought through bad faith noncompliance with procedural rules. In that these facts constitute "fraud, bad faith or abuse of discretion," the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(The South Carolina Eminent Domain Procedure Act is the "exclusive procedure" for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of "shall" and "must," and the Town's failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRPC and other applicable authorities.)

163. The foregoing facts and allegations are incorporated herein.

164. The Town failed to give reasonable notice of request of the appraiser to enter onto the property, as required by S.C. Code Ann. subsection 28-2-70(C) and the common law of trespass

165. The Town made no such request at all and gave no notice at all of any request.

166. After obtaining an appraisal, the Town failed to make the appraisal available to Plaintiff before service of the condemnation notice as mandated by S.C. Code Ann. subsection 28-2-70(A).

167. After obtaining an appraisal with no request to enter the property or notice of intent to enter, and delaying in providing the report to Plaintiff, the Town made the appraisal or its conclusions available to the newspaper.

168. By failing completely to describe in the Condemnation Notice, the attributes of the easement sought, the Town failed to give, in the condemnation notice, “an appropriate legal description of the interest to be taken,” as required by S.C. Code Ann. subsection 28-2-280(C)(3).

169. Rule 11, SCRCPP applies under S.C. Code Ann. section 28-2-120 because Rule 11 is not in conflict with the Eminent Domain Procedures Act, and because under S.C. Code Ann. subsection 28-2-30(5), a condemnation action includes all acts after the service of the condemnation notice, and the condemnation notice therefore constitutes a “pleading, motion or other paper” in an action, as described by Rule 11.

170. The Town failed to comply with Rule 11, SCRCPP in that the statements in the Town’s operative pleading, the condemnation notice itself, i.e. the Town’s statement that the Town made the appraisal available before serving the condemnation notice and the Town’s

certification that a negotiated resolution in light of the appraisal provided was attempted prior to service of the condemnation notice, were false, and without factual basis.

171. After serving the condemnation notice, and only after Plaintiff's demand, the Town sent Plaintiff the appraisal report, which also did not set forth the attributes of the easement sought, because the Town did not provide a copy of the proposed easement document to the appraiser.

172. For the reasons that (1) noncompliance with exclusive mandatory procedure renders the Town's condemnation notice ultra vires and void, and (2) knowing or recklessly negligent false statements in a pleading render the pleader subject to sanctions including dismissal, the beginnings of the condemnation action represented by the Town's Condemnation Notice should be dismissed with prejudice.

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(If, despite the Town's prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

173. The foregoing facts and allegations are incorporated herein.

174. In the further alternative that the Town could later show in good faith, any actual necessity for any easement at all across Plaintiff's land and improvements, it is necessary to first limit any condemnation to what is actually reasonably necessary, and to clearly define the easement being sought, including its limitations and consequences. To do so requires prior correction of persisting legal error or misrepresentation as to not only the nature of the easement that is sought, but also the basis, or legal or practical need, for the attributes the Town sloppily or



deliberately attempts to include, and as to the consequences of Plaintiff granting it or the Town taking it.

175. Among other things, there is no need for an easement over the owner's entire lot. There is no need for public access of any kind, no need to limit owner access, no need for broad Town activities unassociated with doing and maintaining the work, no need to include owner improvements, no need to be so close to owner homes, and no reason not to clarify there is no change in owner access to ocean and beach.

176. Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and procedure for assessing value, including knowing exactly what is or is not proposed to be taken.

177. The extent of the easement sought was purposefully obscured in bad faith in Town pre-condemnation communications, but cannot be allowed to remain so in the Condemnation Notice and proceedings relating to it.

FOR A SIXTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR  
RELIEF

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

178. The foregoing facts and allegations are incorporated herein.

179. In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages for trespass or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

WHEREFORE, Plaintiff prays that the Condemnation Notice be quashed and that the Town be forever barred and enjoined from filing it or proceeding with it, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

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*Attorney for Sunset Lodge, LLC*

7/31/20

December 14, 2020 Town answer to complaint

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | <b>ANSWER</b>                     |
|                         | ) | <b>TO COMPLAINT</b>               |
| Plaintiff,              | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

**DEFENDANT, TOWN OF PAWLEYS ISLAND, BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:**

**FOR A FIRST DEFENSE**

1. Each and every allegation of Plaintiff's Amended Complaint which is not hereinafter specifically admitted, modified or qualified, is denied, and strict proof thereof is demanded.

**FOR A SECOND DEFENSE**

2. The Defendant admits the allegations contained in Paragraphs 1, 4, and 7 of the Complaint.

3. The Defendant denies the truth of the allegations contained in Paragraph 2 of the Complaint, except admits that the Defendant is a municipal corporation.

4. The Defendant admits the truth of the allegations contained in Paragraph 3 of the Complaint, and adds that the Plaintiff filed an Amended Complaint on July 31, 2020.

6. The Defendant denies the truth of the allegations contained in Paragraphs 5, 6, and 8 through 50 of the Complaint.

**FOR A THIRD DEFENSE**

7. The Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

**FOR AN FOURTH DEFENSE**

8. The Defendant is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* Furthermore, the determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity, in this case, the Defendant, exercising the power of eminent domain.

**FOR A FIFTH DEFENSE**

9. The easement sought to be acquired by the Defendant is intended for the public purpose of beach renourishment that would benefit both residents and visitors of the Town of Pawleys Island.

**FOR A SIXTH DEFENSE**

10. The easement sought to be acquired by the Defendant is a requirement by the United States Army Corps of Engineers (the “Corps”) in connection with a 45-year beach renourishment project for the Town of Pawleys Island.

**FOR A SEVENTH DEFENSE**

11. If the Defendant complies with the easement requirements by the Corps, the Town’s beach renourishment project will be federally protected. Thus:

- a. The Corps will be responsible for an estimated cost of \$300,000.00 for erecting sand fence and planting beach grass, at no cost to the Town;

b. The Corps will periodically renourish the Town's beach every nine (9) years in the next forty-five (45) years, and be responsible for 50% of the forecasted total renourishment costs of \$129,522,533.00; and,

c. The Corps will repair all beach damage resulting from a significant storm for the next forty-five (45) years, irrespective of federal declaration, at no cost to the Town.

**FOR AN EIGHTH DEFENSE**

12. Pursuant to S.C. Code Ann. § 27-3-10 *et seq*, the Plaintiff will not be liable to the general public by granting the easement sought by the Defendant.

**WHEREFORE**, having answered the Plaintiff's Complaint, the Defendant hereby respectfully asks the Court for the following relief:

- a. Dismissal of the Complaint with prejudice;
- b. An award of attorney's fees and costs to the Defendant; and
- e. Such other and further reliefs as this Court deems just and proper.

**LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.**

s/N. David DuRant, Sr.  
N. David DuRant, Sr., Esquire (SCB# 1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
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Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
**Attorney for Defendant**

December 14, 2020

January 13, 2021 Landowner amended complaint, with all exhibits  
(1, 1A, 1B, 1C, 2, and 3)

|                         |   |                                                     |
|-------------------------|---|-----------------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS)                       |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932                   |
|                         | ) |                                                     |
| Sunset Lodge, LLC,      | ) |                                                     |
|                         | ) | AMENDED COMPLAINT                                   |
| Plaintiff,              | ) | (Challenge of Authority to Condemn, and             |
|                         | ) | Challenge to Subsequent Condemnation Notice         |
| v.                      | ) | Delivered Without Consent or Leave of Court         |
|                         | ) | While Challenge to Earlier Notice is Still Pending) |
| Town of Pawleys Island, | ) |                                                     |
|                         | ) | (Nonjury)                                           |
| Defendant.              | ) |                                                     |
|                         | ) |                                                     |
|                         | ) |                                                     |

**TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 756 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.**

Plaintiff alleges as follows and requests the relief thereafter prayed for:

1. Plaintiff is an individual citizen of South Carolina who owns oceanfront property at 756 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.
2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, which is three and a half to four and a half miles long, said limits extending to the center of the salt creek separating the island from the mainland.
3. The Town has a council form of government under South Carolina statutory law, consisting of a mayor and four other council members.



4. Under a council form of government, all legislative and administrative powers of the municipality and the determination of all matters of policy are vested in the municipal council, not in a mayor, or city manager, or town administrator.

5. Under a council form of government, the legislative, executive or administrative action of the council is decided and constituted by a majority vote of the council including the mayor.

6. At all times pertinent hereto, the Town Council of the Town consisted of a mayor and four other council members.

7. On May 18, 2020 and October 12, 2020, the five were Mr. Henry, Ms. Zimmerman, Mr. Carter, Mr. Green, and Mr. Holliday.

8. On May 18, 2020 and October 12, 2020, the Town Attorney was Mr. Durant (Sr.) and the Town Administrator was Mr. Fabbri; on May 18, 2020, the Town Clerk was Ms. Allen.

9. Under South Carolina statutory municipal law, as well as under the South Carolina Freedom of Information Act, official proceedings of Council are, with limited exceptions, required to be public and on the record with minutes taken.

10. The Town Administrator is an employee and not a Council member.

11. Under a council form of government, the mayor has no greater vote, or executive or other inherent powers than any other council member, other than to be the presiding officer at council meetings.

12. The majority of the owners on the island do not live on the island; the majority of the homes are not principal residences of the owners or anyone else; and the governing body is elected by the relatively small percentage of owners who are residents or putative residents, from a relatively small percentage of owners who are residents or putative residents on the island.

13. In early 2019, the Town Administrator of the Town began repetitive public and private requests to oceanfront property owners on the south end of Pawleys Island to grant permanent oceanfront easements to the Town on their property at no charge.

14. The requests to south end owners stated that the permanent easements were for the purpose of a project placing additional sand on the beach continuously for three miles more or less, from the south end north past the middle of the island up to a point on the north end some distance north of the fishing pier.

15. Although the beach on Pawleys Island had never before been “nourished” in the first place with pumped-in offshore sand in the manner proposed, the project was commonly referred to as a “renourishment project.”

16. In early 2019, the Town was proposing to do the south end of the renourishment project in conjunction with the U.S. Army Corps of Engineers, which had indicated on-again-off-again intentions and abilities to participate in some form of renourishment for the preceding ten to fifteen years.

17. The repetitive public and private requests were only made to the owners on the southernmost mile, more or less, of beach, and were directed to approximately 113 owners.

18. In the repetitive public and private requests of the Town Administrator to south end property owners for permanent easements, he also encouraged all owners on the island to persuade south end property owners to grant easements. In the verbal public requests, he stated that the encouragement should stop short of showing up at doorsteps with torches and pitchforks.

19. Around this time, the Town began publishing lists of questionable completeness or accuracy, of homeowners who were alleged to have not yet granted an easement, along with

personal information such as property address, details of form of ownership and others with interests in the property, primary contact person, and home address.

20. Around this time, the Town, through the Town Administrator, Ryan Fabbri, and possible others, also began and continued to give similar information and comments on it, of questionable completeness or accuracy, to the local paper.

21. In the repetitive public requests of the Town Administrator to south end property owners, and in public descriptions to all other owners, he consistently stated, in writing, "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

22. Mr. Fabbri made these same representations in private requests directly to south end property owners.

23. In April 2019, south end property owner M. Baron Stanton sent the Town a signed easement in recordable form, allowing conduct on his property of activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.

24. The easement was prepared by Stanton at his expense and was offered by Stanton free of charge.

25. The Town rejected the easement offered by Stanton.

26. The Town Administrator, Mr. Fabbri, and the Town Attorney, Mr. Durant, continued to have specific exchanges with Stanton about features of the permanent easement proposed by the Town which Stanton explained were not necessary because irrelevant to the

stated purpose, because excessive or because otherwise unreasonable, poorly conceived, or poorly drafted.

27. In April 2019, south end property owner Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust, delivered to the Town, a signed easement, allowing conduct on his property of activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.

28. The easement was prepared by Beattie at his expense and was offered by Beattie free of charge.

29. The Town Administrator asked Beattie to sign another execution page in Mr. Fabbri's office to correct a deficiency in execution asserted to exist.

30. Beattie did so.

31. The Town Administrator thereafter recorded a different easement than the one delivered by Beattie.

32. Thereafter, Beattie requested in writing of Mr. Fabbri, a written explanation by Mr. Fabbri, but did not receive one.

33. At Beattie's demand, the Town cancelled the easement it had recorded.

34. Beattie thereafter recorded his own cancellation prepared by him at his expense.

35. From before the time Beattie requested a written explanation From Mr. Fabbri, for the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Beattie.

36. By early May 2019, Stanton had also written to the Corps and discussed the matter with the Corps, and by the end of June, Stanton made Mr. Fabbri acutely aware of the issues which concerned Stanton, if Mr. Fabbri was not already aware of them.

37. After the middle of June 2019, for the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Stanton.

38. By a point in July 2019, property owner Sunset Lodge, LLC, at its expense, recorded with the Georgetown County Register of Deeds, an easement allowing conduct on its property of activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.

39. The easement was prepared by Sunset at its expense and was provided and offered by Sunset free of charge.

40. For the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Sunset.

41. By July 2019, the Town Administrator, Mr. Fabbri, had ceased to make public requests for easements from south end property owners, and upon information and belief, also ceased to make private requests.

42. In July 2019, the Town Council declared that if the Town proceeded with the renourishment project and contracted for the whole project with the contractor Marinex instead of waiting for Corps involvement, no easements would be necessary.

43. In July or August 2019, the Town Council decided to, and did, proceed to contract for the whole renourishment project with the contractor Marinex, without any involvement of the Corps.

44. In 2019, in light of Town estimations that if a certain volume of sand were added, renourishment probably would not be required again for twenty-two years or longer, at which point 400,000 cubic yards of the additional sand would likely remain, the Town contracted for the optimal quantity of sand.

45. In late October or early November 2019, the Town commenced the work on the project, with no new or additional easements from Sunset, Beattie, Stanton or any others whose offers of easements had been rejected and no easements from those from whom the Town had not obtained easements.

46. In February 2020, as the renourishment project was approaching completion, Mayor Brian Henry publicly reported that according to the coastal scientist overseeing the project, the additional sand in place was expected to last at least 15 years, beyond which a significant portion of the additional sand would remain.

47. In the February 2020 published letter, Mr. Henry stated he was furnishing answers to “frequently asked questions” which were being asked as the project was nearing completion.

48. In the February 2020 published letter, Mr. Henry mentioned nothing about signing an agreement with the Corps, any future involvement of the Corps, any need for easements, or any need to renourish again at nine-year intervals.

49. In the February 2020 published letter, Mr. Henry stated that the coastal scientist advised, “While Pawleys Island has historically had a relatively low erosion rate, that rate has been influenced by exposed groins. CSE would expect the rate to increase in the first few years following the project while the groins are mostly buried. Over time, the rate will return to the historic rate. Barring significant storms, CSE expects the fill to last around 15 years, with some measurable sand volume remaining after that.”

50. The Town thereafter completed the renourishment work, including all sand placement and associated earthwork.

51. The project had started on the south end in late October or early November 2019 and proceeded north as areas to the south were completed or substantially completed, but the whole thing was finished by mid-February to the beginning of March, 2020.

52. In early 2020, following completion of the renourishment work, the Town Administrator began again requesting easements from south end property owners from whom the Town had not received easements and those whose easements the Town had rejected.

53. In his requests, the Town Administrator, Mr. Fabbri, stated that easements were needed because of a conditional deal with the Corps.

54. In his requests, the Town Administrator, Mr. Fabbri, consistently stated, "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

55. With regard to the easement document the Town Administrator was requesting be signed in 2019, the Town Administrator, Mr. Fabbri, knew in 2019 that these statements by him about the sole purpose and scope of the easement were not true.

56. With regard to the easement document the Town Administrator was requesting be signed in 2020, the Town Administrator, Mr. Fabbri, knew in early 2020 that these statements by him about the sole purpose and scope of the easement were not true and he continued to make them.

57. In April 2020, beginning with a phone call and following in writing, Stanton directly fully apprised the Mayor, Mr. Henry, in detail, of the problems with the proposed

easement, prior communications with the Corps, and the public-misrepresentation, public-threatening, public-shaming and loud defamatory-gossip methods employed by Mr. Fabbri.

58. On May 18, 2020, Town Council held a public, officially recorded, publicly live-streamed Town Council meeting.

59. At a public, officially recorded, publicly live-streamed May 18, 2020 Town Council meeting, the Council considered whether to condemn renourishment easements the Town Administrator, Mr. Fabbri, represented to the Town he had been unable to obtain.

60. The May 18, 2010 meeting was the sole meeting of Town Council held for the purpose of considering whether to condemn renourishment easements the Town Administrator, Mr. Fabbri, represented to the Town he had been unable to obtain.

61. The May 18, 2020 meeting was the sole meeting at which for Council to consider whether renourishment easements were to be condemned, what interest in property to condemn and at what cost.

62. There were no other meetings of Council at which these matters were considered.

63. The Mayor, all four other Council members, and the Town Attorney were in attendance.

64. At the May 18, 2020 video-streamed meeting, Mr. Fabbri publicly represented that he had been working diligently to obtain easements for over a year, and that he had been in dialogues with the subject owners.

65. At the May 18, 2020 meeting, Mr. Fabbri never stated that Stanton, Beattie and Sunset had previously offered easements.

66. At the May 18, 2020 meeting, Mr. Fabbri did affirmatively present the matter as if these owners had simply declined or refused to grant any easement at all.



67. At the May 18, 2020 meeting, Mr. Fabbri did affirmatively indicate by statements to the effect that “for whatever reason, they would not grant the easement,” and “they do not owe us any explanation,” that these owners had given no reason, that no reason was known, that no explanation was offered, and that there were no issues for Council to balance or discuss.

68. These statements and deliberate implications by Mr. Fabbri were false.

69. Neither the Mayor nor the Town Attorney corrected them.

70. At the May 18, 2020 meeting, the Council never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire.

71. At the May 18, 2020 Town Council meeting, the Council never once discussed any of the objecting three property owners’ concerns with the terms or the differences between what the owners had offered and what Mr. Fabbri had previously tried to exact from them.

72. At the public May 18, 2020 Town Council meeting, the Council never once discussed any balancing of the harm to the property owner caused by the proposed scope of the easement against any legitimate needs for such scope for a concrete, legitimate, existing project, if any.

73. Mr. Fabbri’s explanations of the need for the “renourishment easements” was that obtaining the easements would allow the Corps to come in and plant beach grass and erect sand fence along a berm of sand created on the south end by the renourishment which had been totally completed approximately two and a half months earlier, and that having the Corps install vegetation and sand fence would allow the Corps to claim the project was a completed U.S. Army project, and that this claim, in turn, would make the Town “eligible” to receive future Corps assistance on the south end only.

74. At the public May 18, 2020 Town Council meeting, neither the Council nor the Town Attorney ever once discussed or even questioned the legitimacy or lack of legitimacy of any of the terms in the proposed easements Mr. Fabbri had previously tried to obtain.

75. At the public May 18, 2020 Town Council meeting, the Council never once discussed any of the property owners' actual offers of easements to the Town, or the true circumstances of the property owners' other efforts to cooperate with the Town, or the misrepresentations of Town officials.

76. At the May 18, 2020 meeting, Council proceeded in the light of the repetitive written statements by the Town Administrator over the course of the preceding approximately year and a quarter, "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

77. At the publicized meeting, no statement or discussion by Mr. Fabbri, the Mayor, any other Council member or the Town Attorney, described the scope or terms of the easement in any terms correcting or contradicting this consistent public characterization by Mr. Fabbri.

78. At the May 18, 2020 meeting, the Town Attorney advised Council publicly and officially on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was "basically, simply to put sand on the beach."

79. At the May 18, 2020 meeting, the Town Attorney advised Council publicly and officially on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

80. At the May 18, 2020 meeting, the Council publicly resolved to authorize condemnation of an easement “basically, simply to put sand on the beach.”

81. On June 22, 2020, without previously providing Sunset an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island property owner Sunset Lodge, LLC, the papers shown as “Exhibit A” to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit A to Exhibit 1 being the papers served on Sunset.

82. The papers served on property owner Sunset by the Town on June 22, 2020 consisted of:

- (i) the text of a document entitled “Condemnation Notice and Tender of Payment”;
- (ii) a document entitled “Exhibit ‘A’ (Easement Areas)’”;
- (iii) a document entitled “Beach Renourishment Easement.”

83. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

84. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)’”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Sunset’s property shown in the context of adjacent properties.

85. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of four pages of text including the execution and acknowledgement pages, followed by a fifth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

86. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit “A””.

87. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Sunset’s house, enveloping portions of Sunset’s oceanfront deck and stairs, and then turning diagonally near the northeastern corner of the house and encroaching further westward into Sunset’s north side yard.

88. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Sunset’s property.

89. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Sunset’s property.

90. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement area on Sunset’s property.

91. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Sunset’s access on Sunset’s property.

92. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Sunset’s property.

93. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited the right to remove “obstructions,” “obstacles,” or “structures” throughout the easement area on Sunset’s property.

94. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the “Beach Renourishment Easement,” for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

95. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 22, 2020.

96. No appraisal report to determine just compensation for taking the easement had been served on or made available to Sunset before June 22, 2020.

97. Before June 22, 2020, no negotiation with Sunset had occurred or been attempted by the Town after making an appraisal report available to Sunset.

98. Before June 22, 2020, no offer to purchase had been made by the Town to Sunset after making an appraisal report available to Sunset.

99. Sunset obtained from the Town after June 22, 2020, an appraisal report commissioned by the Town.

100. The “date of valuation” of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8, 2020**.

101. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

102. The Town had never provided the written terms of the proposed easement to the appraiser.

103. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of “Town officials.”

104. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

105. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole Town official from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

106. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

107. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

108. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

109. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

110. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

111. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

112. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

113. On June 30, 2020, without previously providing Beattie an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island property owner Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust, the papers shown as "Exhibit B" to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit B to Exhibit 1 being the papers served on Beattie.

114. The papers served on property owner Beattie by the Town on June 30, 2020 consisted of:

- (i) the text of a document entitled "Condemnation Notice and Tender of Payment";
- (ii) a document entitled "Exhibit 'A' (Easement Areas)"; and

(iii) a document entitled “Beach Renourishment Easement.”

115. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

116. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Beattie’s property shown in the context of adjacent properties.

117. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of four pages of text including the execution and acknowledgement pages, followed by a fifth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

118. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit “A””.

119. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Beattie’s house, enveloping portions of Beattie’s oceanfront deck, and then turning diagonally near the northeastern corner of the house and encroaching further westward into Beattie’s north side yard.

120. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Beattie’s property.

121. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Beattie’s property.



122. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement “area” on Beattie’s property.

123. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Beattie’s access.

124. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Beattie’s property.

125. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited the right to remove “obstructions,” “obstacles,” or “structures” throughout the easement area on Beattie’s property.

126. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the “Beach Renourishment Easement,” for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

127. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 30, 2020.

128. No appraisal report to determine just compensation for taking the easement had been served on or made available to Beattie before June 30, 2020.

129. Before June 30, 2020, no negotiation with Beattie had occurred or been attempted by the Town after making an appraisal report available to Beattie.

130. Before June 30, 2020, no offer to purchase had been made by the Town to Beattie after making an appraisal report available to Beattie.

131. Beattie obtained from the Town after June 30, 2020, an appraisal report commissioned by the Town.

132. The “date of valuation” of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8**, 2020.

133. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

134. The Town had never provided the written terms of the proposed easement to the appraiser.

135. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of “Town officials.”

136. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

137. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole “Town official from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

138. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

139. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

140. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

141. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

142. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

143. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

144. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

145. On June 23, 2020, without previously providing Stanton an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island

property owner M. Baron Stanton, the papers shown as “Exhibit C” to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit C to Exhibit 1 being the papers served on Stanton.

146. The papers served on property owner Stanton by the Town on June 23, 2020 consisted of:

- (i) the text of a document entitled “Condemnation Notice and Tender of Payment”;
- (ii) a document entitled “Exhibit ‘A’ (Easement Areas)’”;
- (iii) a document entitled “Beach Renourishment Easement.”

147. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

148. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)’”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Stanton’s property shown in the context of adjacent properties.

149. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of five pages of text including the execution and acknowledgement pages, followed by a sixth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

150. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit “A””.

151. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Stanton’s house, enveloping Stanton’s oceanfront deck and portions of Stanton’s stairs and concrete foundation system.

152. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Stanton’s property.

153. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Stanton’s property.

154. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement “area” on Stanton’s property.

155. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Stanton’s access.

156. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Stanton’s property.

157. Neither Item (ii), the map or plat, nor the nearly verbatim repeated block of text in Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited the right to remove “obstructions,” “obstacles,” or “structures” throughout the easement area on Stanton’s property.

158. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the “Beach Renourishment Easement,” for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

159. Subsequent to the initial June 23, 2020 service of the above papers, the Town purported to change the scope of the easement requested of Stanton by simply sending another map or plat that was different from the one in the initially served Item (ii).

160. Subsequent to the June 23, 2020 service of the papers in Exhibit C of Exhibit 1 and subsequently purporting to change the map or plat, the Town purported to change the scope of the easement requested of Stanton yet again by simply sending another set of papers and stating that all previous versions were “withdrawn.”

161. The last set of papers sent by the Town restored the previous description of the entire lot, rather than a portion, as being subject to the easement, removed any qualification on the right to destroy or remove owner’s improvements, and reiterated an intention to have the easement encroach on concrete, stairs, and the deck.

162. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 23, 2020.

163. No appraisal report to determine just compensation for taking the easement had been served on or made available to Beattie before June 23, 2020.

164. Before June 23, 2020, no negotiation with Stanton had occurred or been attempted by the Town after making an appraisal report available to Stanton.

165. Before June 23, 2020, no offer to purchase had been made by the Town to Stanton after making an appraisal report available to Stanton.

166. Stanton obtained from the Town after June 23, 2020, an appraisal report commissioned by the Town.

167. The “date of valuation” of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8**, 2020.

168. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

169. The Town had never provided the written terms of the proposed easement to the appraiser.

170. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of “Town officials.”

171. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

172. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

173. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

174. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

175. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

176. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

177. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

178. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

179. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

180. On July 21, 2020, Plaintiff commenced an action against the Town in which Plaintiff challenged on numerous grounds, the right of the Town to condemn the interest in real property on Pawleys Island at the address aforesaid pursuant to the papers served as described above June 22, 2020. (The papers in Exhibit A of Exhibit 1 which were served June 22, 2020 are sometimes hereinafter referred to as the "Existing Notice").



181. Attached as Exhibit A to the original Complaint herein is the Amended Complaint in the July 2020 action, Case 2020-CP-22-00600 (the “Existing Challenge Action”).

182. All of its allegations, by this paragraph, are hereby incorporated herein.

183. The Existing Challenge Action, by law, stays all proceedings under the Existing Notice until the disposition of the Existing Challenge Action.

184. The Existing Challenge Action was still pending as of January 13, 2021.

185. As alleged in the Existing Challenge Action, the Town’s attempt to condemn under the Existing Notice suffers from numerous incurable defects depriving the Town of the power to condemn what it seeks to condemn.

186. These defects include, but are not limited to exceeding the limited authorization granted by Town Council on May 18, 2020, for Mr. Fabbri and the Town Attorney to condemn an easement “basically, simply to put sand on the beach,” as opposed to the easement the Town Administrator and Town Attorney thereafter actually pursued.

187. The easement the Town actually pursued after the May 18, 2020 authorization was one granting public access to and use of substantial portions of the owner’s property.

188. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

189. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement

after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

190. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

191. The easement the Town actually pursued after the May 18, 2020 authorization was one empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to thereafter “operate a public beach” on substantial portions of the owner’s property.

192. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

193. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as

part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

194. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

195. The easement the Town actually pursued after the May 18, 2020 authorization was one empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to limit the owner’s access to broadly and vaguely described “dune areas” portions of the owner’s property, and was one further prohibiting construction by the owner of structures for beach access and beach enjoyment without, in addition to compliance with existing local, state and federal law, obtaining “prior approval” from an undesignated, unidentified “designated representative” of the Town with no stated standards for designating the representative and no stated standards for the representative’s approval, and with the proviso that anything constructed was still subject to the “construction, operation, maintenance, repair, rehabilitation and replacement” of the project, which was previously stated to allow destruction of such things.

196. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “The easement is required solely for

activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

197. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

198. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

199. The easement the Town actually pursued after the May 18, 2020 authorization was one perpetually empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to destroy the owner’s improvements on portions of the owner’s property.

200. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “The easement is required solely for activities related to the construction and maintenance of the project including sand

placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.”

201. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

202. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

203. The defects alleged in the Existing Challenge Action also include, but are not limited to, failing to have the appraiser, prior to serving the Existing Notice, put a value on what the Town actually seeks to condemn; it is alleged that, rather, the Town had the appraiser put a value on some fictional interest in property which was fabricated by the Town Administrator without reference to any explicit written terms of the easement to be appraised and which was calculated to produce a different appraisal value.

204. The Existing Challenge Action’s allegations of incurable defects in the Town’s attempt to condemn under the Existing Notice also include, but are not limited to, failing to offer to pay the landowner the value of the correct interest in property so appraised, rather than the value of a fictional interest in property based on oral representations of the Town Administrator.

205. These defects also include, but are not limited to, failing to provide to the property owner before serving the Existing Notice, an appraisal of the interest to be condemned, as opposed to providing no appraisal at all until after serving the Existing Notice, and then providing an appraisal only of a different interest in property than the interest to be condemned.

206. These defects also include, but are not limited to, falsely stating in paragraph 7 of the Existing Notice served on Plaintiff, “The Condemnor has complied with the requirements set forth in S.C. Code Ann.§28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law.”

207. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a).

208. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a) by having the property interest actually sought by the Town in the Existing Notice appraised as required by law.

209. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a) by making the appraisal of any property interest whatsoever – not even the appraisal of the wrong interest in property -- available to the Landowner.

210. These defects alleged in the Existing Challenge Action also include, but are not limited to, failing to negotiate in good faith for purchase of the interest in property sought, at the price indicated by the appraisal of the correct interest in property, so that during the statutory time for offer and negotiation, the landowner would have an appraisal, at the condemnor’s expense, of the correct thing, and could either knowingly and knowledgeably accept a fair price for the right thing, or knowingly and knowledgeably point out the defects before being sued.

211. These defects also include, but are not limited to, falsely certifying to the Court in paragraph 7 of the Existing Notice served on Plaintiff, in conjunction with falsely stating that an appraisal had been previously made available, “The Condemnor ... certifies to the Court that a negotiated resolution has been attempted prior to service of this Condemnation Notice and commencement of condemnation action.”

212. These defects also include, but are not limited to, failing to seek to condemn an easement with only the scope which is actually and reasonably needed in order to accomplish the renourishment project, which in this case, for example -- but not by way of limitation -- does not reasonably need to include a blanket grant of public access 24/7/365 up to a few feet from the owner’s house, door, and windows, including now private decks, steps, patios, showers, etc.

213. Before October 12, 2020, at considerable time and expense, the parties in the Existing Challenge Action had engaged in drafting and exchange of pleadings, legal and factual research, motions practice and discovery.

214. These activities and efforts included a motion of the Town to dismiss, a motion of the Town to require a ten-million-dollar bond, a motion of the Town for protection from discovery, two notices by Plaintiff of the deposition of the appraiser, interrogatories by Plaintiff, requests by Plaintiff for production, a motion by Plaintiff to compel the Town to comply with discovery requests, and a motion for summary judgment by Plaintiff.

215. The Town’s August 10, 2020 motion was one to require Plaintiff to post a ten million dollar bond as a condition to being allowed to continue with Plaintiff’s challenge to the illegality and unreasonableness of the condemnation attempted by the Town.

216. In its motion and brief, the Town, without any supporting affidavit or other sworn testimony or expert treatise materials whatsoever, and without citing a single case, statute or

other source of legal authority, stated, “There is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently.”

217. The Town made these representations to the Court about all the sand in the entire project without addressing or distinguishing its own recent representations to its constituent owners that after over fifteen years, significant portions of the sand added to the existing beach would still be there.

218. The Town misrepresented in its brief that obtaining the easements would allow the Town to recover from the federal government all of the money the Town spent on all the sand if a major storm wiped out all of the sand the Town put on the whole island.

219. The Town made this misrepresentation despite knowing the fact that only a little over a third – not all -- of the length of the total renourishment project had been earlier proposed to be done in conjunction with the Corps, and despite knowing that any prospective arrangement with the Corps would also be so limited, and despite knowing that the remaining approximately 2/3 of the length of the project would be ineligible for federal assistance other than any federal assistance which would be available in the absence of easements and Corps involvement on the south end of the island, and despite knowing that “eligibility” for federal assistance on even the south end does not ensure actual receipt of federal assistance at all or receipt of timely assistance, if any.

220. In order to intimidate Plaintiff with headlines in the local paper and ask for a ten million dollar bond from Plaintiff and in order to convey this misrepresentation that the federal government would repair any damage to any of the beach on the island if the easements could be obtained, the Town stated in its August 10, 2020 brief that there was “apprehension” by people the Town did not identify and who were never sworn, that “all of the Town’s beach



renourishment activities, with a cost of fourteen million four hundred thirty-one thousand (\$14,431,000.00) dollars, will be shattered and wiped out,” that “[t]here is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently,” and that “[u]nless the Town is able to proceed with condemnation and obtain the easements required by the U.S. Army Corps of Engineers to keep the Town’s beach renourishment project in the federal project system, any damage to the beach will not be repaired by the federal government.”

221. At the hearing of its motion, the Town Attorney admitted to the hearing judge, Judge Culbertson, that the Town was unable to cite any case or statute as authority for the proposition that the Court could require a plaintiff to post a bond – much less a ten million dollar bond -- as a condition of continuing a stay which was imposed by a statute the terms of which allowed the lifting of the stay only upon consent of the plaintiff, or as a condition of continuing an action challenging Town attempts which were alleged to be unconstitutional, illegal, unauthorized, noncompliant, fraudulent, etc.

222. The motion by Plaintiff for summary judgment, requested that the Town’s condemnation attempt be declared invalid and not be permitted.

223. The motion for summary judgment was based on events occurring before the May 18, 2020 Town Council meeting, events, including false and fraudulent presentation by the Town Administrator, occurring and omitted at the May 18, 2020 Town Council meeting, and events occurring and omitted after the May 18, 2020 Town Council meeting, including false statements in the condemnation papers and failure to appraise the same interest in property for which condemnation was sought and failure to timely provide any appraisal of anything.

224. Four days before the October 16, 2020 commencement of the deposition of the appraiser, and twelve days before the then-scheduled October 30, 2020 hearing of the motion for summary judgment, while the Existing Challenge Action was still pending, the Town Council held a public meeting, live-streamed, on October 12, 2020. On or around the same day, the Town Attorney requested consent to continue the October 30, 2020 summary judgment hearing to attend the Clemson-Boston College football game, which hearing was later re-scheduled for December 4, 2020.

225. The Town Council held the public meeting, live-streamed, on October 12, 2020 while all condemnation proceedings under the Existing Notice were stayed.

226. The Council members Henry, Zimmerman, Holliday and Green, the Town Administrator, and the Town Attorney were in attendance.

227. On the agenda at the October 12, 2020 Town Council meeting was public comment, and consideration of a proposed written resolution, or “addendum to resolution,” concerning condemnation.

228. In spite of the falsities, alleged below, in the final product of the meeting, the resolution was drafted to read as an after-the-fact ratification of what had already been done by the Town Administrator and Town Attorney.

229. What was not on the agenda, and what was not in the proposed resolution, and what was not discussed at the meeting or in any other way disclosed to the public viewing the live-streamed and recorded broadcast, was the service of a new and additional Condemnation Notice on Plaintiff or other property owners.

230. This meeting was yet another instance of the Town saying one thing but doing another.

231. In the meeting, the Town sought to justify to the onlooking public with completely unfulfilled spoken words and video what the Town had put Plaintiff and others through, while some Town actors pursuing the condemnation apparently used or created the opportunity to attempt to salvage positions previously taken in litigation with property owners, by substituting more documents, backdating, obscuring the issues with an adversarial pseudoscholarly footnote, and making more false statements in the public record and written documents.

232. The falsifications include making statements in the public meeting that documents under consideration state, or will state, things that are completely lacking.

233. The falsifications include implying publicly that documents under consideration at the meeting do not do or state things that the documents do and state.

234. The falsifications include further stating a purpose and intention to change documents in a way ‘addressing the concerns’ of property owners and helpfully “clarifying” things for all owners, and then later either not making the changes at all, or making meaningless, illusory changes, or making adversarial changes which are harmful to the titles of the three condemnees and all beachfront property owners on the whole island, or using the documents for purposes in litigation not disclosed or authorized in the meeting.

235. In the October 12, 2020 meeting, the proposed written October 12, 2020 resolution that was included in advance with the meeting agenda (“the Publicized Proposed Resolution”) was part of the public record along with the agenda for the October 12, 2020 meeting. Its written terms are inconsistent with the spoken words at the meeting. The Publicized Proposed Resolution is attached hereto as “Exhibit 2.”

236. At the October 12, 2020 meeting, although there were written documents in the Publicized Proposed Resolution, the Council still never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire, nor the specific terms of the proposed easements in Publicized Proposed Resolution, which at that point, was worded and presented to Council as if the attached proposed easements had already been “proposed to,” sent to,” and served on the three condemnees.

237. Introducing the purpose of proposing the Publicized Proposed Resolution, Mr. Durant states (at close to mark 33:49 on the video time counter), “Essentially, this document is a document that defines the use of the area of the easement that we are asking for.”

238. Mr. Durant does not state, and perhaps Council is unaware, that the document then presented to Council, the Publicized Proposed Resolution, does not define the use to which the easement may be put any further than did the June 2020 Existing Notice, and, for example, does not define, or even purport to define, “public use” at all.

239. Mr. Durant does not state, and perhaps Council is unaware, that he has not yet added any language at all to define “public use” or further define any other use of the easement, but he states at c.34:43, “There is a couple of things that we might want to tweak on there as far as defining public use and that sort of thing.”

240. He adds at c. 36:08 that he will “meet with Ryan and go through the definition.”

241. Mr. Holliday, at c. 35:27, understands that the entire purpose of the resolution is proposed to be supplied, not at the meeting, but after the fact, as he inquires whether the resolution could be approved subject to Mr. Durant “making the change you just discussed, since you don’t have that particular language in there tonight.”

242. In a self-lauding added clarification of Council's purpose in considering the Publicized Proposed Resolution that is before them, Mr. Henry emphasizes at c.38:51, that the easement "is limited to very specific uses, thus it is a 'use easement,' and it is not a taking. It is a clarification of those key points." "It" refers to the Publicized Proposed Resolution, but "it" does no such thing; it contains no new clarifications, it contains no new definitions, and it contains no new narrowing, limitation, or specification of uses. Again, apparently no one on Council read the document or asked what on earth Mr. Henry was referring to.

243. As another example of "saying it doesn't make its so," nothing in the Publicized Proposed Resolution or in the Existing Notice "limits the easement to very specific uses"; it is exactly the opposite: the impetus of the present litigation (other than fraudulent behavior of Town actors, frivolous assertions, abusive use of Town power and resources, etc.) is that the easements proposed by the Town consume over a page clarifying just how oppressively and dangerously broad the easement is and contain virtually no limiting language or definitions at all; this same verbiage remained intact in the Publicized Proposed Resolution.

244. Mr. Henry adds at c. 38:51, "Because the phrase 'public use' is in the easement -- what exactly is that -- that is the whole gist of what we are trying to do here." While the ordinary meaning of "public use" is far from mysterious, the Publicized Proposed Resolution does nothing to state exactly what "public use" is, and leaves it to be understood by its plain ordinary meaning.

245. At the meeting, at approximately 37:25, the Town Attorney confirmed a requested clarification from Mr. Green (c. 37:00) that the "change in language is to address the concerns of the citizens or property owners who have objected to the easement."

246. The Town Attorney confirmed (c. 37:25), “Yeah, and I think it also provides clarification for all the folks who have signed easements out there as well.” There is nothing in the Publicized Proposed Resolution which does so, nor does the later harmful revision help the matter in any way.

247. The Town Attorney at c. 37:55, added, “The homeowner’s property is just subject to the use and for renourishment purposes only.”

248. It is of course unclear whether the Town Attorney is representing what the document then before the Council – the Proposed Publicized Resolution -- says, or what he expects the document to say in the future.

249. In fact, the document then before Council contained no explicit limitation of public use to “renourishment purposes only,” nor any narrowing of what was meant by “renourishment purposes.”

250. In fact, the Town has essentially argued in the past in its opposition to summary judgment, in circular fashion, that “for the purpose of renourishment” means anything which is included in the easement the Town has sought, i.e., that anything that is in the proposed easement, is, because it is in the easement, for renourishment purposes.

251. Mr. Durant continued at c.38:04, “And it sort of just identifies what renourishment purposes are.”

252. Again, the statement is less than clear on what “it” is – the document then before Council and the Existing Notice, or the nonexistent “it” -- some future altered version of one of these documents.

253. The document then before Council contained no identification of what “renourishment purposes” are.

254. Mr. Durant continued at 38:19, “So, to the extent that anybody uses the easement, it is going to be subject to what the use is as defined by the condemnation notice.”

255. Again, this begs the question – never considered by Council – of what “the use is as defined by the condemnation notice.” The term “public use” is not defined or limited at all, and was not defined or limited later.

256. Council and the Town Attorney exhibited, at best, confusion and lack of understanding of even the simplest aspects easements, condemnation, and what constitutes property in America.

257. They also exhibited an inability or refusal to read the language in the documents they were promulgating and blithely indulged in a shell game with present tense and future tense which concealed what they were not doing and what they were doing. They made no discernment between what document or verbiage existed and what document or verbiage did not exist at the time of the meeting.

258. For example, they clarified and emphasized in completely illusory and meaningless fashion no less than three times that the easement they were condemning was distinguished as being a less onerous subspecies of thing they called a “use easement.” (Durant, c. 34:05 (It is a “use easement”); Durant, c. 37:45 (“There have been incorrect statements out there ... this is a use easement”); Henry, 38:35 (It is “limited to very specific uses, thus it is a ‘use easement’”).

259. All easements are for the purpose of use; all easements are interests in property; and all condemnations are takings.

260. An easement is a nonpossessory right to use.

261. There is no separate species of easement known as a “use easement.”

262. By way of further example of the fundamental “misunderstanding” of Council and its counsel of the nature of property and the principles, objects and constraints of the process they were indulging in, they no less than twice emphasized self-assuredly that condemnation of the easements was “not a taking.” (Henry, c. 38:07; Henry, c. 38:35). Mr. Henry at c.38:51 described this as one of two “key points” they were “making” with whatever present or future resolution he was referring to.

263. The act of condemning is, by definition, the act of taking. The Town commenced a condemnation action.

264. Easements and other property may not be taken without just compensation.

265. Paying just compensation when taking by condemnation is not prohibited by the State and federal constitutions.

266. Paying for property involuntarily taken through condemnation does not make it not a taking. Taking and paying for an easement, as opposed to taking and paying for a fee simple interest in real property, also does not make the taking of the easement not a taking.

267. All condemnations are takings.

268. The “takings clause” of U.S. Constitution provides that “nor shall private property be taken for public use, without just compensation. The “takings clause” of the South Carolina Constitution provides, “private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.”

269. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also does not understand any of the significance of what it has embarked on doing to its property owners all up and down the beach.



270. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also cannot be trusted to read and understand the “definitions” proposed to be added to the document and determine whether what is written accomplishes the Council’s stated purpose, or any purpose, or some other purpose.

271. At the October 12, 2020 meeting, the Council never once discussed any of the objecting three property owner’s concerns with the terms.

272. At the October 12, 2020 meeting, the Council never once discussed any balancing of the harm to the property owner against any legitimate needs for a concrete, legitimate, existing project, if any.

273. At the October 12, 2020 meeting, the Council never once discussed or exhibited any knowledge of the property owner’s actual offers of easements to the Town, or any of the other true circumstances of the property owners’ efforts to cooperate with the Town, or the misrepresentations of Town officials.

274. At the October 12, 2020 meeting, the Town Council received advice from the Town Attorney that the Publicized Proposed Resolution, which included attached exhibits designated “A,” “B,” and “C,” needed further “tweaking” in terms of defining public use.

275. At the October 12, 2020 meeting, the Town Council thereupon conditionally approved the incomplete Publicized Public Resolution which Council acknowledged it knew would be changed by the Town Attorney in some manner not yet known to Council.

276. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Public Resolution which stated that the documents attached to the resolution had been previously “proposed to” and “sent” to the subject property owners.

277. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Proposed Resolution knowing that the Town Attorney proposed to change it.

278. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Proposed Resolution knowing that the Town Attorney proposed to thereafter tweak the documents which were stated to have been previously “proposed to” and “sent” to the subject property owners.

279. At the October 12, 2020 meeting, the Town Council then did not discuss the actual terms of the Publicized Proposed Resolution or the contents of the proposed attachments.

280. At the October 12, 2020 meeting, the Town Council then stated it would allow a private later decision of only the Mayor and Town Administrator to determine the matter and the suitability of the resolution.

281. Upon information and belief, Town Council did not read the resolution it was approving.

282. Upon information and belief, Town Council either did not care whether the statements in the resolution it was approving were true or false.

283. Upon information and belief, Town Council did not understand that there are different legal consequences between stating true things and stating false things.

284. Upon information and belief, after the October 12, 2020 public meeting, namely, on October 13, 2020, the Town Attorney, Mr. Durant, the Mayor, Mr. Henry and the Town Administrator, Mr. Fabbri, alone, in the abovedescribed fashion, privately, invalidly, revised and issued a different document (the “Private Resolution”). The Private Resolution is attached hereto as “Exhibit 3.”

285. The Private Resolution did not accomplish any of the things stated or authorized in the meeting.

286. The map which is part of Exhibit C of the Private Resolution is different from the map which was shown in the Publicized Proposed Resolution's version of Exhibit C. This is not a tweaking of a nonexistent definition of "public use," as stated in the October 12, 2020 meeting.

287. The version of the map in Exhibit C in the Publicized Proposed Resolution was swapped out for a different one which now appears in the Private Resolution.

287. As a result of the swapping out of the map, the proposed Beach Renourishment Easement agreement attached to the Private Resolution as Exhibit "C" is different from the proposed Beach Renourishment Easement in the Existing Notice for that property because, among other things, the Revised Easement moves the western boundary of the easement area (the "PEL") five or six feet east. Although it is a move in the right direction, it is a misrepresentation and a coverup to state that this was the map in the Existing Notice, by which the Town first sued the owner of the property which was the subject of the Existing Notice, requiring him to file the Existing Challenge Action.

288. The version of the granting clause in Exhibit C in the Publicized Proposed Resolution was also altered to remove an exception to the right of the easement holder to destroy owner improvements, and a different text now appears in the Private Resolution. This is not a tweaking of a nonexistent definition of "public use," as stated in the October 12, 2020 meeting. This is also a change adverse to the property owner.

289. Upon information and belief, the Private Resolution, including its three exhibits, was never publicly debated or voted on or publicized for comment.

290. The Private Resolution, after more than a mere tweaking of the exhibits to the Publicized Proposed Resolution, still stated that the proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits “A,” “B” and “C” were “previously proposed to” and previously “sent” to the three property owners respectively affected thereby.

291. These statements are false.

292. None of the documents represented in Exhibits “A,” “B,” and “C” of the Private Resolution were previously proposed to Plaintiff or the other two property owners.

293. None of the documents represented in Exhibits “A,” “B,” and “C” of the Private Resolution were previously sent to Plaintiff or the other two property owners.

294. None of the documents represented in Exhibits “A,” “B,” and “C” of the Private Resolution were part of the Existing Notice served on Plaintiff by the Town in June 2020, commencing a condemnation action against Plaintiff.

295. If the Mayor and Town Administrator had examined the Private Resolution before purporting to approve it on behalf of Town Council without vote, they would have known it was impossible for the statements in the document to be true.

296. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits “A,” “B” and “C” (the “Revised Easements”) are different from the proposed agreements in the Existing Notices because, among other things, the Existing Notices do not contain the conspicuous 9-line footnote.

297. The 9-line footnote never before appeared in anything sent to or proposed to or served on Plaintiff or any of the other affected landowners.

298. Upon information and belief, while the Mayor and Town Administrator may or may not have noticed and participated in the Town Attorney’s other changes to Exhibit C to the

Publicized Proposed Resolution, they could not have missed the conspicuous 9-line footnote added to each of Exhibits A, B and C, and the fact that there was no way that the footnote or document could have been “proposed to” or “sent” to the three property owners as falsely proclaimed by the resolution.

299. The proposed easement in the October 13, 2020 Private Resolution, was absolutely and clearly not what was served on the property owner in June 2020, and was absolutely and clearly not, as proclaimed in the Private Resolution, previously proposed to and sent to the property owner.

300. The Private Resolution putatively made by or on behalf of Town Council is fraudulent in the above respect, among possible others, and is part of the extensive, continuing series of reckless “mis-steps” at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

301. The Town’s actions with regard to the 9-line footnote later added are strikingly unusual and confounding, and are at odds with the entirety of the public “deliberation,” statements of intention, and “exercise of judgment and discretion” of Council at the actual, open, public, meeting October 12, 2020.

302. The 9-line footnote added after the meeting and appearing in the Private Resolution states in its entirety:

"Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

(Absence of closing quotation marks in original.)

303. The 9-line footnote purports to be a definition of a term used in the easement, but is not.

303. Strangely, the footnote tepidly states that the term “public use” “should” be defined in the manner to follow in the footnote for purposes of this title document.

304. The document in which the footnote is added is a formal, perpetual document proposed by the Town to be included, against the owner’s will and without the owner’s input, in the owner’s chain of title to valuable oceanfront property for purposes of conveyances, sale, inheritance, financing, appraisal, title insurance, improvement and development, and other matters involved in ownership of real property.

305. The footnote does not state that the term “public use” is defined in the manner to follow in the footnote.

306. The footnote then does not define the adjective “public,” nor does the footnote ever define the noun, “public use.”

307. Rather, the footnote does not define the term and then uses the still undefined word “public” in its usual sense in stating an outright assertion of -- in the absence of the explicit grant in the document --what the Town’s rights are and what the quality of the property owner’s title is under stated conditions, regardless of whether the granting document or easement even exists.

308. These stated conditions include factual conditions stated to be present if there has been “continuous use” and legal conditions stated to exist if the Town “retains an easement.”

309. The factual conditions are not defined and are not stipulated by the owner to be extant and have not been otherwise established; and the legal conditions, to the extent even intelligible, are an incorrect statement of law with no citation of authority.

310. The assertion in the footnote, even under the conditions which have not been demonstrated to be present, is an argumentative assertion of legal status and is an incorrect statement of law, with no citation of its source or authority supporting it.

311. The argumentative statement in the footnote is completely out of place in a formal conveyancing document affecting title. The footnote, contrary to the self-laudatory statements of purely benevolent purpose at the October 12, 2020 meeting, is about as singularly unhelpful to the three condemnees and every oceanfront owner on the island as the Town could have cooked up.

312. The strange, tepid preface to the footnote and the argument of other circumstances and incorrect legal principles in the footnote reveal the footnote not to be, or contain, or add, any definition at all.

313. Under the circumstances of the Town's previous multiple falsities, bungles and putative "misunderstandings" or "oversights," the footnote can only represent an attempt to add a provision the Town can later sell to the Corps of Engineers as meaningless and can simultaneously sell to previously "sold" property owners as meaningful.

314. What is not yet clear is what the Town will claim the footnote means and which meanings will be argued by the Town to which people.

315. The Revised Easement (including the 9-line footnote), was never part of the Existing Notice.

316. However, the Town has publicly and judicially represented the Revised Easement (including the 9-line footnote) to have been part of the Existing Notice.

317. As further alleged below, the Private Resolution also states, “the Town Attorney has served each of the property owners of the three remaining easements [sic] that have not been acquired with a Condemnation Notice and Tender of Payment,” implying the Revised Easement was the subject of the Condemnation Notice referred to.

318. This implication is false: the Revised Easement with 9-line footnote was not part of the papers served in June 2020. As will be further alleged below, the Town nevertheless later created a new Condemnation Notice and Tender of Payment which incorporated the Revised Easement, and falsely dated the new Condemnation Notice June 9, 2020, the same as the Existing Notice.

319. As further alleged below, the Private Resolution was later filed in court by the Town without correction of its inaccuracies.

320. The Private Resolution and the 9-line footnote in the Revised Easement and are legally, logically, and literarily ineffective to ameliorate any of the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be unnecessary, to be overreaching, to be without authority, and to be an extraordinary cloud and blight on title to valuable property imposed indifferently through municipal treachery.

321. The Private Resolution and the 9-line footnote in the Revised Easement and are also legally, logically, and literarily ineffective to justify any of the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be unnecessary, to be overreaching, to be without authority, and to be an extraordinary cloud and blight on title to valuable property imposed indifferently through municipal treachery.



322. The 9-line footnote of “public use” in the Revised Easement, for example, does not state, as possibly falsely implied by the spoken statements at the October 12, 2020 meeting, that “public use” is defined as “use solely, whether collectively or individually, by workers actively engaged in putting or spreading offshore sand on the beach or installing vegetation or sand fence or other erosion control structures. and by the Town police when on duty incident to such work being in progress.”

323. The inapplicable introductory clause, “‘Public use’ should be defined as follows,” should be deleted to reveal more clearly that the Town is bizarrely simply trying to add a legal argument to an involuntary conveyancing document, and an incorrect one at that.

324. The Town briefing its own hostile, incorrect legal arguments in the conveyancing document’s description of the property interest the Town is trying to take by condemnation, hopelessly confusing the appraiser, the court, and the whole process, and thereafter permanently further polluting the property owner’s title, cannot be tolerated in a condemnation action. It is bad faith.

325. “Public” means public. The Revised Easement grants use and access to the public. Attempting, as the Town appears to do, to state that the Town or the public already has some rights similar to the ones the Town is trying to take from the property owner, provided that certain circumstances are established, does nothing change the scope of the outright grant the proposed document explicitly makes regardless of whether certain conditions are established or rights otherwise exist.

326. Making such a statement when the whole statement is legally incorrect does even less to define “public use,” if less is possible.

327. The incorrect statement of law is itself a blight not only on the title of Plaintiff, but also on the title of every oceanfront owner on the entire island, comprising millions if not billions of dollars in real estate worth.

328. The extraordinarily unconventional placement of a legal argument in a footnote in an easement deed is made all the worse by the failure of the Town to cite any source of authority for the incorrect statement.

329. Even under its errant approach of stating a conditional legal argument about matters if they occurred in the absence of the document instead of defining any term used in the document, the footnote is not even comprehensive in attempting to argue legal statuses and consequences under all conditions: the footnote is completely silent as to what right of “public use” the public allegedly has when, as here, the Town does not “retain” an easement by virtue of continuous public use by the public.

330. The footnote asserts: “where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line.”

331. This assertion from the footnote is not the law in South Carolina.

332. The Town can cite no South Carolina legal authority for this statement because no such authority exists, and the Town cannot change state law by placing a footnote in an exhibit to a municipal resolution.

333. The Town does not “retain” an easement by virtue of continuous public use by the public, has never proven any such easement, and has, upon information and belief, never been

ill-advised enough to assert such an easement against any property owner with an improved lot on Pawleys Island.

334. The 9-line footnote also states that reference to the plat attached to the proposed deed of easement does not create an “implied easement” for “unrestricted” public access.

335. This statement does nothing disclaim the express, rather than “implied,” easement created by the written granting words in the text of the proposed easement. This sleight of hand again does nothing to fulfill the self-laudatory purposes claimed in spoken word at the October 12, 2020 meeting, failing completely to ameliorate the overreaching terms of the printed language of the proposed deed of easement, without reference to the plat, which, still, expressly grant complete, unqualified, perpetual, public access.

336. Echoing the empty statements of the Town Attorney at the October 12, 2020 meeting, the 9-line footnote then states that uses by the public are “limited to the uses set forth” in “the terms of the easement document.”

337. This statement is illusory and meaningless because the easement document does not describe any particular, limited, uses by the public.

338. The document, rather, describes the public’s uses as “public use and access” in general, with no limitation whatsoever to “renourishment purposes,” and does not even “sort of just identify what ‘renourishment purposes’ are,” as the Town Attorney asserted on October 12, 2020.

339. The stated purposes of the October 12, 2020 meeting were thus a ruse, consisting of saying one thing and doing another.

340. The footnote does not state anywhere that the public’s access is limited to the purpose of showing up with shovels to assist in distributing sand pumped from offshore.

341. If this were the limited purpose, it would be a simple matter to state, “The public are granted access for the limited purpose of assisting in the renourishment work and associated work.”

342. However, the Town will not make a clear change to the document stating, as recited at the October 12, 2020 meeting, that public use is limited to renourishment purposes and that renourishment purposes are those related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project.

343. The Town will not do so, because the Corps of Engineers makes no such pretense in any of its publications elsewhere that there is any such limitation.

344. The Corps is unabashedly attempting to engage in Congressionally unauthorized transformation and diminution of property titles presently protected by state law. The Town wishes to betray its owners, raise no objection, and insist that things are other than what they are. The Corps would reject any clarity in limiting the easement. Therefore, the Town offers confusing, illusory obscurity and uses among the Town’s tools, keeping the product of the Town’s actual deeds away from daylight by deferring activities until no one is looking or listening.

345. The whole 9-line footnote is a ruse of offering pseudoscholarship to provide a confusing and illusory piece of verbiage the Town may hope to sell to the Corps as meaningless and ineffectual to limit wide open public access to the owner’s private property in any way. This Town Council has simultaneously told its constituent owners, falsely, that it has helped them by limiting the scope of an easement they have already been duped into granting.

346. The Private Resolution also states, “the Town Attorney has served each of the property owners of the three remaining easements [sic] that have not been acquired with a Condemnation Notice and Tender of Payment.”

347. The foregoing statement is intended to imply to a court later reading it, to the Council and to any other reader or viewer, that the thereafterdescribed proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits “A,” “B” and “C,” and which were stated to have been previously “proposed” and “sent,” were the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020.

348. This deliberately conveyed implication is false.

349. The proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits “A,” “B” and “C,” and which were stated to have been previously “proposed” and “sent” to the property owners were not the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020, and which appear in Exhibit 1 hereto.

350. The Private Resolution was later filed in court by the Town without correction of its inaccuracies.

351. The Private Resolution was filed November 24, 2020 in the Existing Challenge Action as Exhibit B of the Town’s brief opposing Plaintiff’s motion for summary judgment, by attaching the Private Resolution to the Town’s brief without any affidavit or other authenticating or introductory testimony under oath describing exactly and truthfully what the document represented.

352. Following the October 12, 2020 Town Council meeting and the subsequent revision of the resolution which was supposed to be considered publicly there, while the Existing Challenge Action was still pending and all condemnation proceedings under the Existing Notice were stayed, the Town then “issued” a new condemnation notice (the “New Notice”).

353. The Town Attorney formally delivered and presented this New Notice to Plaintiff’s counsel.

354. The New Notice is similar to the Existing Notice, but among other possible differences, the New Notice attempts, without leave of court, to alter the Existing Notice by adding the aforescribed 9-line footnote in the description of the property sought to be acquired.

355. The New Notice is falsely dated June 9, 2020, as if it, including the map and proposed Beach Renourishment Easement forming a part of it, existed on that date. This leaves the Town actors poised to next represent to the public, the Town Council or a court, if need be, that the New Notice (including its constituent parts) is what was served in June 2020 instead of the Existing Notice.

356. The New Notice is dated the same as the Existing Notice, but upon information and belief, did not exist on that date and was not prepared until after the October 12, 2020 Town Council meeting.

357. The New Notice is fraudulent in the above respect, and is an attempt, like other aforescribed activities, to create a false public record and a morass of official-looking paperwork to obscure the delicts and derelictions of the various Town actors involved; the New Notice is part of the continuing series of bumbles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

358. Plaintiff's counsel pointed out to the Town Attorney in writing that the caption of the New Notice was the same as the caption of the Existing Notice (neither yet having a case number) and obviously was not the caption of the existing challenge action, and that the New Notice therefore obviously did not purport to be a proposed filing or operative document in the existing challenge action. The question was, what was the New Notice intended to represent?

359. Plaintiff's counsel pointed out that the Existing Challenge Action stays all further proceedings under the Existing Notice, precluding any amendment of the Existing Notice until there has been a disposition of the Existing Challenge Action.

360. Plaintiff's counsel pointed out that, even in the absence of a stay, the Eminent Domain Procedure Act makes no provision for the condemnor's unilateral "amendment" of the scope of the property description in the condemnation notice or a "do-over" of conditions precedent which the notice states were done, but which were not.

361. In the context of the overall required exclusive procedure, no such amendment is possible.

362. Under the EDPA, when served, the notice commences condemnation proceedings of a specifically identified interest in property.

363. The proceedings commenced in this manner, in turn, are predicated on the appraisal of that specifically identified interest in property having already been provided and the negotiations for that specifically identified interest in property having already occurred.

364. The providing of the appraisal and the occurrence of the negotiations, in turn, are based on there first having been an appropriate description of the interest in property sought to be acquired.

365. Obviously, the description of the property interest also cannot be composed without a full and complete discussion and weighing by the condemning authority and a knowing and untainted approval of it.

366. The root of many of the Town's present frauds and the past ones is that the Town Administrator and some others insist on pretending that provisions in the proposed easements are not in the proposed easements.

367. The Town has carried on this pretense in selling the easements to other property owners, covering up the matter afterwards, misrepresenting to the public, the objecting landowner's positions, and even in having the wrong interest in property appraised, and then trying to condemn something entirely more onerous than what was appraised.

368. The Town now takes it a step further, apparently wanting other owners to think that the Town, as a mere municipality, can change the legal effect of past and present executed conveyances by local legislative act and even that the language of a proposed grant by one (or three) landowners can somehow change the legal effect of past executed conveyances by others. The Town cannot. It is legally ineffective. It is preposterous.

369. Plaintiff's counsel asked what the procedural purpose and status of the New Notice is intended to be, but no response was forthcoming; yet, without ever withdrawing the Existing Notice, the Town has simply bucked all law and procedure and has attempted to sue Plaintiff yet again.

370. The Town has attempted to sue in a new proceeding and shoehorn in a putative cure to obvious defects raised in the Existing Challenge Action without acknowledging them in the Existing Challenge Action, all in spite of the existing statutory stay.



371. The New Notice violates Rule 12(b)(8), SCRCP (regarding commencing another action on the same subject when another action is already pending) and principles of subject matter jurisdiction, judicial economy and judicial management, in that the Existing Notice already commenced proceedings on the same subject matter. Even if the Existing Notice is quashed, the New Notice and the Town's acts suffer from many of the same, and from additional, delicts, deficiencies and defects.

372. The Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant additional challenge action after awarding litigation expenses to Plaintiff.

373. If the New Notice is not so quashed, the Court should declare the Existing Notice and the proceedings commenced by it abandoned by Defendant, and award Plaintiff the litigation costs incurred by Plaintiff in the Existing Challenge Action in causing the Town to thus admit it had no right to pursue condemnation under the Existing Notice, for, among other apparent reasons, lack of power because of noncompliance with the Eminent Domain Procedure Act, lack of authorization from Town Council, seeking more than was reasonably necessary, failing to even consider what was reasonably necessary in light of the real burdens imposed, and being misled on the facts and the law, if not participating in a bad faith fraud and sham.

374. The Town has issued a backdated and amended notice without calling it an "amended notice," and has formally presented it to Plaintiff in freestanding fashion as a new matter, and the terms of the document announce an intent to proceed with a new condemnation and a deadline to make a challenge to same.

375. This is that challenge.

WHEREFORE, Plaintiff prays that both the “Existing” and the “New” Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
Stanton Law Offices, P.A.  
PO Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
*Attorney for Sunset Lodge, LLC*

1/13/21

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00602 |
|                         | ) |                                   |
| M. Baron Stanton,       | ) |                                   |
|                         | ) | STANTON AFFIDAVIT OF              |
| Plaintiff,              | ) | CONDEMNATION NOTICE AND           |
|                         | ) | ASSOCIATED PAPERS FIRST           |
| v.                      | ) | SERVED                            |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

1. I believe the following facts to be without genuine dispute by the Town.
2. I represent Sunset Lodge, LLC, in the case with file number ending in “600,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Sunset Lodge, LLC.
3. I represent Franklin D. Beattie, as trustee, in the case with file number ending in “601,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Franklin D. Beattie, as trustee.
4. I represent myself in the case with file number ending in “602,” which is a challenge action to the Town’s attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against me.

5. Of my own knowledge, the following facts are true in all material respects.

6. Attached as Exhibit A are the first condemnation notice and associated papers the Town served on Sunset.

7. Attached as Exhibit B are the first condemnation notice and associated papers the Town served on Beattie.

8. Attached as Exhibit C are the first condemnation notice and associated papers the Town served on me.

Pursuant to S.C. Sup. Ct. Order 2020-04-22-01 (regarding emergency procedures in trial courts during COVID-19 pandemic), in lieu of having this affidavit notarized, I certify the foregoing and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/M. Baron Stanton  
M. Baron Stanton

Date: 12-6-20

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

Sunset Lodge, LLC,

Landowner.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-

**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.
2. Sunset Lodge, LLC is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated September 18, 2015 and recorded on September 21, 2015 in Book 2655, at Page 15 in the Register of Deeds for Georgetown County.
3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description

in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL

DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF FORTY-THREE THOUSAND TWO HUNDRED SEVENTY-EIGHT DOLLARS (\$43,278.00) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. Payment of Zero Dollars (\$0.00) will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the following address: Office of the Town Administrator, Town of Pawleys Island, 321 Myrtle Avenue, Pawleys Island, SC 29585.

11. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.



13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

15. In the event the Landowner accepts the tender hereof, the attached Beach Renourishment Easement agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.  
N. David DuRant, Sr. (SCB #1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
Telephone: 843-650-7800  
Facsimile: 843-650-8090  
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
**Attorney for the Condemnor**

June 9, 2020



**Exhibit “A”  
(Easement Areas)**



STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN     )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Sunset Lodge, LLC

\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_ of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-027.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
 

|                                                              |          |
|--------------------------------------------------------------|----------|
| (a) Place the amount listed in item 4 above here:            | \$ _____ |
| (b) Place the amount listed in item 5 above here:            | \$ _____ |
| (c) Subtract item 6(a) from item 6(b) and place result here: | \$ _____ |
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
 (Notary Public)  
 My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.  
 Print or Type Name Here

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

The Franklin D. Beattie Preservation Trust,

Landowner.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.

2. The Franklin D. Beattie Preservation Trust is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated October 9, 2007 and recorded on October 17, 2007 in Book 723, at Page 7 in the Register of Deeds for Georgetown County.

3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as



shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF FIFTY-FOUR THOUSAND FIFTY EIGHT DOLLARS (\$54,058) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. Payment of Zero Dollars (\$0.00) will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the following address: Office of the Town Administrator, Town of Pawleys Island, 321 Myrtle Avenue, Pawleys Island, SC 29585.

11. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial of by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

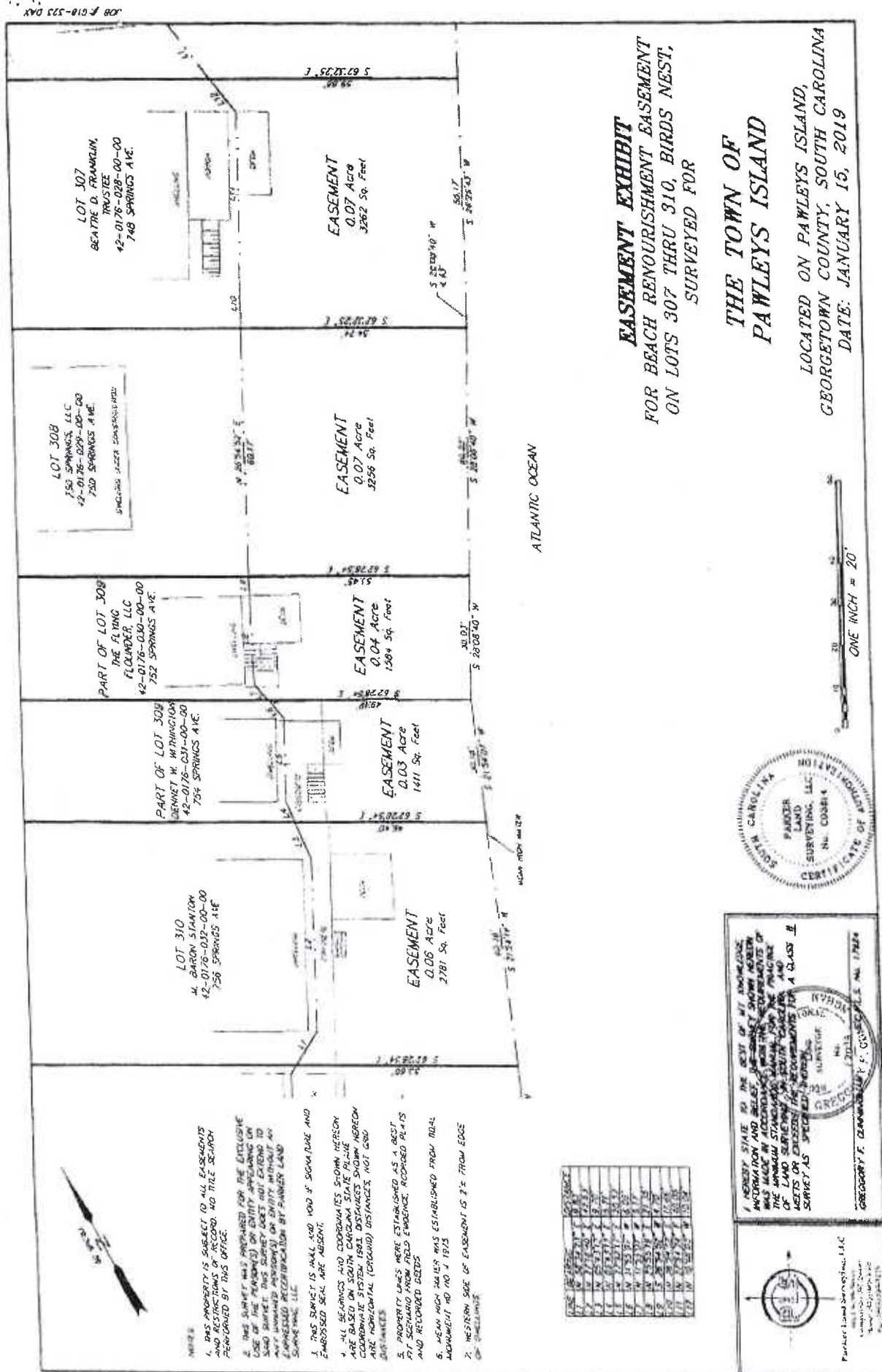
15. In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.  
N. David DuRant, Sr. (SCB #1803)  
P.O. Box 14722  
Surfside Beach, SC 29587  
Telephone: 843-650-7800  
Facsimile: 843-650-8090  
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)  
**Attorney for the Condemnor**

June 9, 2020

## **Exhibit “A” (Easement Areas)**





STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

## BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals  
on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_ of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_ of the Town of Pawleys Island, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-028.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_.
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_.
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_.
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 20\_\_\_\_.

(Notary Public)  
 My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.  
 Print or Type Name Here

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Town of Pawleys Island,

Condemnor,

v.

M. Baron Stanton,

Landowner.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-22-

**CONDEMNATION NOTICE  
AND  
TENDER OF PAYMENT**

TO: THE LANDOWNER ABOVE-NAMED AND THEIR ATTORNEYS, IF ANY

Pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 *et seq.*, you are hereby notified as follows:

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein (“the Property”) for public purpose.

2. M. Baron Stanton is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated March 27, 1998 and recorded on April 14, 1998 in Book B862, at Page 17 in the Register of Deeds for Georgetown County.

3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley’s Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as

shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

The beach renourishment easement is in the shaded area on the map as described hereinbelow:

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Pawleys Island Coastal Storm Damage Reduction Project, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*
5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army

Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF SIXTY THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$60,750.00) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

10. If the tender is rejected or if the Landowner fails to respond within thirty (30) days from tender, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the Property is situated. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.



11. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

12. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, or the Landowner fails to respond to this Condemnation Notice within thirty (30) days from service hereof, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. The notice shall state whether the Condemnor demands a jury trial or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

13. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

14. In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

LAW OFFICES OF N. DAVID DuRANT  
AND ASSOCIATES, P.A.

s/N. David DuRant, Sr.

N. David DuRant, Sr. (SCB #1803)

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: 843-650-7800

Facsimile: 843-650-8090

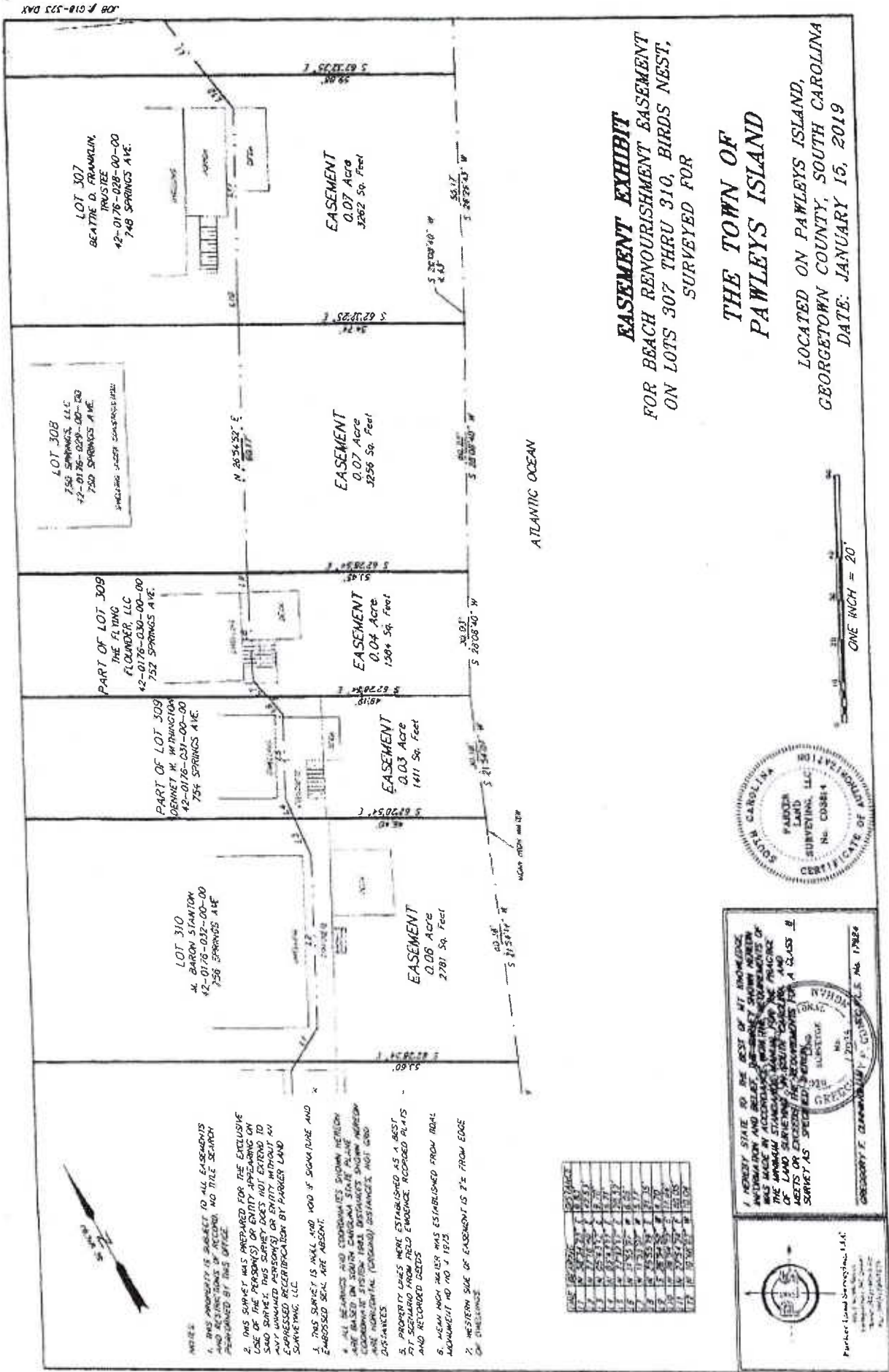
Email: [ddurant@lawofficesofdurant.com](mailto:ddurant@lawofficesofdurant.com)

**Attorney for the Condemnor**

June 9, 2020

## **Exhibit “A” (Easement Areas)**





STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN        )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

**does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:**

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Coastal Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations,

provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be



used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and  
Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
M. Baron Stanton

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron Stanton, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-032.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_.

(Notary Public)

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here

RESOLUTION NO. 2020-07  
TOWN OF PAWLEYS ISLAND  
PAWLEYS ISLAND SOUTH CAROLINA  
October 12, 2020

*Addendum to Resolution 2020-06 Authorizing Condemnation for easement acquisition for Beach Renourishment Project*

WHEREAS, on May 18, 2020, the Town of Pawleys Island passed Resolution No. 2020-06 ("Resolution"), identifying four property easements necessary for the Town's Beach Renourishment Project in conjunction with the Army Corps of Engineers;

WHEREAS, the Resolution authorized the Town Attorney to commence condemnation actions for acquisition of the easements if the property owners do not accept an offer of the appraised value of the easement areas within thirty days from the offer, or if the landowners reject the offer;

WHEREAS, the Town of Pawleys Island had successfully negotiated and acquired one out of four property easements since then;

WHEREAS, the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 12<sup>th</sup> day of October 2020, that upon acquisition of the property easement, either by eminent domain or by easement agreement, the title to the property shall remain with the property owner, and that the terms of the use of the easement shall be pursuant to and as set forth in the Beach Renourishment Easement agreement that the Town had previously proposed to the property owner. A copy of the Beach Renourishment Easement agreement sent to each of the three property owners is hereto attached as Exhibit "A" (Sunset Lodge, LLC), Exhibit "B" (The Franklin D. Beattie Preservation Trust); and, Exhibit "C" (M. Baron Stanton).

MOVED, APPROVED, AND ADOPTED ON THIS 12<sup>TH</sup> DAY OF OCTOBER 2020, AS FOLLOWS:

Those in favor:

Those opposed:

APPROVED: \_\_\_\_\_  
BRIAN HENRY, MAYOR

DATE:

ATTEST: \_\_\_\_\_  
RYAN FABBRI, ADMINISTRATOR

DATE:



# EXHIBIT "A"

STATE OF SOUTH CAROLINA   )  
                                                   )  
 COUNTY OF GEORGETOWN    )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Sunset Lodge, LLC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_ of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

**A F F I D A V I T**

**PERSONALLY** appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-027.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_

(Notary Public)

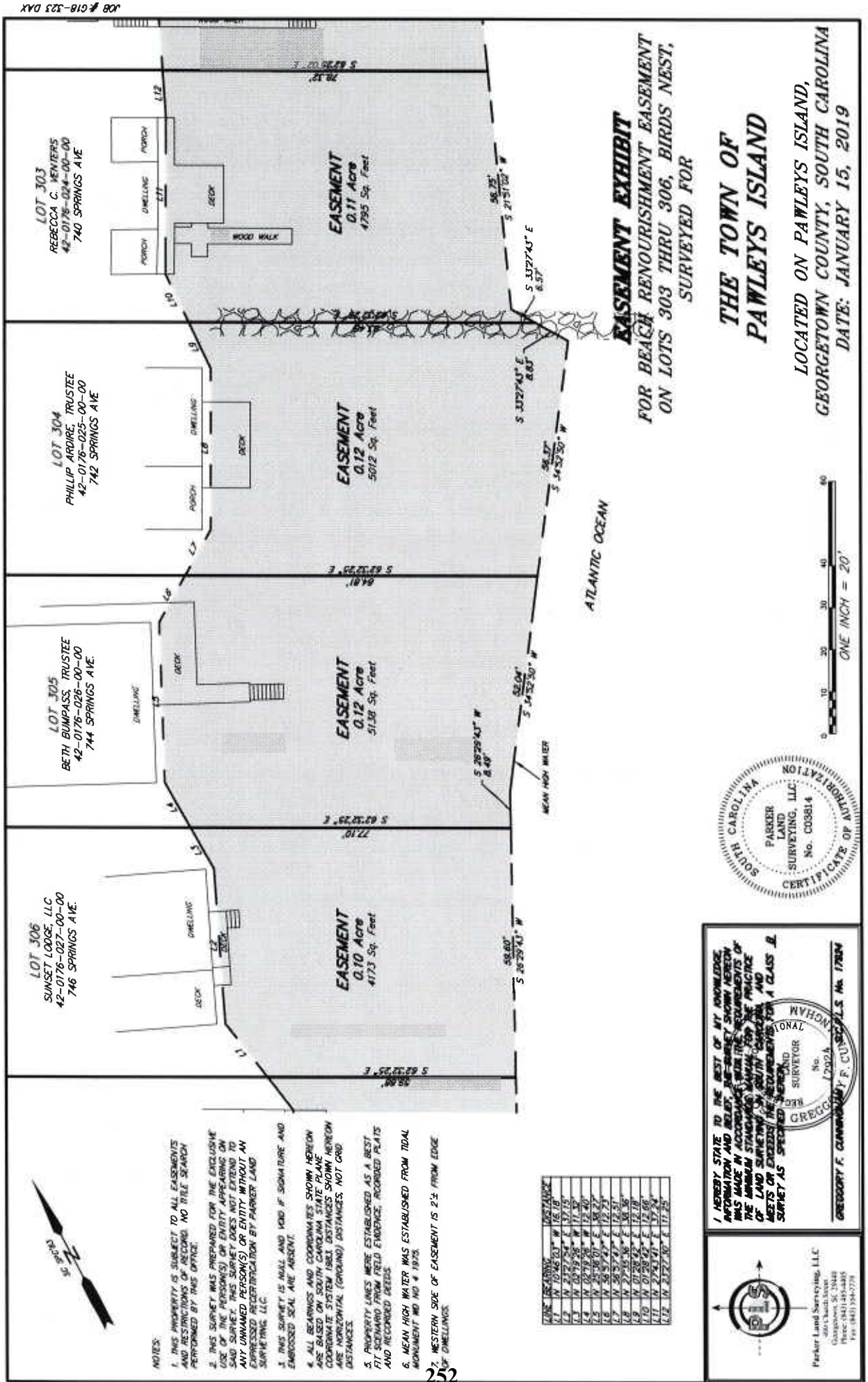
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here





JOB # C18-123 DAY

STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN        )

# BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other



work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals  
on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_ of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_ of the Town of Pawleys Island, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GEORGETOWN**

**AFFIDAVIT**

**PERSONALLY** appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-028.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

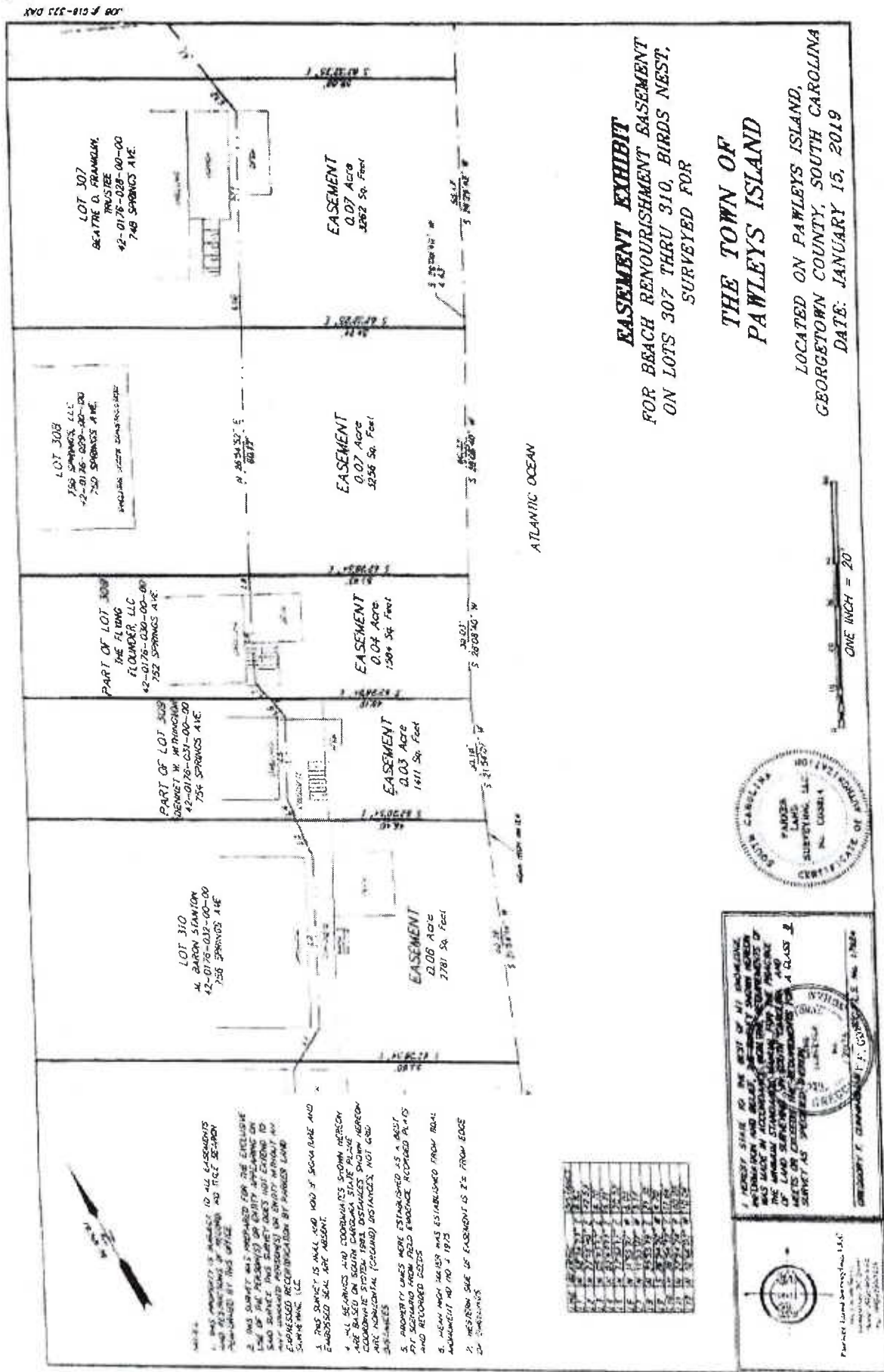
SWORN to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, **20** \_\_\_\_\_

\_\_\_\_\_  
 (Notary Public)  
 My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.  
 Print or Type Name Here

## EXHIBIT "B"



## EXHIBIT “C”



STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF GEORGETOWN        )

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

**does hereby grant, bargain, sell and convey to the Grantee, the** Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

The easement granted herein is the 0.06 Acre portion of Lot 310 (Easement Exhibit) shown as the shaded area on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019, revised May 6, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-032.00.00. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the premise shown in the shaded areas on Exhibit "A" attached hereto.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above and shown in the shaded areas on Exhibit A, for use by the Town of Pawleys Island, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and



renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Pawleys Island Coastal Storm Damage Reduction Project, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of public access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvements within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the designated representative of the Town of Pawleys Island and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this

Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and  
Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

M. Baron Stanton

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

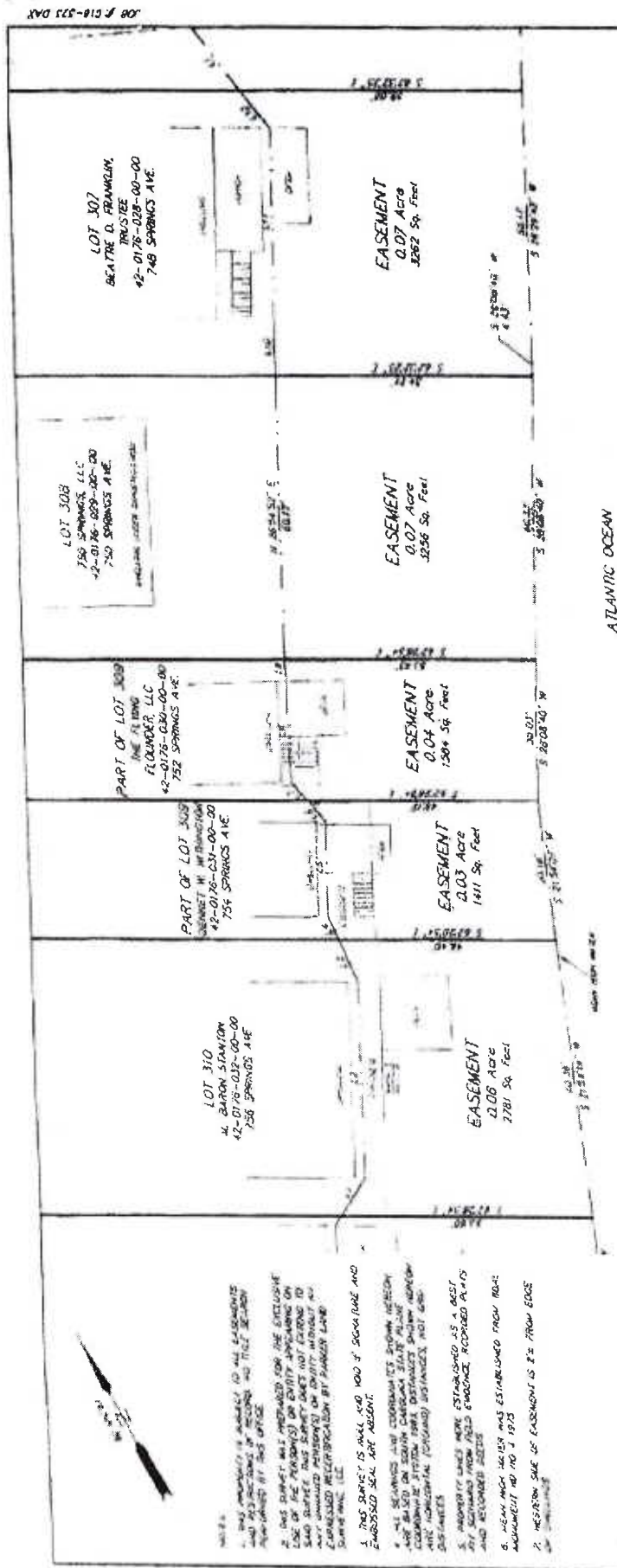
## ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron Stanton, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary  
Printed Name:

My Commission Expires: \_\_\_\_\_



**EASEMENT EXHIBIT**  
FOR BEACH RENOURISHMENT EASEMENT  
ON LOTS 307 THRU 310, BIRDS NEST,  
SURVEYED FOR

**THE TOWN OF  
PAWLEYS ISLAND**

LOCATED ON PAWLEYS ISLAND,  
GEORGETOWN COUNTY, SOUTH CAROLINA  
DATE: JANUARY 15, 2019



RESOLUTION NO. 2020-07  
TOWN OF PAWLEYS ISLAND  
PAWLEYS ISLAND SOUTH CAROLINA  
October 12, 2020

*Addendum to Resolution 2020-06 Authorizing Condemnation for easement acquisition for Beach Renourishment Project*

WHEREAS, on May 18, 2020, the Town of Pawleys Island passed Resolution No. 2020-06 ("Resolution"), identifying four property easements necessary for the Town's Beach Renourishment Project in conjunction with the Army Corps of Engineers;

WHEREAS, the Resolution authorized the Town Attorney to commence condemnation actions for acquisition of the easements if the property owners do not accept an offer of the appraised value of the easement areas within thirty days from the offer, or if the landowners reject the offer;

WHEREAS, the Town of Pawleys Island had successfully negotiated and acquired one out of four property easements since then;

WHEREAS, the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 12<sup>th</sup> day of October 2020, that upon acquisition of the property easement, either by eminent domain or by easement agreement, the title to the property shall remain with the property owner, and that the terms of the use of the easement shall be pursuant to and as set forth in the Beach Renourishment Easement agreement that the Town had previously proposed to the property owner. A copy of the Beach Renourishment Easement agreement sent to each of the three property owners is hereto attached as Exhibit "A" (Sunset Lodge, LLC), Exhibit "B" (The Franklin D. Beattie Preservation Trust); and, Exhibit "C" (M. Baron Stanton).

MOVED, APPROVED, AND ADOPTED ON THIS 12<sup>TH</sup> DAY OF OCTOBER 2020, AS FOLLOWS:

Those in favor: BRIAN HENRY, SARAH ZINNERMAN, ROCKY HOLLIDAY, GUEY GREEN

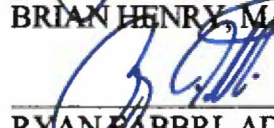
Those opposed: NONE

APPROVED:

  
BRIAN HENRY, MAYOR

DATE: 10-13-2020

ATTEST:

  
RYAN ABBRI, ADMINISTRATOR

DATE: 10-13-2020

## **EXHIBIT “A”**



STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

**Sunset Lodge, LLC**

**does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:**

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and

incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use<sup>1</sup> and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary

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<sup>1</sup> "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.



representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Sunset Lodge, LLC

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

# AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County Tax Map Number 42-176-027.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
  - (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
  - (b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_
  - (c) Subtract item 6(a) from item 6(b) and place result here: \$ \_\_\_\_\_
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_.

(Notary Public)

My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here



## **EXHIBIT “B”**



STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

**The Franklin D. Beattie Preservation Trust**

**does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:**

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform

any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use<sup>1</sup> and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described

---

<sup>1</sup> "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Agent

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF GEORGETOWN    )

# ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed  
\_\_\_\_\_, \_\_\_\_\_ of the Town of Pawleys Island, personally  
appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due  
execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

# AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, **Pawleys Island, SC 29585**, bearing **Georgetown County** Tax Map Number **42-176-028.00.00**.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$\_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$\_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$\_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$\_\_\_\_\_.
6. The Deed recording fee is composed as follows:
 

|                                                              |         |
|--------------------------------------------------------------|---------|
| (a) Place the amount listed in item 4 above here:            | \$_____ |
| (b) Place the amount listed in item 5 above here:            | \$_____ |
| (c) Subtract item 6(a) from item 6(b) and place result here: | \$_____ |
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$\_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_.

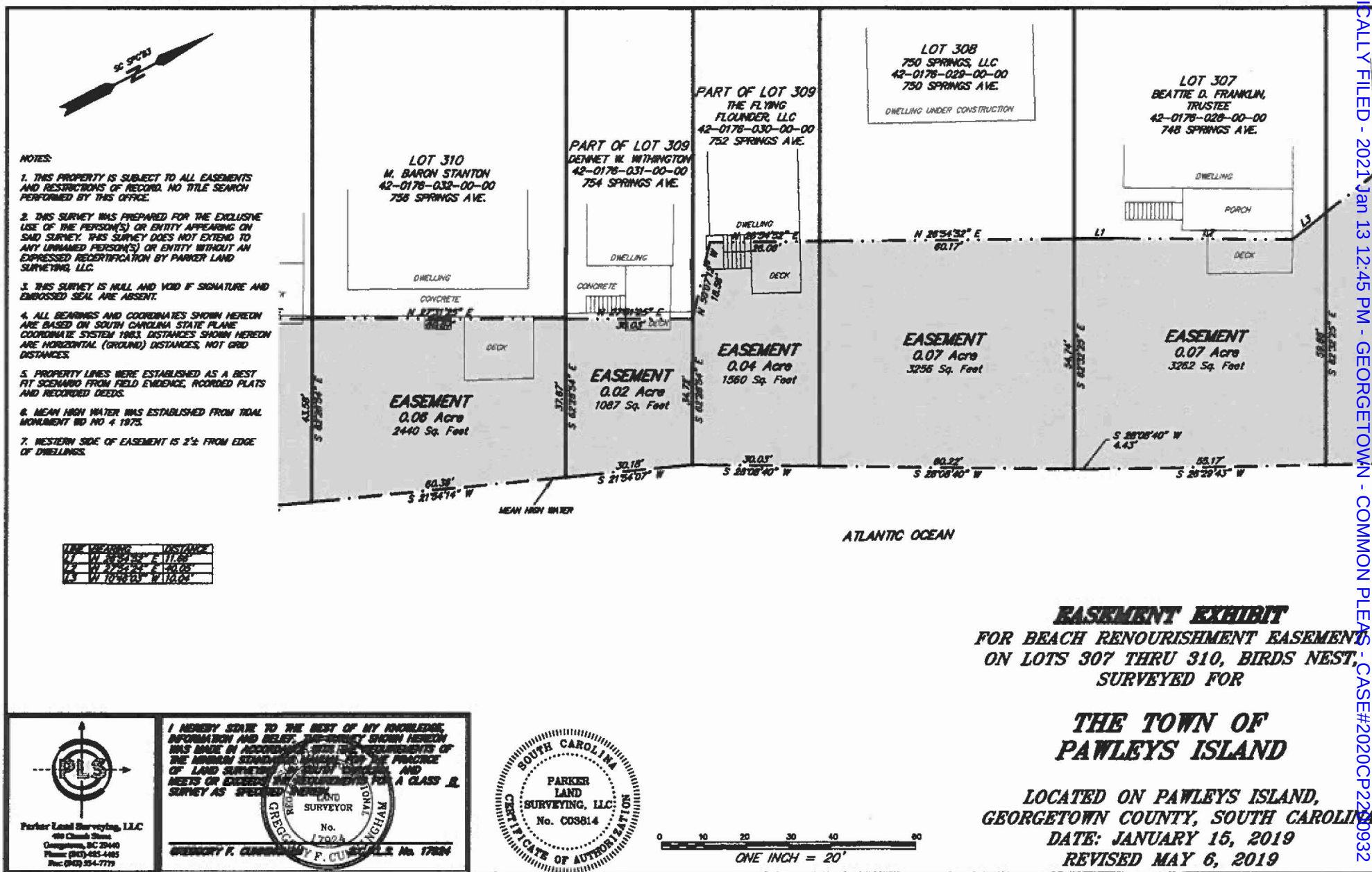
(Notary Public)

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here



## **EXHIBIT “C”**



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

## BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

**does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:**

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island. State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat, to the East by the high water mark of the Atlantic Ocean, to the South on Lot #311, as shown on said plat; and to the West on the high. water mark of said creek as shown on said plat. Saving and excepting on the West Side a twenty-five (25') foot width for street and utility lines.

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-032.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish

any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies, to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use<sup>1</sup> and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Town of Pawleys Island and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired, subject however to existing easements for

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<sup>1</sup> "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its successors, heirs and assigns forever.

The above described easement and covenants shall run with the title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set their respective Hands and Seals on this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
M. Baron Stanton

STATE OF SOUTH CAROLINA   )  
                                                  )  
COUNTY OF GEORGETOWN    )

ACKNOWLEDGEMENT

1, the undersigned Notary Public, do hereby certify that the above-signed M. Baron

Stanton personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary

Printed Name:

My Commission Expires:



THE TOWN OF PAWLEYS ISLAND

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
of Pawleys Island

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed \_\_\_\_\_ of the Town of Pawleys Island, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

## AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-032.00.00.
3. Check one of the following: The Deed is
  - (a) \_\_\_\_\_ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
  - (b) \_\_\_\_\_ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The Deed recording fee is composed as follows:
 

|                                                              |          |
|--------------------------------------------------------------|----------|
| (a) Place the amount listed in item 4 above here:            | \$ _____ |
| (b) Place the amount listed in item 5 above here:            | \$ _____ |
| (c) Subtract item 6(a) from item 6(b) and place result here: | \$ _____ |
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

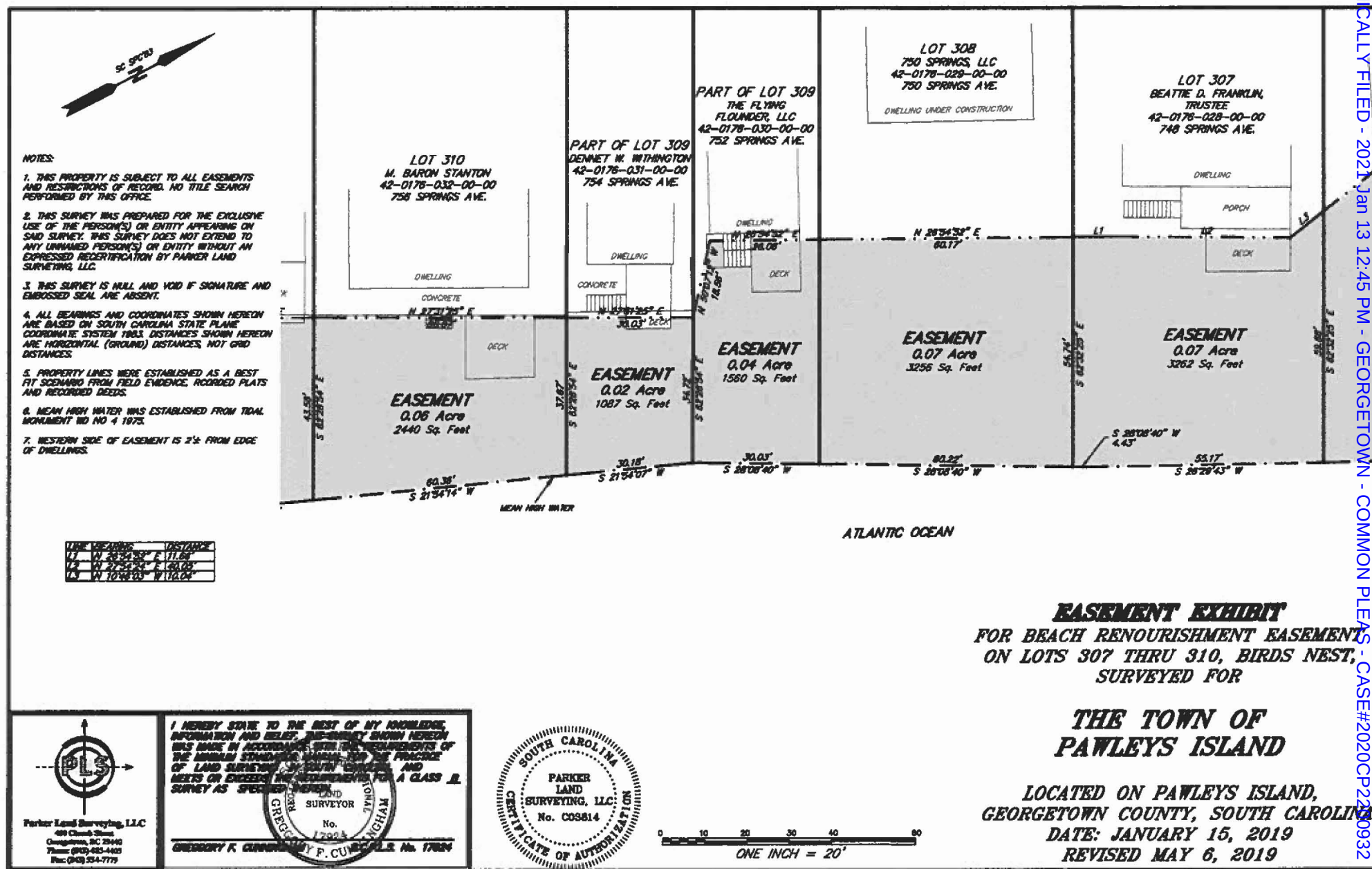
SWORN to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_.

(Notary Public)

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Responsible Person Connected with Transaction\_\_\_\_\_  
Norwood D. DuRant, Jr.  
Print or Type Name Here



March 3, 2021 Town answer to amended complaint

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) | <b>ANSWER TO</b>                  |
| v.                      | ) | <b>AMENDED COMPLAINT</b>          |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

**DEFENDANT, TOWN OF PAWLEYS ISLAND, BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:**

**FOR A FIRST DEFENSE**

1.) Each and every allegation of Plaintiff's Amended Complaint which is not hereinafter specifically admitted, modified or qualified, is denied, and strict proof thereof is demanded.

**FOR A SECOND DEFENSE**

2.) The Defendant admits the allegations contained in Paragraphs 1, 7, and 8 of the Amended Complaint.

3.) The Defendant denies the truth of the allegations contained in Paragraph 2 of the Amended Complaint, except admits that the Defendant is a municipal corporation.

4.) Answering Paragraphs 3, 4, 5, 6, 9, 10 and 11 of the Amended Complaint, Defendant admits that it operates under a council form of government consistent with Defendant's Code of Ordinances and the South Carolina Code of Laws, and subject to the South Carolina

Freedom of Information Act, and denies any allegation contained in such paragraphs inconsistent therewith.

5.) Answering Paragraph 182 of the Amended Complaint, which purports to incorporate by reference the allegations of the pending matter identified as the “Existing Challenge Action,” Defendant incorporates by reference the defenses and allegations asserted in its Answer to such Amended Complaint in the Existing Challenge Action.

6.) Answering Paragraphs 12 through 375 of the Amended Complaint:

- a. Defendant admits that Town Council held public meetings in 2020 on or about the dates referenced in the Amended Complaint;
- b. Defendant admits that at all meetings at which Town Council took action in relation to this matter it did so through a properly constituted quorum, with Councilmembers in attendance and engaged in discussion with Town staff and the Town Attorney as indicated in the minutes for the same;
- c. Defendant admits that Town Council properly approved resolutions authorizing the challenged condemnation, and that Defendant delivered the document identified in the Amended Complaint as the New Notice to Plaintiff or Plaintiff’s representatives in October 2020;
- d. Defendant craves reference to the Condemnation Notice, Resolution, and other document referenced in the Amended Complaint and denies any allegation inconsistent with the terms thereof;
- e. Defendant admits that, through counsel, it has made certain arguments and taken certain positions in this litigation and the pending litigation referred to as the Existing Challenge

Action, craves reference to the filings in and other records of the same, and denies any allegation of the Amended Complaint inconsistent therewith;

- f. Defendant admits that the U.S. Constitution and S.C. Constitution included the provisions cited in Paragraph 268 of the Amended Complaint;
- g. Defendant admits, in response to Paragraph 353 of the Amended Complaint, that the Town Attorney delivered a new condemnation notice to Plaintiff's counsel in October 2020; and
- h. Defendant admits, in answering Paragraph 362 of the Amended Complaint, that service of a condemnation notice commences a condemnation action.

7.) Subject to the admissions and qualifications stated above, Defendant denies the allegations of Paragraphs 12 through 375 of the Amended Complaint.

#### **FOR A THIRD DEFENSE**

8.) The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Defendant's February 10, 2021 filing of a Notice of Abandonment of Condemnation Action (attached as Exhibit A) relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the "New Notice"). As such Condemnation Notice has been abandoned and withdrawn, any condemnation action it initiated has been extinguished, and therefore warrants no challenge, and the subject action should be dismissed as moot.

#### **FOR AN FOURTH DEFENSE**

9.) To the extent that the Amended Complaint seeks to challenge or obtain any relief in connection with a prior pending condemnation action, another action is pending between the



same parties for the same claim (identified in the Amended Complaint as the “Existing Challenge Action”) and this action should be dismissed pursuant to Rule 12(b)(8), SCRCP.

**FOR A FIFTH DEFENSE**

10.) The Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

**FOR AN SIXTH DEFENSE**

11.) The Defendant is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 et seq. Furthermore, the determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity, in this case, the Defendant, exercising the power of eminent domain.

**FOR A SEVENTH DEFENSE**

12.) The easement sought to be acquired by the Defendant was intended for the public purpose of beach renourishment that would benefit both residents and visitors of the Town of Pawleys Island.

**FOR AN EIGHTH DEFENSE**

13.) The easement sought to be acquired by the Defendant was a requirement by the United States Army Corps of Engineers (the “Corps”) in connection with a 45-year beach renourishment project for the Town of Pawleys Island.

**FOR A NINTH DEFENSE**

14.) If the Defendant complies with the easement requirements by the Corps, the Town’s beach renourishment project will be federally protected. Thus:



- a. The Corps will be responsible for an estimated cost of \$300,000.00 for erecting sand fence and planting beach grass, at no cost to the Town;
- b. The Corps will periodically renourish the Town's beach every nine (9) years in the next forty-five (45) years, and be responsible for 50% of the forecasted total renourishment costs of \$129,522,533.00; and,
- c. The Corps will repair all beach damage resulting from a significant storm for the next forty-five (45) years, irrespective of federal declaration, at no cost to the Town.

**FOR AN TENTH DEFENSE**

15.) Pursuant to S.C. Code Ann. § 27-3-10 et seq, the Plaintiff would not be liable to the general public by granting the easement sought by the Defendant.

WHEREFORE, having answered the Plaintiff's Complaint, the Defendant hereby respectfully asks the Court for the following relief:

- a. Dismissal of the Complaint with prejudice;
- b. An award of attorney's fees and costs to the Defendant; and
- c. Such other and further reliefs as this Court deems just and proper.

**BELSER & BELSER, P.A.**

s/ William C. Dillard, Jr.  
 William C. Dillard, Jr. (S.C. Bar No. 78986)  
 Post Office Box 96  
 Columbia, SC 29202  
 (803) 929-0096  
 will@belserpa.com  
 Attorneys for Town of Pawleys Island

March 3, 2021

April 14, 2023 hearing transcript

1 STATE OF SOUTH CAROLINA ) COMMON PLEAS  
 2 COUNTY OF GEORGETOWN ) TRANSCRIPT OF RECORD

3 -----X  
 4 SUNSET LODGE, LLC, )  
 5 )  
 6 Plaintiff, )  
 7 )  
 8 vs. )  
 9 )  
 10 TOWN OF PAWLEYS ISLAND, )  
 11 et al., )  
 12 )  
 13 Defendants. )  
 14 -----X

Case No. 2020-CP-22-00932

9 -----X  
 10 FRANKLIN D. BEATTIE, as )  
 11 Trustee of the Franklin D. )  
 12 Beattie Preservation Trust, )  
 13 )  
 14 Plaintiff, )  
 15 vs. )  
 16 )  
 17 TOWN OF PAWLEYS ISLAND, )  
 18 et al., )  
 19 )  
 20 Defendants. )  
 21 -----X

Case No. 2020-CP-22-00931

16 -----X  
 17 M. BARON STANTON, )  
 18 )  
 19 Plaintiff, )  
 20 )  
 21 vs. )  
 22 )  
 23 TOWN OF PAWLEYS ISLAND, )  
 24 et al., )  
 25 )  
 Defendants. )  
 -----X

Case No. 2020-CP-22-00930

April 14, 2023

B E F O R E:

The Honorable Benjamin H. Culbertson, Presiding Judge

1     A P P E A R A N C E S:

2     M. Baron Stanton, Esq.  
3             Attorney for the Plaintiff

4     William C. Dillard, Jr., Esq.  
5             Attorney for the Defendant

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23     Recorded by: Webex Recording

24     Transcribed by: Bobbi Fisher  
25     SC Official Court Reporter III

1

## I N D E X

2

DESCRIPTION

PAGE

3

Proceedings

4

4

5

6

7

8

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10

## E X H I B I T S

11

(None.)

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16

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19

## COURT REPORTER LEGEND

20

Dash (--)

Indicates an interruption in speech

21

Ellipses (...)

Indicates trailing off in speech

22

(ph)

Indicates phonetic word

23

[Verbatim]

Indicates the word is said as written

24

(Indiscernible)

[Transcription] Indicates word(s) is  
not known due to audio recording  
quality

25

## P R O C E E D I N G S

(The following proceedings commenced as follows:)

THE COURT: Let me go ahead and put on the record, this is 2020-CP-22-00932, Sunset Lodge, LLC, versus Town of Pawleys Island; 2020-CP-22-00931, Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust versus Town of Pawleys Island; and 2020-CP-22-00930, M. Baron Stanton versus Town of Pawleys Island.

The matter is before the Court on a motion for expenses, including attorney's fees. All right. Since this is a remote hearing, please state your name for the record and the capacity in which you're appearing at the hearing.

Mr. Stanton?

MR. STANTON: Thank you. May it please the Court? I'm Barry Stanton, and I show up on the pleadings as M. Baron Stanton, and I'm representing three parties. There are three consolidated cases. One is against Sunset Lodge, LLC; I'm representing them. The other is against Franklin D. Beattie; I'm representing him. And the other is against M. Baron Stanton, which is me. And I'm representing myself pro se on that.

THE COURT: All right. Mr. Dillard?

MR. DILLARD: Yes, Your Honor. My name is Will Dillard with the Belser Law Firm here --

1           THE COURT: Hold for one -- I apologize. The clerk  
2 has just --

3           (Pause in the proceedings.)

4           THE COURT: She said there's another attorney here  
5 who did not know it was Webex. Are y'all aware of any  
6 other attorney appearing?

7           MR. STANTON: I'm not.

8           MR. DILLARD: The Durant firm. They're, you know,  
9 Town attorneys for the Town of Pawleys Island. I wasn't  
10 aware that one of them might be attending. I believe they  
11 knew it was Webex.

12          THE COURT: Let me hold for one second.

13          Who is it?

14          (Pause in the proceedings.)

15          THE COURT: Are y'all aware of a Mr. Jones  
16 participating in this motion hearing?

17          MR. STANTON: No, sir.

18          MR. DILLARD: No, sir.

19          THE COURT: He said it was the Town of Pawleys  
20 Island cases?

21          THE CLERK: He said, yeah.

22          THE COURT: I don't know who that is. She told them  
23 it would be Webex. He's going to try to log on, but y'all  
24 aren't aware of an Attorney Jones appearing on behalf of  
25 the Town of Pawleys Island?

1 MR. STANTON: There is no attorney of record with  
2 that name unless he's entering an appearance today.

3 MR. DILLARD: I don't know about that, Your Honor.

4 THE COURT: Yeah, the clerk didn't -- she doesn't  
5 have him listed as an attorney appearing in this case or  
6 anything of that nature.

7 All right. Well, we'll go ahead and go forward  
8 then. All right. I apologize, Mr. Dillard, for the  
9 interruption. Go ahead. Give your name and the capacity  
10 in which you're appearing.

11 MR. DILLARD: Yes, Your Honor. Will Dillard with  
12 the Belser Law Firm hear on behalf of the Town of Pawleys  
13 Island, the defendant in these cases.

14 THE COURT: All right. Mr. Stanton, this is your  
15 motion.

16 MR. STANTON: Thank you. May it please the Court,  
17 Your Honor?

18 We filed a motion in these cases I believe it was  
19 back in October requesting expenses, including attorney's  
20 fees. And I want to acknowledge Your Honor's kind email  
21 yesterday that there was -- there's a voluminous number of  
22 filings and advising us of some time constraints for the  
23 hearing, which I think makes it easier on all of us.

24 I do want to address that, though. When we filed  
25 the motion for the attorney's fees, these cases -- let me



1 back up. These cases are related to an earlier set of  
2 three cases. This is the second -- essentially the second  
3 time that the Town sued these three people and the second  
4 time that they then responded with actions challenging  
5 those suits. Because of the peculiar procedure, it's two  
6 separate sets of suits. In other words, when the Town  
7 sues Sunset Lodge and Beattie and Stanton, that's an  
8 actual condemnation action, but then the weird procedure  
9 that you have for condemnations doesn't allow for simply a  
10 response within this suit. We had to actually, within 30  
11 days, file a counter suit, if you will, a free-standing  
12 suit to stop those suits.

13 So this arises from the second go-round on that  
14 combination of six lawsuits. This is the second six of  
15 12, so to speak. And when we filed the motion for  
16 attorney's fees in this set of suits, we did include a  
17 rather lengthy affidavit in support of the fee petition,  
18 and frankly, Your Honor, we want to make a good record,  
19 because in the first go-round, in the other six suits, we  
20 asked for our fees there after summary judgment was  
21 granted to us, and then the Town wanted to contest that,  
22 and it was about eight months before we had a full hearing  
23 on the attorney's fees, including discovery and motions  
24 and whatnot. So that -- as we explained in that  
25 affidavit, we wanted to be thorough and make sure that we

1 made a proper record.

2 But having said that, the request for attorney's  
3 fees is rather straightforward. Let me address first the  
4 basis for the attorney's fees, and that is under the  
5 Imminent Domain Procedure Act, there is a subsection  
6 510(C); that's a capital C, for some reason. And that  
7 statute says that if -- a would-be condemnor brings a  
8 condemnation action and then they abandon that  
9 condemnation action, which the Town purports to have done  
10 in this instance, the condemnee, the landowners, are  
11 simply entitled to their attorney's fees that they  
12 incurred responding to that and preparing to respond to  
13 that and preparing to go forward.

14 So it's a straightforward statute that says, if the  
15 Town abandons, we're entitled to our attorney's fees. And  
16 if you note there, it has nothing do with our level of  
17 success in the matter because, I guess, by definition, its  
18 success, if you're challenging a condemnation and the  
19 other side withdraws it, that's a measure of success, but  
20 that statute doesn't turn on any of that. It simply says,  
21 if they abandon, we get the attorney's fees that we  
22 incurred.

23 We, additionally, base the request for attorney's  
24 fees on what's called -- in common terms, it's the State  
25 version of the Equal Access to Justice Act, and that is a

1 different statute that deals with any time someone sues or  
2 is sued by the Government and they do not have a  
3 substantially justifiable position in what they have done,  
4 then the Court can award attorney's fees and there are  
5 some other questions there that the Court has to answer  
6 before doing so.

7 We back our petition up under that statute as well.  
8 But the abandonment one under condemnation procedure  
9 should suffice if there's no dispute that it applies.

10 As for the request for attorney's fees, it's based  
11 simply on the actual hours spent multiplied by a low -- a  
12 generously low, if you will, hourly rate. And then  
13 divided by three and each of the litigants getting  
14 one-third.

15 And we have cited in our briefs actually South  
16 Carolina case law from the South Carolina Supreme Court  
17 where it's justifiable for the Court to award the whole  
18 fee to each of the litigants.

19 But, here, we're tracking what the actual fee  
20 arrangement was, which was do the work at \$190 an hour,  
21 bill for the time that is done, and then divide it by  
22 three. And so that's all we're asking for; except I would  
23 note that the actual time that we have submitted is  
24 probably not the actual time. It's probably much less  
25 than the actual time. What we're saying is that's the

1 actual time at a minimum. The time records have been  
2 supplied -- excuse me -- the hours have been stated, laid  
3 out in a statement in our affidavit under oath that,  
4 through March the 27th, 2023, we have 190.6 hours in the  
5 matter. If you multiply that times an hourly rate of  
6 \$190, that gives you attorney's fees of \$36,214. We have  
7 also detailed in that affidavit expenses incurred for all  
8 three totalled together of \$751.71. So if you add those  
9 two together, you get 36 thousand, nine hundred and --  
10 can't read my own writing -- I think 65 dollars and 71  
11 cents. And if you divide that by three, you get  
12 \$12,321.90. So the request for each of the litigants is  
13 to be reimbursed for actually incurred attorney's fees and  
14 expenses of \$12,321.90.

15 I do want to address one other thing in advance.  
16 I'm a pro se litigant and I'm representing myself. In our  
17 fee petition, we asked that each of us be reimbursed  
18 because, in essence, the other two are getting a  
19 significant discount. And I'm actually incurring that  
20 time out of my office where I can't make money doing  
21 something else. And as noted in our affidavit, I actually  
22 got a bill, just like everybody else. We prepared a  
23 completely detailed bill, you know, divided everything by  
24 three. And let me tell you, it's extremely tedious to  
25 sit -- even just to prepare the bills. And I'll affirm to

1 the Court that none of the time spent on preparing the  
2 bills is included in the bill.

3 So we have got a really conservative measure here.  
4 We have a low hourly rate of \$190 whereas the Town's two  
5 lead attorneys each charged \$250 an hour. We have  
6 supported a much higher hourly rate than that.

7 Mr. Beattie, who is one of the litigants, is also a  
8 retired lawyer who practiced for over 50 years. There's  
9 an affidavit from him in the file stating that the work  
10 was exemplary and the method and everything else -- that  
11 the billing and the bills were reasonable.

12 Mr. Howard, who is a principal of the other  
13 litigant, Sunset, his affidavit indicates that he is still  
14 a practicing attorney and has practiced for over 50 years  
15 and is a senior partner in his firm, and he has sent his  
16 share of bills and he's received and paid his share of  
17 bills, and he also believes the work is exemplary and  
18 reasonable.

19 So we have that. But I'm honor-bound to call to  
20 Your Honor's attention a case I found in South Carolina,  
21 and I believe it is a -- I can't remember if it's a Court  
22 of Appeals case or a Supreme Court case -- that does rule  
23 in that particular case that the attorney who is a pro se  
24 litigant was not entitled to attorney's fees because he  
25 was pro se. And as you know under the Rules of Ethics,

1 we're required to call your attention to controlling  
2 precedent. That's all I'm doing.

3 In our briefs, I explained the distinctions from  
4 that case, where, in that case, they said the attorney  
5 didn't really incur anything. In this case, my firm  
6 actually sent me a bill, and we did incur something. And  
7 there's some other distinctions.

8 THE COURT: Go ahead and put on the record what  
9 those distinctions are. So you're saying you actually owe  
10 \$12,321.90? I mean, if there's precedent out there and  
11 you're asking me to rule against that precedent or  
12 distinguish from that case, what is the distinction?

13 MR. STANTON: I'm sorry, Your Honor. My audio has  
14 gone bad. Can you hear me, Your Honor?

15 THE COURT: Yeah, I can hear you. Can you hear me?

16 MR. STANTON: Something happened, all of a sudden,  
17 that it went very faint. I don't know how to turn the  
18 volume up on this thing.

19 THE COURT: Can you hear me?

20 MR. STANTON: Just very faintly. I heard you say  
21 let's go ahead and mention those distinctions.

22 THE COURT: Yes. That's what I -- I mean, are you  
23 arguing against precedent or are you trying to distinguish  
24 your situation from the precedent?

25 MR. STANTON: I'm trying to distinguish it. But

1 I'll tell you this, Your Honor: We could probably  
2 simplify this. When I filed the motion, we asked for our  
3 fees for all three of us. In the other set of cases, just  
4 to not get bogged down in that, we only asked for the fees  
5 for the other two people, and I just basically waived  
6 mine.

7 And then we got an award that was something like  
8 14 percent of the total fees, and that's on appeal as  
9 being grossly inadequate and based on some errors of law.  
10 And so, in this one, I said, Well, you know, I need to go  
11 ahead and ask for this if we're going to get that kind of  
12 response each time.

13 So I filed it asking for all three, not waiving  
14 anything. But neither of us -- I didn't, at that time,  
15 mention that case or know of it and nor did Mr. Dillard  
16 cite it. But when we were doing all this other briefing,  
17 I found that case, and I wanted to just bring it to the  
18 Court's attention.

19 I was trying to distinguish the case. I think it  
20 was -- for some reason, I don't think it's SCE&G vs.  
21 Sanders. I'll have to find it. It's in our -- I believe  
22 it's in our reply brief. And I think it was a Court of  
23 Appeals -- it might have been a Court of Appeals case, so  
24 it might not have been completely binding precedent. Even  
25 if it was Supreme Court, it was a -- it was a family court

1 case, and the attorney there, I think, was a pro se -- may  
2 have even been a domestic litigant -- and asked for  
3 attorney's fees for time spent and whatnot, and the Court  
4 recognized on appeal that it was a novel issue that had  
5 not really clearly been decided and that there was a  
6 majority of jurisdictions that said the attorney could get  
7 the fees and there was a minority that couldn't, and the  
8 Court went with the minority on the basis that that  
9 attorney in that instance had not actually incurred  
10 attorney's fees, and, therefore, since the statute said --  
11 was based on fees incurred, there weren't any incurred.

12 So we addressed that in our brief to distinguish it,  
13 but I guess what I'm alluding to is that, in the other  
14 case, if we had just gotten a fair fee award, we would  
15 have been just fine waiving our share of the fees and make  
16 that a contribution to the Town of Pawleys Island. But  
17 we're a little bit apprehensive in that we got such a  
18 haircut in the first case that it was, frankly,  
19 ridiculous.

20 And all we're asking for here is a conservative  
21 hourly rate times hours actually spent -- probably less  
22 than the hours actually spent, and then divide it by  
23 three. And in that other case, we basically said, "And  
24 let's knock off another third."

25 I'll also tell you that the hours that we just



1 mentioned had an estimate of 25 hours in there that  
2 weren't yet in our billing system. That estimate was  
3 about 69 hours under. So even the figure I have just  
4 given Your Honor is about 70 hours short of what it ought  
5 to be.

6 So I guess what I'm saying is there's precedent out  
7 there. I think there's some good arguments about the  
8 applicability of that precedent here. But if we have got  
9 a fair fee award, I don't think we'd hear much more about  
10 it.

11 Kind of that's where I am on that.

12 THE COURT: All right.

13 MR. STANTON: I think there are some issues with the  
14 correctness of that case, but I followed the Court's  
15 reasoning. I mean, they examined both sides of the coin.  
16 But I think, factually, this one is distinct in that, in  
17 our affidavit, we outline the fact that, every time I send  
18 a bill, I have to go through this elaborate procedure of  
19 double-checking and triple-checking everything, and then I  
20 send myself a bill.

21 THE COURT: Well, let me ask you this: I understand  
22 you say you send yourself a bill, Mr. Stanton, but do you  
23 actually come -- say, in this instance, will you come out  
24 of pocket \$12,321.90? And if you will, where does that  
25 money go, in legal fees? Does it go -- I can understand

1 if you were of a big firm and the firm was charging you.  
2 You're a solo practitioner, and what you're going to do is  
3 take it out of your right pocket and put it in your left  
4 pocket. That's a different story.

5 So what is the actual situation in this case?

6 MR. STANTON: The actual situation with my payment  
7 of my bill to my firm is that I have a pending bill that's  
8 addressed to me. For example, in that first case, I have  
9 a pending bill sitting there for me for over \$65,000  
10 that's just for me.

11 THE COURT: If it doesn't get paid, is anybody going  
12 to pursue collection?

13 MR. STANTON: Well, it would be my firm that would  
14 have to collect it from me, so you do have that bit of  
15 circuitry. There are some differences, you know, in terms  
16 of whether that's W-2 wages or -- I mean, you know,  
17 whether I get it back as W-2 wages after the Federal  
18 Government has stepped on it, whether I get a deduction  
19 when I pay the fees. There are all those questions.

20 But in its simplest form, it is me owing the -- my  
21 firm is a corporation. It's a professional association,  
22 incorporated under South Carolina law. And my firm, that  
23 corporation, has sent me a bill. But I'll tell you -- I  
24 mean, there's no secret -- I'm the 100 percent owner of  
25 that corporation. So you're right on. I'm sending myself

1 a bill, and if I pay it, I'll be paying the bill back to  
2 my corporation, which then uses that money to pay other  
3 operating expenses and whatnot. And if there's anything  
4 left, I guess I benefit from it.

5 THE COURT: All right. Go ahead.

6 MR. STANTON: So I probably haven't engaged in that  
7 dialogue. I have probably burned off most of the  
8 remaining time. Your Honor indicated that there was no  
9 way to read all of this stuff before this hearing, but --  
10 and there's no way for me to cover it in the time allowed,  
11 but I would like to, just for the record, incorporate by  
12 reference the things that we have filed as part of the  
13 record. And I'm sure Your Honor will study any of them  
14 that need studying.

15 What we filed was, back in October, I think it was,  
16 of '22, the motion for attorney's fees, which was about a  
17 page and a half or something. We filed a proposed order,  
18 which is now inaccurate because the numbers have changed  
19 since then. But it was about a two-page proposed order.  
20 We filed an affidavit of me that had four exhibits, and  
21 that affidavit, Your Honor, I'm sure, from your years as a  
22 judge and before that as a Master-in-Equity, you have seen  
23 your share of attorney's fees, petitions, and some of them  
24 were woefully short and some of them very lengthy. Well,  
25 this one goes into my background and the time spent and

1 the considerations in the case and all the things that  
2 you're supposed to consider under the factors. And, in  
3 fact, goes into the detailed procedural history of the  
4 case. You can see what -- everything that got filed and  
5 what got done and how many pages the 378-paragraph  
6 complaint is and all that sort of thing.

7 Attached to that affidavit were four exhibits. One  
8 is an example of what we went through with the Corps of  
9 Engineers. It's an appeal of their response to our  
10 request for federal documents. Another is a copy of an  
11 email from the mayor of Pawleys Island asking the Corps of  
12 Engineers if there was a nuclear option that could be  
13 exercised to -- against the landowners. Another was a set  
14 of discovery that we sent in these cases asking why we  
15 were sued a second time and asking specific things about  
16 what was gained by it, why was it done. So this is the  
17 second time we have had to defend ourselves. And that's  
18 an exhibit showing those interrogatories never answered.

19 And there's a copy of the order in the first set of  
20 cases granting the motion for summary judgment in which  
21 the judge determined that the Town had based the  
22 condemnation on numerous false statements and just showing  
23 the basis on which those actions were disposed of.

24 THE COURT: Now, was that the action -- is that the  
25 action where attorney's fees has already been awarded but

1     you said were woefully low?

2             MR. STANTON:   Correct.

3             THE COURT:   Okay.   So whatever happened in that,  
4     we're up until the summary judgment was granted.   That's  
5     already been dealt with by another judge in another order.

6             MR. STANTON:   That's correct.   And, Your Honor, I'm  
7     glad you mentioned that.   I want to make very clear that  
8     what we did was we separated the hours for the first --  
9     I'm going to call them the first six cases, and I'm going  
10    to call these the second six cases.   We separated the  
11    hours in that first case down to the -- you know, down to  
12    the scintilla.   We made clear what we were not asking for  
13    in that case that we were reserving to ask for in this  
14    case.   And so what I want to make clear is there should be  
15    no question whatsoever that we're asking -- even asking  
16    for any of the same hours.   In that other case, we asked  
17    for hours that explicitly said we're cutting out the hours  
18    for what I'm calling -- these are the challenge 2 cases.

19            And so what we're requesting here, the 190.6 hours  
20    that I mentioned to Your Honor, none of those not only  
21    warrant award, but none of those hours were requested, not  
22    even a subject of the request in the other cases.   There's  
23    no overlap in the time.

24            Now, someone could possibly question you, "Well, how  
25    to you determine which hours go to which things?"   And we

1 made a reasonable judgment to allocate what time was spent  
2 on this as opposed to that, but my main point is, there's  
3 no duplication whatsoever. We didn't get to ask for these  
4 hours in that case. And, in this case, we're not asking  
5 for any hours spent in the other case.

6 THE COURT: And this is the case that was  
7 voluntarily dismissed by the Town?

8 MR. STANTON: No. The first set, the Town sued the  
9 three of us. We sued the Town to stop those actions. The  
10 Town moved to dismiss our cases and Your Honor denied  
11 their motion to dismiss. We moved for summary judgment  
12 against the Town and a different judge, Judge Nettles,  
13 heard our summary judgment motion and granted the summary  
14 judgment motion and threw the Town out-of-court, you know,  
15 quashed their condemnation attempts on the basis that  
16 their Town council resolution was based on false premises,  
17 that the condemnation -- excuse me, the appraisal was  
18 based on false information, and, therefore, the  
19 condemnation papers themselves weren't based on the right  
20 things; that, in a nutshell, they proceeded as if these  
21 easements were just to put sand on the beach when they  
22 actually wanted public access right up to the back door.

23 THE COURT: And so Judge Nettles granted summary  
24 judgment on that -- with attorney's fees. And with this,  
25 the Town brought condemnation action again.

1           MR. STANTON: Right. And they did it while the  
2 other suits were already still pending. So once Judge  
3 Nettles threw them out on the first set, then the Town --  
4 this is the one -- the ones we're in now are the ones  
5 where the Town then abandoned, they say -- they said they  
6 abandoned their attempt.

7           And then under -- so it's a different attorney's  
8 fees statute. Actually, in the other one, the fees were  
9 awarded pursuant to winning a challenge action, whereas  
10 this one is subsection (C) where the fees are awarded when  
11 they abandon an action.

12          THE COURT: All right. Go ahead. Continue. Sorry.

13          MR. STANTON: And so I'll just -- incorporating  
14 basically our arguments in these other -- in the filings,  
15 in response to the things I just mentioned, Mr. Dillard  
16 filed a number of things -- a brief, an affidavit with  
17 several exhibits, and so forth -- and then we did file a  
18 reply, Your Honor, in March of this year -- I think about  
19 March the 8th, 2023 -- replying to everything that  
20 Mr. Dillard contended, and that reply has -- that's the  
21 reply that has the affidavit of Mr. Beattie, who was a  
22 lawyer that practiced over 50 years; the affidavit of  
23 Mr. Howard, who is a practicing lawyer of over 50 years;  
24 and also a letter that was responsive to another letter  
25 that was in one of Mr. Dillard's exhibits.

1           So all of those things are what we filed, but to  
2 come back around, it's really pretty straightforward in  
3 that we're making a conservative request. The statute  
4 says we're entitled to the fees. And we're trying to be  
5 reasonable about it. And all we're asking for is the time  
6 we have spent, which is accurate and sworn to.

7           That's -- I could go on for two hours but Your Honor  
8 is not going to let me, but I'd be glad to answer any  
9 questions.

10          THE COURT: My only question is, is under the --  
11 everything that you have been -- that you have e-filed --  
12 your memorandums, your affidavits and all that -- does  
13 that appear in all three of these case numbers, or is  
14 there anything -- in other words, do I need to look  
15 through this case and then this case and then this case,  
16 or have all the filings been put in every one?

17          MR. STANTON: Let me clarify that. And I think the  
18 same will go for Mr. Dillard. The three cases, when they  
19 got toward the end, Your Honor granted our request to  
20 consolidate all three cases, and, in fact -- I don't know  
21 whether it was a joint motion or whether Mr. Dillard  
22 consented -- but we concurred that it would be better to  
23 consolidate them, and everything that has to do with this  
24 fee petition was post consolidation. So everything we  
25 filed is in the action.



1           And, Will, you're going to have to correct me; I get  
2 these numbers wrong. Everything that we filed is in the  
3 case ending in 932, which is the Sunset case.

4           MR. DILLARD: That's correct.

5           THE COURT: Okay. The clerk has just informed me  
6 that that's correct, 932. All right. Thank you very  
7 much.

8           All right, Mr. Dillard. Let me hear from you.

9           MR. DILLARD: Yes, sir, Judge Culbertson. Thank you  
10 very much. Good morning again.

11           Just to clarify -- and I think it was just  
12 clarified -- but this is the case that the Town  
13 voluntarily abandoned those condemnation attempts. The  
14 overriding theme of my presentation will be that very  
15 little at all ever happened in this case. Totally  
16 different situation from the other cases that were  
17 dismissed on summary judgment by Judge Nettles.

18           Just to confirm what we filed in opposition to the  
19 fee request, I filed a memorandum in opposition, an  
20 affidavit of David Durant, who is the Town attorney, that  
21 mainly focuses on what went on in the case before I got  
22 involved, towards the end before we abandoned.

23           And then also an affidavit from myself that talks  
24 about what happened from that point forward when we  
25 abandoned the case, and then sort of the post-abandonment

1 history leading up to the appeals. And those are things  
2 that I don't understand the plaintiffs are claiming, but I  
3 wanted to give that in the record, a clear description of  
4 what had happened.

5 My affidavit also has several exhibits for your  
6 reference. I have included a copy of the case index so  
7 you can clearly see what was filed and when; a letter --  
8 you know, shortly before we filed the notice of  
9 abandonment where I essentially notified Mr. Stanton that,  
10 yes, we're thinking about withdrawing this based on the  
11 summary judgment ruling in the other cases, so let's just  
12 hit the pause button, let's not incur anymore expenses on  
13 either side.

14 And then I also provided what I hope will be helpful  
15 to Your Honor, a case events table where I list sort of  
16 the major case events and to match that up chronologically  
17 with the hours of time that Mr. Stanton is claiming on  
18 different days so you can see where he's claiming time for  
19 certain things, what was actually going on in the case at  
20 the time as you evaluate this. And I have included a few  
21 other exhibits that are in my affidavit as well.

22 I'll say one of the arguments that we have that I  
23 believe Your Honor has already let us know at the last  
24 hearing how you would tend to rule or what your position  
25 is, is that we -- we feel that this petition was not

1 timely filed; that there is a subject matter jurisdiction  
2 issue; that the petition was filed more than a year after  
3 they appealed Your Honor's dismissal of the case. And so  
4 that's in my memo. I won't belabor that. I just wanted  
5 to -- for issue preservation purposes -- get that back on  
6 the record, and I'll move on from there.

7 One other, I guess, a housekeeping item. They're  
8 claiming fees not only under the Eminent Domain Procedure  
9 Act, which I think is the right statute to point to, but  
10 also the State action statute which is 15-77-300, and I  
11 think that one does not apply. And I have cited the case  
12 law. It's the Revells case that says you don't look at  
13 the State action statute; you look at the Eminent Domain  
14 Procedures Act when you're in this kind of a situation.

15 Now, what the -- what the Eminent Domain Procedures  
16 Act says about recovery of attorney's fees when a  
17 condemnation is abandoned is that it's not -- you're not  
18 entitled to recover anything that was actually incurred,  
19 any hours that you claim were worked. The specific  
20 language of the statute is that the landowner is entitled  
21 to reasonable attorney's fees, litigation expenses, and  
22 costs as determined by the Court. The definition includes  
23 such costs and expenses necessarily incurred from an  
24 after-service of the condemnation notice.

25 So I think the key factor for the Court to consider

1 is what was reasonable in this case where, again, very  
2 little ever happens. There's very little made for much  
3 attorney time at all.

4 So, essentially, the Town initiated -- you know,  
5 delivered the condemnation notices, the second set of  
6 condemnation notices. And then less than four months  
7 later, after that summary judgment ruling in the other set  
8 of challenge actions, withdrew the case. It was a very  
9 brief period of time, less than four months.

10 The plaintiff's fault dismissal that Your Honor  
11 granted -- and that's up on appeal, and so a lot happened  
12 after that, but I think the relevant period of time is up  
13 to the time of the Town filed the notice of abandonment  
14 and withdrew these efforts that they challenged due to  
15 condemn to property.

16 Now, so what actually happened in the case up until  
17 the time we filed the notice of abandonment? They filed  
18 the complaint, and that was on -- the condemnation notices  
19 were delivered on October 15th. And, Your Honor, if I  
20 may, I'm going to share my screen --

21 THE COURT: All right.

22 MR. DILLARD: -- so that you can see. Okay. Are  
23 you able to see this table that I have attempted to share?

24 THE COURT: All right.

25 MR. DILLARD: And so this is Exhibit C to my

1 affidavit. And so on October 15th, 2020, the Town  
2 delivered the condemnation notices to Mr. Stanton.

3 October 12th, he filed the summons and complaint in  
4 these three cases.

5 December 14th, the Town filed a brief answer, just  
6 three pages, essentially a general denial.

7 And less than a month later, Judge Nettles issued  
8 the Form 4 granting summary judgment in the other cases.

9 January 10th, the plaintiffs served the  
10 interrogatories in this case, and they have attached  
11 copies of those.

12 January 13th, they filed an amended complaint, which  
13 was 59 pages. I believe 375 paragraphs.

14 And shortly after that, in early February, I  
15 appeared, and then we abandoned the case.

16 So, essentially, just to recap, all that happened  
17 was the complaint, the answer, the amended complaint, and  
18 then they served interrogatories and a deposition notice  
19 for the Town administrator. That is all that happened in  
20 this case, Your Honor. Nothing else happens.

21 The -- it looks -- if you evaluate the hours that  
22 they're claiming, a substantial amount of the time  
23 pre-abandonment, I'll say, appears clearly have been -- to  
24 have been devoted to amending the complaint going from --  
25 I believe the original complaint was 11 or 12 pages, which

1 is more than sufficient, in my view, up to 59 pages, 375  
2 paragraphs.

3 The rules of procedure, Your Honor, contemplate  
4 short, plain statements of facts. That type of lengthy  
5 pleading, which is totally unnecessary, given that all  
6 they're asking for in the case was that the condemnation  
7 attempts be quashed on a few various grounds. But that's  
8 the sole claim for relief that they were asserting.

9 So based on that very limited scope of work, they  
10 originally claimed, when they filed their first affidavit  
11 in October, this past year, 138 hours of work for that  
12 very limited case activity. And that also included some  
13 time to file the fee petition.

14 That amount, you know, if you're looking at eight  
15 hours a day, five days a week, about three and a half  
16 full-time weeks working on what I just went over.

17 In March, Mr. Stanton filed an updated affidavit,  
18 increasing the hours claimed by just over 50 additional  
19 hours. And I don't know what happened between October and  
20 March, last month, that required him to work 50 more  
21 hours, but that's the claim. And so that would take it,  
22 you know, up to more than a month of work straight on this  
23 case, which, again, pleadings, sent out discovery, and  
24 then a fee petition that should have been pretty simple  
25 and straightforward.

1           We don't feel that that's plausible, that there is  
2 any reasonable need to work that much on this case that  
3 the Town very early on -- almost immediately voluntarily  
4 withdrew.

5           Now, Mr. Stanton's affidavits include a very long  
6 procedural history of things outside of this case. He  
7 talks in various places about depositions, the Town  
8 sending discovery requests, going through hundreds of  
9 pages of documents. All of that was not in this case.  
10 Huge -- maybe even a majority of the work and litigation  
11 time that he talks about in his affidavit was in the other  
12 cases.

13           Likewise, the affidavits from -- that he's filed  
14 from Mr. Beattie and Mr. Howard, those are from the other  
15 cases as well, Your Honor. If you look at those  
16 affidavits, they have the case captions and the civil  
17 action numbers from the first set of cases. And I believe  
18 they're the same affidavits they filed in support of their  
19 fee petition in that case. And so I don't know that those  
20 have any bearing on this case and this fee petition.

21           Now, the plaintiffs have the burden to prove their  
22 entitlement to fees and that what they're requesting is  
23 reasonable. Here, they have provided no invoices.  
24 Mr. Stanton mentioned that the -- in the prior cases, it  
25 took several months -- I think he said eight months -- to

1 get to that final hearing with Judge Nettles. Most of  
2 what was happening during that time is we had multiple  
3 hearings over the Town's request to see their invoices, to  
4 see how was this time itemized and spent. And we  
5 ultimately got redacted versions of those in that case.  
6 We did not pursue that here because, again, we feel it's  
7 so clear to see that virtually nothing happened in the  
8 case other than the pleadings. So we didn't think that  
9 that was justified. But they, once again, have not  
10 provided their invoices in support of what they're  
11 requesting.

12 And more generally, they don't provide any  
13 explanation of how any of this time was spent, which,  
14 again, is up to nearly 200 hours that they're claiming  
15 now. No explanation of how any particular time was spent.  
16 They -- in Mr. Stanton's affidavit, he provides basically  
17 a daily block bill. He just says, "On this date, I worked  
18 this many hours. This date, this many hours." Not  
19 itemized or explained in any way. And so we take the  
20 position that they just have not met their burden to show  
21 that there was any reasonable basis for that time.

22 Your Honor, I also want to point out that they  
23 include a substantial number of what they call prospective  
24 hours in that affidavit. I understand Mr. Stanton to say  
25 now that that was a low estimate; they should have



1 included more. But I think any kind of prospective hours  
2 is completely -- it's just inherently speculative. And  
3 that -- I want to share again -- going back to the case  
4 events table, in this hours claimed column is the time  
5 from Mr. Stanton's affidavit. You can see that, up to the  
6 time they filed the complaint, they're claiming 6.9 hours  
7 right there. And then from then up until -- essentially  
8 they filed the amended complaint, we have got about 48  
9 hours there. And after that, essentially very little time  
10 until we file the notice of abandonment.

11 And so to go from that, the 6.9 hours plus 48 hours,  
12 so, you know, around 55 hours, to go from there to 200  
13 hours, it just shows that the substantial bulk of what  
14 their claiming seems to be this very speculative,  
15 unnecessary prospective time of nearly 150 hours over and  
16 above what they're claiming were worked up until we filed  
17 the notice of abandonment. And I think that just  
18 highlights how unreasonable the request really is.

19 In my affidavit, I have provided, you know, my view  
20 of what a reasonable amount of time to have worked on this  
21 case would be based on looking at what was actually  
22 involved, and I came up with -- and this is on page 11 of  
23 my affidavit -- a total of 20 hours. That includes the  
24 fee petition; four hours for research and drafting the  
25 complaint; three hours for drafting interrogatories;

1 another four hours for miscellaneous review and  
2 communications; and then nine hours for the fee petition  
3 and hearing. And, again, that assumes a -- you know, a  
4 reasonable well-supported approach to the fee petition  
5 which, I mean, I believe could have just been a  
6 straightforward affidavit with copies of the invoices  
7 attached, explaining how all this time, how it was  
8 actually spent.

9         So if you apply the 20 hours I came with up to  
10 Mr. Stanton's hourly rate, that comes to what we think  
11 would be a reasonable fee of \$3800. And if you are to  
12 divide that between the three cases, that comes to a  
13 little over \$1400 each.

14         I do think, going back to the case that Mr. Stanton  
15 discussed regarding pro se attorneys, that is in his  
16 brief. It's the Calhoun v. Calhoun case. It's a reported  
17 case from the South Carolina Supreme Court. The cite is  
18 339 S.C. 96. And that -- in his reply memo, it's Footnote  
19 14, beginning on page 13. What that case says, just to  
20 read straight from it, "A pro se litigant, whether an  
21 attorney or layperson, does not become liable for or  
22 subject to fees charged by an attorney. Accordingly, we  
23 hold that pro se litigants are not entitled to attorney's  
24 fees under" and then it cites to an attorney's fees  
25 provision that was at issue in that case.

1           To me, that is straightforward, on point, binding  
2 precedent. We have not made a big issue of that just  
3 because, again, our fundamental position is that there --  
4 whether you're dividing it by two or three or however you  
5 divide it up, really, there's not need for much attorney's  
6 fees or much attorney time at all in this case. But I  
7 think that that precedent -- the Calhoun v. Calhoun case  
8 does preclude Mr. Stanton from recovering.

9           And I would also say one minor point is that, in the  
10 costs that they have requested, it looks like they have  
11 included various filing fees and other expenses associated  
12 with disputing the motion to dismiss. It was granted in  
13 favor of the Town and against the plaintiffs. We don't  
14 think they're entitled to recover those types of expenses.  
15 So if you take those out and then -- but do allow to  
16 recover for the other expenses, what you would have left  
17 would be the filing fees -- the original filing fees, and  
18 then the filing fee for the fee petition. And we don't  
19 dispute any of that. And that comes to a total of  
20 \$572.70. And, again, that's outlined in my affidavit on  
21 the very last page.

22           THE COURT: And what was the other -- and I'll go  
23 back and look at all this, but what was the other -- what  
24 would it be? \$180 in costs? What was that for? You said  
25 it was with the motion to dismiss but what was the actual

1 cost?

2 MR. DILLARD: Yes, sir, so he claims mileage for  
3 travel to the motion to dismiss hearing. That's \$52.05.  
4 Filing fees for the motion to reconsider. That's \$31.74  
5 times three; one for each case. And then the last thing  
6 is the filing fee for the motion to correct Form 4, which  
7 was another \$31.74.

8 THE COURT: All right.

9 MR. DILLARD: It's not a major issue but just to be  
10 consistent with what our position is on the scope of what  
11 they're entitled to request.

12 So, Your Honor, again, if you look at the Jackson v.  
13 Speed factors that govern recovery of attorney's fees, it  
14 goes back to what was reasonably necessarily incurred, and  
15 I think that's the fundamental question here, just as it  
16 was when Judge Nettles considered it in the other case. I  
17 mean, that's not the issue here, but I think it's the same  
18 basic idea. We're not taking the position that  
19 Mr. Stanton did not actually work that time. We just  
20 don't think it was reasonable or necessary.

21 And so I'm happy to answer any questions Your Honor  
22 may have. I would be -- if you would like for one of us  
23 to draft a proposed order, I would certainly be happy to  
24 do that regardless of which way you rule. I think that  
25 the Town would -- the Town has concerns that, if

1 Mr. Stanton drafts any proposed order, that it might  
2 include a number of proposed factual findings on issues  
3 that really aren't relevant to the fee award that, even if  
4 the Town could otherwise live with whatever the award is  
5 and not want to appeal that, may see some need to appeal  
6 just to deal with some factual findings that he might feel  
7 compelled to include.

8 So, respectfully, we would be happy to prepare a  
9 proposed order, however Your Honor might rule. Thank you  
10 very much.

11 THE COURT: Thank you.

12 All right. Mr. Stanton, anything in reply?

13 MR. STANTON: Yes, Your Honor. Having just listened  
14 to Mr. Dillard, I hope you can see now we filed what we  
15 did. When Mr. Dillard was standing in front of Your Honor  
16 arguing that our challenge to the Town's second set of  
17 lawsuits against its own constituents should be dismissed  
18 as moot, Mr. Dillard argued to you orally and in writing  
19 in his briefs that our concern over having been sued not  
20 once but twice and being threatened with a third suit  
21 could be completely allayed by the fact that the eminent  
22 domain procedure act awards attorney's fees. Okay?

23 What did he do? What did the Town do? They opposed  
24 the attorney's fees in the first set of cases. It took us  
25 eight months to get a hearing, and we got 14 percent of

1 the money that we actually spent. Okay?

2 What did they do in the second set of cases? Here  
3 we are in the second set of cases, based on the same false  
4 and fraudulent bases. They already knew that what they  
5 were doing was false and fraudulent based on the filings  
6 in the first case, and knowing that, while the case was  
7 still pending, sued us again and have yet to ever explain  
8 to this Court or any other Court why they sued again and  
9 what was accomplished by doing it. Okay?

10 So we were put to the expense then of responding to  
11 that. And respond, we did. We responded in spades. We  
12 immediately, within the 30 days, filed a complaint and  
13 then we set to work and we filed an amended complaint  
14 completely and comprehensively tracking all of the  
15 falsities, the fraudulent meanings, and the new fraudulent  
16 things that were included in the new suit. We did that  
17 and were put to that expense. All right?

18 So the Town knew, when they sued the second time,  
19 what was wrong. They have never explained to this Court  
20 or any other Court what was accomplished by suing us again  
21 for the same false things and new false things. But what  
22 they did do was they withdrew their condemnation actions,  
23 and then they asked Your Honor to dismiss our challenge to  
24 those actions on the basis that they were moot.

25 And we argued to Your Honor that the same time they

1 were doing that, they were making public announcements  
2 that they were going to sue us a third time for the same  
3 thing. And those threats continue and are pending to this  
4 day. All right?

5 So it's a high-stakes matter, Your Honor, and we  
6 have incurred expenses that we have incurred in our  
7 judgment, not Mr. Dillard's. Okay? He says he doesn't  
8 doubt the time was spent but that it wasn't reasonably  
9 spent. It's not for him to decide what's reasonably  
10 spent. He's not being sued, effecting the titles to  
11 millions and millions of dollars worth of real estate,  
12 asking to allow the public to come up and use their decks  
13 and showers in perpetuity. Okay?

14 THE COURT: But, I mean, as I --

15 MR. STANTON: It's a high-stakes matter --

16 THE COURT: As I understand -- excuse me for  
17 interrupting, Mr. Stanton, but as I recall, on the motion  
18 to dismiss, you were asking that the action not be  
19 dismissed because you were seeking an order that would  
20 prohibit the Town of Pawleys Island from ever bringing  
21 another condemnation action; correct?

22 MR. STANTON: Not completely correct, Your Honor.  
23 That was among the relief that we could seek. I want to  
24 point out to Your Honor that, in the challenge actions, in  
25 the first set of cases and in the second set of cases, we

1 have also pointed out that the first -- that the first  
2 case establishes things against the Town, what they can do  
3 and what they can't do; that there were things that  
4 weren't yet determined in either case as to what they can  
5 do and what they can't do. In other words, it's not  
6 necessarily an all or nothing. There's still the ability  
7 of a Court to say this part of this easement is  
8 unreasonable, this part of this easement is unreasonable.  
9 Here's something you have done for other people but you  
10 won't do here; that can't be reasonable.

11 So we do not rule out, at some point when you get  
12 sued enough times, a court of equity does have the ability  
13 to tell somebody you can't do this again at all. But  
14 there's all kind -- a wide range and spectrum of other  
15 relief that could be achieved, and what we were saying is  
16 they're threatening to sue us again for the same thing.  
17 They have already done it twice. We should stay in here,  
18 and let's get to the bottom of what they can do and what  
19 they can't do going forward.

20 Mr. Dillard's response in writing and orally was  
21 that they can sue us as many times as they want to and  
22 that those concerns are taken care of by the fact that  
23 we'll get our attorney's fees. So far, we're not getting  
24 many attorney's fees, and Mr. Dillard has now come up with  
25 the proverbial 40 reasons why we shouldn't get them in



1 this case, after arguing that that's what excuses what the  
2 Town has done.

3 What he's argued here about very little happening in  
4 the case, I want to emphasize: We're not asking for  
5 anything that didn't happen. We're only asking for what  
6 did happen. His so-called table of case events, that is  
7 an invention of Mr. Dillard's. Everything I'm about to  
8 say to Your Honor is in our brief -- in our opening brief  
9 or our reply brief. But that events table -- Mr. Dillard  
10 was late to the party. He wasn't in the case until they  
11 came in and decided to withdraw it, doesn't have any  
12 personal knowledge of it, and he's looking after the fact  
13 and preparing a table of what he thinks is, quote,  
14 "significant." Okay?

15 And I have shown in our briefs that he's left things  
16 out. You know, lawyers -- a case -- what a lawyer does in  
17 a case is more than file -- draft a document and file it  
18 and show up and argue it. They answer the phone. They  
19 talk to Mr. Dillard. They bring Mr. Dillard up to speed  
20 on what's going on in the case. They ask about mediation  
21 and settlement. There are all kinds -- there's  
22 correspondence. There's review of documents. There's all  
23 sorts of stuff not in his table.

24 All we're asking for is what did happen in the case,  
25 not what didn't happen in the case. And where he cites

1 these hours, Your Honor, it's confusing if not deceiving.  
2 He mentions the 138 hours and talks about how many months  
3 worth of work that is. We have made it explicitly clear  
4 and that's why we filed what we did in our opening  
5 affidavit. We carefully detailed what we're not asking  
6 for. And even in this case, Your Honor, we -- as much  
7 expense as we have been to, arguing over those motions to  
8 dismiss and asking Your Honor to reconsider granting this  
9 motion to dismiss, we explicitly left the bulk of that out  
10 of the fee request. Our fee request states clearly that  
11 what we were trying to focus on was it just seemed -- it  
12 doesn't seem fair but it seems like it follows the statute  
13 that we track the expense up to just shortly after the  
14 time that they abandoned, which was February the 10th of  
15 2021, if I have the correct year.

16 After February the 10th of 2021, there was  
17 substantial activity in the case that we're not asking for  
18 in this fee petition. The only thing after February the  
19 10th of any substance is our request that -- to get the  
20 fees themselves, which South Carolina law states we're  
21 entitled to recover. And we have cited all the cases for  
22 that in our briefs as well.

23 So, in fact, I think that the time that was spent  
24 before February the 10th, 2021, was closer to 59 hours  
25 rather than the 138 hours that Mr. Dillard just now

1       recited to you. The other time has to do with attempting  
2       to actually get our fees. As in the first case, I think  
3       the time trying to get the fees began to approach the time  
4       in the whole case.

5               Now, as to the time up to February the 10th, you  
6       know, we're entitled to file a complaint. We're entitled  
7       to file an amended complaint. And his statement that a  
8       short and plain statement of facts is required by the  
9       rules of procedure is explained again in our brief that  
10      he's overlooked Rule 9. Rule 9 of the Rules of Civil  
11      Procedure say that you have to plead with -- at time,  
12      place, and circumstances particular background for  
13      allegations of fraud, dishonesty, bad faith, and things  
14      like that. And that's what the whole case has been so  
15      far, the Town persistently, to this day, carrying on a  
16      public charade that this is nothing but an easement for  
17      sand.

18             So we went through that. We filed the complaint.  
19      We answered the phone. We read our mail. We reviewed  
20      documents that we received in discovery or in Freedom of  
21      Information Act requests. We analyzed the file. We did  
22      all that. And he objected to estimated hours after --  
23      after March -- he didn't peg the time, but the hours that  
24      were estimated were from March the 7th to March the 27th,  
25      which was -- so of the 190.6 hours, 25 hours of that was

1 estimated for between March the 7th and March the 27th.  
2 Instead, between that period of time, we spent 94.2 hours,  
3 which was 69.2 hours more than was estimated. So we gave  
4 Your Honor a very conservative estimate and, in fact,  
5 we're prepared to stick with that. But now we're getting  
6 beaten down on a conservative estimate.

7 I'll tell Your Honor right now -- and be happy to  
8 swear to it -- that those hours were incurred on March the  
9 7th, March the 8th, March the 9th, March the 13th, March  
10 the 14th, March the 15th, March the 16th, March the 17th,  
11 March the 18th, and March the 19th. And those were 12.6  
12 hours, 15.4 hours, 1.6 hours, 5.4 hours, 1.6 hours, and so  
13 forth.

14 So all we have done is asked to be reimbursed for  
15 what we have been caused to actually incur, and I have to  
16 say really less than that because a lot of work was put  
17 into opposing their motion to dismiss, and when it was  
18 granted, requesting that it be reconsidered, none of that  
19 time is in this petition. So all the stuff he's presented  
20 to you is confusing.

21 His table of what he calls significant events, the  
22 fee award is not for the significant time or the time that  
23 Mr. Dillard deems to be interesting as a substitute  
24 attorney who was not in the case. It's actually --

25 THE COURT: Mr. Stanton, your ten minutes for reply

1 for is up. Okay?

2 All right. And I haven't looked at what y'all have  
3 filed but that's why I want to make sure it's filed. I  
4 have got to go back and look through all of this stuff.  
5 I'm going to get each one of you to submit a proposed  
6 order. Just email it to me in Word form so that I can  
7 modify it to the extent I think it needs to be modified.

8 How long do y'all need to submit those proposed  
9 orders?

10 MR. STANTON: Your Honor, my intention would be to  
11 emulate the two-page order that I sent back in October.

12 THE COURT: That's fine.

13 MR. STANTON: And if Your Honor wants any  
14 discussion, you know, of any of these other filigree  
15 issues, I mean, I could write you a much longer order, but  
16 I could send you that order within a week.

17 THE COURT: Okay.

18 Mr. Dillard, how long do you need?

19 MR. DILLARD: Yes, sir. I believe if we could have  
20 until next Friday, including next Friday, that would --

21 THE COURT: I tell you what, let's do -- I'll give  
22 you 14 days. Is that sufficient?

23 MR. DILLARD: Yes, sir. Thank you.

24 THE COURT: That gives you two weeks. Is that all  
25 right?

1 MR. STANTON: That's fine, Your Honor.

2 MR. DILLARD: Thank you, Your Honor.

3 THE COURT: All right. Submit proposed orders.  
4 That will give me time to look over your exhibits, your  
5 affidavits, and your memorandums, and then we'll go from  
6 there. Okay?

7 MR. STANTON: Thank you for hearing us.

8 MR. DILLARD: Thank you, Judge Culbertson.

9 THE COURT: All right. Thank you very much.

10 MR. DILLARD: Have a nice weekend.

11 THE COURT: You too.

12 (The above matter concluded.)  
13  
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## 1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Sunset Lodge v. Town of Pawleys Island

3 2020-CP-22-0932

4 (And related cases)

5 DATE OF HEARING: 4/14/23

6 COURT REPORTER/MONITOR: Webex Recording

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14 have no interest, financial or otherwise, in its outcome.  
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16 18 /s/ Bobbi Fisher

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20 Date Prepared: August 16, 2023

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## 2020CP2200932 : Sunset Lodge Llc VS Pawleys Island Town Of

Common Pleas

**Case Number** 2020CP2200932  
**Case Subtype** Fraud/Bad Faith 150  
**Filed Date** 11-12-2020  
**Status** Appeal

**Plaintiff**  
**Defendant**  
**Assigned Judge**  
**File Type**

Sunset Lodge Llc  
Pawleys Island Town Of  
Clerk Of Court C P, G S, And Family Court  
Non-Jury

[Show/Hide Participants](#)

| Name                         | Description                                                  | Type     | File Date              |
|------------------------------|--------------------------------------------------------------|----------|------------------------|
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| Pawleys Island Town Of       | Judgment/Satisfaction of Judgment                            | Filing   | 08-29-2023 02:26:44 PM |
| Sunset Lodge Llc             | NEF(07-28-2023 04:07:29 PM) Appeal/Notice of Appeal to C...  | Filing   | 07-28-2023 04:10:45 PM |
| Sunset Lodge Llc             | Appeal/Notice of Appeal to Court of Appeals/Cert of Service  | Filing   | 07-28-2023 04:07:29 PM |
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| Sunset Lodge Llc             | Order/Electronic Form 4/Motions to Reconsider Denied         | Order    | 06-28-2023 01:08:48 PM |
| Sunset Lodge Llc             | NEF(06-20-2023 12:17:15 PM) Amended/Other                    | Filing   | 06-20-2023 01:31:47 PM |
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| Sunset Lodge Llc             | NEF(06-20-2023 01:25:06 PM) Amended/Other                    | Filing   | 06-20-2023 01:29:13 PM |
| Sunset Lodge Llc             | Amend Mot to Reconsideration Fee Award to Landowners/Stanton | Filing   | 06-20-2023 01:25:06 PM |
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| M. Baron Stanton             | 2/21/2023_NJT_Roster/Notice of Case Roster Publication Sent  | Action | 01-09-2023 | 03:55:08 PM |
| Norwood David DuRant, Sr.    | 2/21/2023_NJT_Roster/Notice of Case Roster Publication Sent  | Action | 01-09-2023 | 03:55:08 PM |
| William Clayton Dillard, Jr. | 2/21/2023_NJT_Roster/Notice of Case Roster Publication Sent  | Action | 01-09-2023 | 03:55:08 PM |
| Sunset Lodge Llc             | NEF(12-22-2022 02:09:06 PM) Order/Electronic Form 4          | Filing | 12-22-2022 | 02:09:29 PM |
| Sunset Lodge Llc             | Order/Electronic Form 4/Continued                            | Order  | 12-22-2022 | 02:09:06 PM |
| M. Baron Stanton             | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| M. Baron Stanton             | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| Norwood David DuRant, Sr.    | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| Norwood David DuRant, Sr.    | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| William Clayton Dillard, Jr. | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| William Clayton Dillard, Jr. | 1/6/2023_MOTION_Roster/Notice of Case Roster Publication Sen | Action | 12-19-2022 | 10:41:27 AM |
| Pawleys Island Town Of       | NEF(12-13-2022 04:36:12 PM) Memo/Memo in Opposition          | Filing | 12-14-2022 | 10:01:23 AM |
| Pawleys Island Town Of       | Memo/Memo in Opposition to Petition for Attorneys Fees       | Filing | 12-13-2022 | 04:36:12 PM |
| Pawleys Island Town Of       | NEF(12-12-2022 07:27:16 PM) Affidavit/Affidavit of           | Filing | 12-13-2022 | 08:35:51 AM |
| Pawleys Island Town Of       | Affidavit/Affidavit of N David Durant Sr                     | Filing | 12-12-2022 | 07:27:16 PM |
| Pawleys Island Town Of       | Affidavit/Affidavit of N David Durant Sr-EX_1                | Filing | 12-12-2022 | 07:27:16 PM |
| Pawleys Island Town Of       | Affidavit/Affidavit of William C Dillard Jr                  | Filing | 12-12-2022 | 07:27:16 PM |
| Pawleys Island Town Of       | Affidavit/Affidavit of William C Dillard Jr-EX_1             | Filing | 12-12-2022 | 07:27:16 PM |
| M. Baron Stanton             | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| M. Baron Stanton             | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| Norwood David DuRant, Sr.    | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| Norwood David DuRant, Sr.    | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| William Clayton Dillard, Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| William Clayton Dillard, Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 12-06-2022 | 10:32:12 AM |
| M. Baron Stanton             | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| M. Baron Stanton             | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| Norwood David DuRant, Sr.    | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| Norwood David DuRant, Sr.    | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| William Clayton Dillard, Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| William Clayton Dillard, Jr. | 12/15/2022_MOTION_Roster/Notice of Case Roster Publication S | Action | 11-21-2022 | 03:01:05 PM |
| Sunset Lodge Llc             | Decline to Sign:Order/Attorney Fees                          | Filing | 10-31-2022 | 04:03:36 PM |
| Sunset Lodge Llc             | NEF(10-21-2022 10:57:19 AM) Motion/Attorney Fees             | Filing | 10-21-2022 | 11:27:28 AM |
| Sunset Lodge Llc             | Motion/Attorney Fees/Stanton                                 | Motion | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees                                      | Filing | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees-EX_1                                 | Filing | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees-EX_2                                 | Filing | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees-EX_3                                 | Filing | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Affidavit/Attorney Fees-EX_4                                 | Filing | 10-21-2022 | 10:57:19 AM |
| Sunset Lodge Llc             | Remittitur From Court Of Appeals                             | Filing | 10-07-2022 | 11:33:00 AM |
| Sunset Lodge Llc             | Order                                                        | Order  | 10-07-2022 | 11:33:00 AM |
| Pawleys Island Town Of       | NEF(09-07-2022 09:59:12 AM) Stipulation/Stipulation of       | Filing | 09-07-2022 | 10:34:13 AM |
| Pawleys Island Town Of       | Stipulation/Stipulation Regarding 6-3-21 Form 4 Orders       | Filing | 09-07-2022 | 09:59:12 AM |
| Pawleys Island Town Of       | Appeal/Notice of Appeal to Court of Appeals                  | Action | 08-12-2022 | 02:25:20 PM |
| Pawleys Island Town Of       | NEF(08-11-2022 02:25:20 PM) Appeal/Notice of Appeal to C...  | Filing | 08-11-2022 | 02:53:12 PM |
| Sunset Lodge Llc             | NEF(07-22-2022 05:10:03 PM) Motion/Alter and/or Amend        | Filing | 07-25-2022 | 08:47:59 AM |
| Sunset Lodge Llc             | Motion/Alter/Amend/Correct/Reconsider Form 4/Stanton         | Motion | 07-22-2022 | 05:10:03 PM |
| Sunset Lodge Llc             | NEF(07-12-2022 11:02:50 AM) Order/Electronic Form 4          | Filing | 07-12-2022 | 11:03:02 AM |
| Sunset Lodge Llc             | Order/Electronic Form 4/See Form 4                           | Order  | 07-12-2022 | 11:02:50 AM |
| Sunset Lodge Llc             | ADR/Notice of ADR                                            | Action | 09-09-2021 | 10:01:38 AM |
| Sunset Lodge Llc             | NEF(07-02-2021 04:58:34 PM) Notice/Other                     | Filing | 07-06-2021 | 08:44:31 AM |
| Sunset Lodge Llc             | Notice of Appeal/Certificate of Service                      | Filing | 07-02-2021 | 04:58:34 PM |
| M. Baron Stanton             | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 07-01-2021 | 11:49:49 AM |
| Norwood David DuRant, Sr.    | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 07-01-2021 | 11:49:49 AM |
| William Clayton Dillard, Jr. | 7/29/2021_MOTION_Roster/Notice of Case Roster Publication Se | Action | 07-01-2021 | 11:49:49 AM |
| Sunset Lodge Llc             | NEF(06-21-2021 10:01:38 AM) ADR/Notice of ADR                | Filing | 06-21-2021 | 10:01:48 AM |
| Pawleys Island Town Of       | NEF(06-14-2021 04:42:27 PM) Motion/Relief                    | Filing | 06-15-2021 | 10:24:34 AM |
| Pawleys Island Town Of       | Motion to Correct or Amend Error In 6-3-21 Orders/Dillard    | Motion | 06-14-2021 | 04:42:27 PM |
| Sunset Lodge Llc             | ADR/Alternative Dispute Resolution (Workflow)                | Action | 06-10-2021 | 05:08:03 PM |
| Sunset Lodge Llc             | NEF(06-03-2021 12:56:15 PM) Order/Electronic Form 4          | Filing | 06-03-2021 | 12:56:38 PM |

|                              |                                                                               |        |            |             |
|------------------------------|-------------------------------------------------------------------------------|--------|------------|-------------|
| Sunset Lodge Llc             | <a href="#">Order/Electronic Form 4/See Form 4</a>                            | Order  | 06-03-2021 | 12:56:15 PM |
| Pawleys Island Town Of       | <a href="#">NEF(06-02-2021 04:10:37 PM) Memo/Memo in Opposition</a>           | Filing | 06-02-2021 | 04:15:20 PM |
| Pawleys Island Town Of       | <a href="#">Memo/Memo in Opposition to Mot to Reconsider Order of Dismiss</a> | Filing | 06-02-2021 | 04:10:37 PM |
| M. Baron Stanton             | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 06-01-2021 | 10:05:41 AM |
| Norwood David DuRant, Sr.    | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 06-01-2021 | 10:05:41 AM |
| William Clayton Dillard, Jr. | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 06-01-2021 | 10:05:41 AM |
| M. Baron Stanton             | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 05-17-2021 | 10:37:58 AM |
| Norwood David DuRant, Sr.    | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 05-17-2021 | 10:37:58 AM |
| William Clayton Dillard, Jr. | <a href="#">6/3/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 05-17-2021 | 10:37:58 AM |
| Sunset Lodge Llc             | <a href="#">NEF(04-28-2021 12:24:16 PM) Motion/Reconsider</a>                 | Filing | 04-28-2021 | 12:46:49 PM |
| Sunset Lodge Llc             | <a href="#">Motion/Reconsider/Stanton</a>                                     | Motion | 04-28-2021 | 12:24:16 PM |
| Sunset Lodge Llc             | <a href="#">NEF(04-22-2021 08:26:10 AM) Order/Dismissal</a>                   | Filing | 04-22-2021 | 08:26:28 AM |
| Sunset Lodge Llc             | <a href="#">Order/Dismissal</a>                                               | Order  | 04-22-2021 | 08:26:10 AM |
| Sunset Lodge Llc             | <a href="#">NEF(04-22-2021 08:25:47 AM) Order/Form 4</a>                      | Filing | 04-22-2021 | 08:25:59 AM |
| Sunset Lodge Llc             | <a href="#">Form 4/Mot to Dismiss&amp;Mot for Prot Ord Granted/See Form 4</a> | Order  | 04-22-2021 | 08:25:47 AM |
| Sunset Lodge Llc             | <a href="#">NEF(04-01-2021 04:12:58 PM) Order/Electronic Form 4</a>           | Filing | 04-01-2021 | 04:21:07 PM |
| Sunset Lodge Llc             | <a href="#">Order/Electronic Form 4/See Form 4</a>                            | Order  | 04-01-2021 | 04:12:58 PM |
| Pawleys Island Town Of       | <a href="#">NEF(03-31-2021 04:32:07 PM) Memo/Memo in Support</a>              | Filing | 04-01-2021 | 08:30:31 AM |
| Sunset Lodge Llc             | <a href="#">NEF(03-31-2021 08:55:32 PM) Reply/Other</a>                       | Filing | 04-01-2021 | 08:29:49 AM |
| Sunset Lodge Llc             | <a href="#">Reply to Memo in Opposition</a>                                   | Filing | 03-31-2021 | 08:55:32 PM |
| Pawleys Island Town Of       | <a href="#">Memo/Memo in Support</a>                                          | Filing | 03-31-2021 | 04:32:07 PM |
| Sunset Lodge Llc             | <a href="#">NEF(03-31-2021 08:07:18 AM) Memo/Memo in Opposition</a>           | Filing | 03-31-2021 | 09:52:36 AM |
| Sunset Lodge Llc             | <a href="#">Memo/Memo in Opposition</a>                                       | Filing | 03-31-2021 | 08:07:18 AM |
| M. Baron Stanton             | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| M. Baron Stanton             | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| Norwood David DuRant, Sr.    | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| Norwood David DuRant, Sr.    | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| William Clayton Dillard, Jr. | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| William Clayton Dillard, Jr. | <a href="#">4/1/2021_MOTION_Roster/Notice of Case Roster Publication Sen</a>  | Action | 03-25-2021 | 09:14:17 AM |
| Pawleys Island Town Of       | <a href="#">NEF(03-05-2021 03:50:14 PM) Motion/Dismiss</a>                    | Filing | 03-05-2021 | 04:37:16 PM |
| Pawleys Island Town Of       | <a href="#">Motion/Dismiss/Dillard</a>                                        | Motion | 03-05-2021 | 03:50:14 PM |
| Pawleys Island Town Of       | <a href="#">NEF(03-03-2021 02:59:36 PM) Answer/Answer To Amended Com...</a>   | Filing | 03-03-2021 | 04:21:39 PM |
| Pawleys Island Town Of       | <a href="#">Answer/Answer To Amended Complaint</a>                            | Filing | 03-03-2021 | 02:59:36 PM |
| Pawleys Island Town Of       | <a href="#">Answer/Answer To Amended Complaint-EX_1</a>                       | Filing | 03-03-2021 | 02:59:36 PM |
| Pawleys Island Town Of       | <a href="#">Motion/Protection from Discovery/Dillard</a>                      | Motion | 03-03-2021 | 02:59:36 PM |
| Pawleys Island Town Of       | <a href="#">Motion/Protection from Discovery/Dillard-EX_1</a>                 | Motion | 03-03-2021 | 02:59:36 PM |
| Pawleys Island Town Of       | <a href="#">Motion/Protection from Discovery/Dillard-EX_2</a>                 | Motion | 03-03-2021 | 02:59:36 PM |
| Pawleys Island Town Of       | <a href="#">NEF(02-10-2021 03:37:20 PM) Notice/Other</a>                      | Filing | 02-10-2021 | 04:50:47 PM |
| Pawleys Island Town Of       | <a href="#">Notice of Abandonment of Condemnation Action</a>                  | Filing | 02-10-2021 | 03:37:20 PM |
| Pawleys Island Town Of       | <a href="#">NEF(02-03-2021 10:32:01 AM) Notice/Notice of Appearance</a>       | Filing | 02-03-2021 | 10:32:19 AM |
| Pawleys Island Town Of       | <a href="#">Notice/Notice of Appearance</a>                                   | Filing | 02-03-2021 | 10:32:01 AM |
| Sunset Lodge Llc             | <a href="#">NEF(01-13-2021 12:45:47 PM) Amended/Amended Summons And ...</a>   | Filing | 01-13-2021 | 02:11:58 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint</a>                         | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_1</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_2</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_3</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_4</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_5</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Sunset Lodge Llc             | <a href="#">Amended/Amended Summons And Complaint-EX_6</a>                    | Filing | 01-13-2021 | 12:45:47 PM |
| Pawleys Island Town Of       | <a href="#">NEF(12-14-2020 04:09:30 PM) Notice/Notice of Appearance</a>       | Filing | 12-14-2020 | 04:19:47 PM |
| Pawleys Island Town Of       | <a href="#">Notice/Notice of Appearance</a>                                   | Filing | 12-14-2020 | 04:09:30 PM |
| Pawleys Island Town Of       | <a href="#">Answer/Answer</a>                                                 | Filing | 12-14-2020 | 04:09:30 PM |
| Sunset Lodge Llc             | <a href="#">Summons &amp; Complaint</a>                                       | Filing | 11-12-2020 | 05:08:03 PM |
| Sunset Lodge Llc             | <a href="#">Summons &amp; Complaint-EX_1</a>                                  | Filing | 11-12-2020 | 05:08:03 PM |

[October 12, 2020 resolution (first version) of Town Council is included once as an exhibit to amended complaint.]

[October 12, 2020 resolution (second version) of Town Council is included once as an exhibit to the amended complaint.]

[January 10, 2021 Landowner first interrogatories to Town are included once as an exhibit to Town March 3, 2021 motion to stop discovery.]

[January 15, 2021 Landowner notice of deposition of then Town Administrator (Fabbri) is included once as an exhibit to Town March 3, 2021 motion to stop discovery.]

[February 10, 2021 Town notice re abandonment is included as an exhibit to the Town answer to the amended complaint.]



March 3, 2021 Town motion to stop discovery, with exhibits (2)

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | <b>DEFENDANT’S MOTION FOR</b>     |
| Plaintiff,              | ) | <b>PROTECTIVE ORDER</b>           |
| v.                      | ) | <b>REGARDING DISCOVERY</b>        |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

**TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQ.**

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island (“Town”), by and through its undersigned attorneys, will move this Court the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for issuance of a Protective Order relieving Town of any obligation to participate in certain discovery in this action, on the general ground that the single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town’s February 10, 2021 filing of a *Notice of Abandonment of Condemnation Action* relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the “New Notice”).<sup>1</sup> Because Plaintiff has declined to stipulate to dismissal of the action and withdrawal of such discovery, Town seeks an Order providing the following relief from discovery initiated by Plaintiff:

---

<sup>1</sup> Plaintiff alleges on page 58, Paragraph 372 of the *Amended Complaint* that “[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff.”

- 1.) Quashing the *Plaintiff's Notice of Deposition of Mr. [Ryan] Fabbri*<sup>2</sup> (Exhibit A) and any additional notice as may be served for such deposition prior to the Court's ruling on this motion, and relieving the Town and intended deponent of any obligation to comply with the same; and
- 2.) Ordering that the Town is relieved of any obligation to respond to the *Plaintiff's First Interrogatories*<sup>3</sup> (Exhibit B) submitted by Plaintiff in this action.

This relief is requested on the grounds that that **(a)** as set forth above, the challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary and inappropriate; **(b)** such discovery would be unreasonably burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and **(c)** such protection is necessary to protect Town from entirely unnecessary burden, expense, and annoyance in this action, Rule 26(c), SCRCP.

#### Rule 11 Certification

Pursuant to Rule 11, SCRCP, undersigned counsel hereby certifies that he attempted to consult with opposing counsel to resolve the issues underlying this motion prior to filing the motion and determined that further consultation would serve no useful purpose.

---

<sup>2</sup> The *Notice of Deposition* references a deposition to take place on February 19, 2021. However, by written agreement of counsel, this date was extended to March 5, 2021, subject to reservation of Town's right to object to the taking of the deposition.

<sup>3</sup> The *Plaintiff's First Interrogatories* and accompanying certificate of service are dated January 10, 2021. However, by written agreement of counsel, the date for responding was extended to March 5, 2021, subject to reservation of Town's right to object to the written discovery.

Respectfully submitted,

s/ William C. Dillard, Jr.  
William C. Dillard, Jr. (S.C. Bar No. 78986)  
BELSER & BELSER, P.A.  
Post Office Box 96  
Columbia, SC 29202  
(803) 929-0096  
[will@belserpa.com](mailto:will@belserpa.com)  
Attorneys for Town of Pawleys Island

March 3, 2021

**EXHIBIT A**

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | PLAINTIFF'S                       |
| Plaintiff,              | ) | NOTICE OF DEPOSITION              |
|                         | ) | OF MR. FABBRI                     |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: Please take notice:

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition of Ryan Fabbri 10:00 a.m. on Friday, February 19, 2021 at the offices of the undersigned. The deposition will continue from hour to hour, or day to day, until completion. The deposition will be recorded by stenographic and sound means and taken pursuant to the South Carolina Rules of Civil Procedure before a disinterested person authorized by law to administer oaths. If the deposition is commenced but not completed, it will be continued from time to time as agreed by the parties or pursuant to court order until completed, without further notice. If the deposition is rescheduled by agreement as to time or place after the initial notice, no further notice will be sent, and the original notice, as modified, will remain in effect.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)  
 STANTON LAW OFFICES, P.A.  
 (1230 Richland Street (29201))  
 P.O. Box 245  
 Columbia, SC 29202  
 Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
*Attorney for Sunset Lodge, LLC*

1/15/21

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
| Sunset Lodge, LLC,      | ) |                                   |
| Plaintiff,              | ) | CERTIFICATE OF                    |
|                         | ) | SERVICE                           |
| v.                      | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com  
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton  
M. Baron Stanton

Date: 1/15/21

**EXHIBIT B**

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | PLAINTIFF'S                       |
| Plaintiff,              | ) | FIRST INTERROGATORIES             |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL:

YOU ARE HEREBY REQUIRED to answer the following interrogatories pursuant to South Carolina Rule of Civil Procedure 33. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and a copy of such answers, and objections if any, shall be served upon the undersigned within (30) days after the service hereof.

1. What was the purpose of, with no prior notice, delivering to Plaintiff's counsel on October 16, 2020, the Condemnation Notice and Tender of Payment (including referenced map and proposed Beach Renourishment Easement) incorrectly dated June 9, 2020 (collectively, "the New Notice"), along with a proposed Acceptance of Service document and asking him to accept service?

2. Please explain why you dated the New Notice June 9, 2020.

3. Identify any and all appraisals, supplemental appraisals, amended or modified appraisals, substituted appraisals or additional appraisals relating to the subject property or the easement you seek in the New Notice, which you obtained before serving the New Notice.

4. Do you contend that the New Notice was a valid notice, which, as stated to the condemnee named in the Notice, if not responded to, would give you the right to file it and certify taking possession of the easement it sought? If not, do you contend that the New Notice was a valid amendment of the Condemnation Notice and Tender of Payment (including referenced map and proposed Beach Renourishment Easement) dated June 9, 2020 and served in June 2020 (collectively, “The Existing Notice”) in spite of the statutory stay?

5. On what basis do you contend that the stay did not prohibit an amendment of the Existing Notice without the consent of the condemnee and without leave of court?

6. Do you contend that the Existing Notice is no longer in effect as a result of issuance of the New Notice? If not, do you contend that the Existing Notice and the New Notice may exist at the same time and that you may condemn both the easement described in the Existing Notice and the easement with different terms in the New Notice at the same time? If so, do you contend that if the condemnee does not agree to the efficacy or legitimacy of either notice or does not agree to the proposed compensation in either notice, the condemnee must defend two condemnation proceedings at once?

7. Please explain why you did not respond to condemnee’s counsel’s e-mail of November 8, 2020, which stated and asked: “David, following up on the changed condemnation notices which you provided to me October 16 with a proposed acceptance of service, what is their purpose procedurally? Are they intended to be part of the same condemnation proceedings



which are already pending? If not, do you intend for these October 16 documents to be something else or some new proceeding? Please clarify what these documents are supposed to be procedurally.”

8. What is the source and any supporting court opinion, statute, ordinance, code, regulation, written legal opinion or covenant, restriction, easement or other title document for the assertion in the 9-line footnote in the Beach Renourishment Easement comprising part of the New Notice that under the conditions stated in the footnote, the Town or the public acquires an easement or right of use?

9. Has the Town ever “retained,” or does the Town purport or claim “retain,” an easement over any part of the beach by virtue of continuous use by the public? If so, state what portion of beach and identify what public records, if any, there are relating to, establishing or asserting the same, e.g., lawsuits, court orders, resolutions, ordinances, letters, assertions in writing by town constabulary, tickets or charges filed or issued by same, etc.

10. Identify any expert or other witness from whom you received input on the contents of the 9-line footnote in the Beach Renourishment Easement comprising part of the New Notice, and identify any witness you expect to testify concerning the contents or validity of anything stated in the 9-line footnote.

11. Which council member or members introduced the resolution October 12, 2020?

12. Please describe any and all efforts you (the Town or its counsel) made before January 9, 2021 to ascertain whether “Standard Estate 26” or any other verbiage sent to you by the Corps for inclusion in the permanent easement to you from over a hundred Pawleys Island property owners had been approved pursuant to the Federal Administrative Procedures Act,

published in the Federal Register, included in the Code of Federal Regulations, or otherwise had the force of law, and identify all correspondence or other documents reflecting such attempt and identify all documents reflecting the conclusion you reached or the result or response to the attempt.

13. If the Corps had stated to you (the Town or its counsel) that in order to have federal assistance with the southern portion of the renourishment project, you would need to include in all easements, a provision perpetually allowing one public parking space in each owner's driveway and allowing you or the Corps to kill all family dogs found in the easement area, would you have included these provisions in the easement document as well, still described it as solely permission to do the work of putting sand on the beach, and still informed owners that no change whatsoever could be made to the easement?

14. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

15. Set forth a list of photographs, videotapes, plats, sketches, correspondence, notes, memoranda, agendas, logs, studies, minutes, press releases, resolutions, reports, charts, other writings and recordings, e-mails, texts, IMs, blogs, other electronically stored information, or other prepared documents in possession of the party that relate to the attempt to condemn and related contemplated proceedings, the instant lawsuit, Plaintiff's claims or Defendant's defenses. (By "electronically stored information," this party means to include all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or

bookkeeping information stored or accessed with QuickBooks or similar software; e-mail of any type, category, or status, including incoming, outgoing, draft, or deleted e-mail; social networking website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard drive, cell phone, PDA, or other electronic device capable of storing data.)

16. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

17. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witnesses.

18. For each person whom the party may call as an expert or opinion witness at the trial, identify the person in complete detail and provide the following information:

- a. Name, occupation, title, business address, area of specialization, if any, and professional relationship to the responding party;
- b. The manner in which such person became familiar with the facts of the case;
- c. The subject matter on which the person is expected to testify;
- d. Substance of the facts and opinions to which the person is expected to testify;

- e. A summary of the grounds for each opinion;
- f. The person's area of expertise;
- g. The person's educational background and experience qualifying the person as an expert in that area;
- h. Identification of all documents, materials, reports, articles, treatises or other information the expert will rely upon in forming opinions; and
- i. A summary of the expert's prior history of consultation and/or testimony in legal matters.

19. Please identify any documents or things (as broadly defined), regardless of whether or not favorable to you, which you believe relevant to this case, or which you intend to use as a demonstrative exhibit at trial, or which you intend to introduce into evidence at trial, or which you intend to use for cross examination or refresher of recollection.

20. State the detailed factual basis for each of the claims or defenses you assert in your pleadings.

21. Please identify any and all instances in which you, your attorney, or the agent of either of you has spoken with or otherwise communicated with any of the following since this suit was filed and state the actual substance of what was communicated: Any employee or member or officer of or person serving in the U.S. Army Corps of Engineers.

22. State and describe in detail, in what document or by what means you were first provided with specific the wording the Corps of Engineers wanted you to include in easements from south end property owners and who provided that wording. (This interrogatory calls for identification of the first document you received stating such specific wording, not simply identification of any and all documents containing such wording or similar wording.)

23. State and describe in detail, the date a person from the Corps of Engineers first explained to you the meaning of the desired contents to include in easements from south end property owners and who provided that explanation and in what document or by what means.

24. Have you withheld production or description of any documents you claim are privileged, and, if so, please identify those documents.

s/M. Baron Stanton  
M. Baron Stanton (Bar#7970)  
STANTON LAW OFFICES, P.A.  
(1230 Richland Street (29201))  
P.O. Box 245  
Columbia, SC 29202  
Tel: (803) 929-1484  
[bstanton@stantonlaw.com](mailto:bstanton@stantonlaw.com)  
*Attorney for Sunset Lodge, LLC*

1/10/21

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
| Sunset Lodge, LLC,      | ) |                                   |
| Plaintiff,              | ) | CERTIFICATE OF SERVICE            |
| v.                      | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com  
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton  
M. Baron Stanton

Date: 1/10/21

March 5, 2021 Town motion to dismiss on the face of the complaint as moot

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | <b>DEFENDANT'S</b>                |
| Plaintiff,              | ) | <b>MOTION TO DISMISS</b>          |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

**TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, M. BARON STANTON, ESQ.**

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island (“Town”), by and through its undersigned attorneys, will move this Court the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for issuance of an Order dismissing this action, without prejudice, on the general ground that the Town’s February 10, 2021 filing of a *Notice of Abandonment of Condemnation Action* relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the “New Notice”), renders this condemnation challenge action entirely moot.<sup>1</sup> More specifically, based on the Plaintiff’s refusal to stipulate to dismissal of this matter even subject to an opportunity to assert any claim Plaintiff may have for litigation expenses, Town seeks dismissal of the action on the following grounds:

- 1.) The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town’s filing of

<sup>1</sup> Plaintiff alleges on page 58, Paragraph 372 of the *Amended Complaint* that “[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff.” The New Notice has now been formally abandoned and withdrawn.



the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. As the subject Condemnation Notice has been abandoned and withdrawn, any condemnation action it initiated has been extinguished and therefore warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470. Accordingly, based on the pleadings, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings dismissing the action pursuant to Rule 12(c), SCRPC.

- 2.) To the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to a separate prior condemnation notice and condemnation action, another action (referenced in the Amended Complaint as the "Existing Challenge Action") is already pending between the same parties for the same claim, and this present action should be dismissed pursuant to SCRPC 12(b)(8).

The requested dismissal is intended to be without prejudice to any right the Plaintiff may have to assert a claim to reasonable attorney fees, litigation expenses, and costs in this action pursuant to § 28-2-510(C). Accordingly, Town stipulates to inclusion in the Order of Dismissal of terms providing that:

- (a) Delivery of the Condemnation Notice referenced as the "New Notice" in the Amended Complaint constituted service of the same and commencement of a condemnation action within the meaning of the Eminent Domain Procedure Act, and Town's filing of the *Notice of Abandonment* constituted an abandonment and withdrawal of such Condemnation Notice and action; and

(b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action within a reasonable specified time or, in the alternative, in the separately pending “Existing Condemnation Action” referenced in the Amended Complaint.

Based on the foregoing, the Defendant respectfully requests that the Court dismiss this action without prejudice as set forth above. This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, and oral arguments by counsel.

Rule 11 Certification

Although not required pursuant to Rule 11, SCRCP, undersigned counsel hereby certifies that he has consulted with opposing counsel prior to filing this motion in a good faith attempt to resolve the matter herein.

Respectfully submitted,

s/ William C. Dillard, Jr.  
William C. Dillard, Jr. (S.C. Bar No. 78986)  
BELSER & BELSER, P.A.  
Post Office Box 96  
Columbia, SC 29202  
(803) 929-0096  
[will@belserpa.com](mailto:will@belserpa.com)  
Attorneys for Town of Pawleys Island

March 5, 2021

March 31, 2021 Landowner memorandum in opposition to motion to stop discovery and to dismiss

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

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PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
THE TOWN'S MARCH 5, 2021 MOTION TO DISMISS  
AS MOOT AND IN OPPOSITION TO THE TOWN'S  
MOTION FOR PROTECTION FROM DISCOVERY

Defendant Town of Pawleys Island filed a March 5, 2021 motion to dismiss the instant action, asserting that the action is "moot." Plaintiff opposes the motion. Because the motion for protection from discovery is predicated entirely on the motion to dismiss, Plaintiff also opposes the Town's motion for protection from discovery.

This case is nowhere near over, nor moot. There is also no reason advanced for such haste, after the Town has brought two suits, and sought delay in the related case.

The only thing that might be accomplished by such haste would be to subject Plaintiff to the necessity of going through two lawsuits to enable a third without the true facts all coming out and without all the appropriate relief being afforded.

Plaintiff needs to submit a fee petition and also needs to decide what, if any, additional relief to seek under the amended complaint, under further amendment, or by appropriate motion.

**I. The Town's unilateral stipulations in its motion do not control court procedure, the relief to which Plaintiff is entitled, or the relief Plaintiff may seek as the plaintiff in this action.**

The Town's motion makes partial stipulations regarding fees and offers suggested resolutions including moving part of this case to another case so that this case can be dismissed.

While it is unusual to exchange, in the motion and in this response, ways to voluntarily resolve the matter without Court order, both parties do seek to streamline the matter. However, any resolution must be consistent with protecting Plaintiff's interests.

Plaintiff has now been sued not once, but twice. Plaintiff has been put to great distraction and great expense, and along the way has suffered defamation and has suffered a cloud on Plaintiff's title. The Town's offers do not protect Plaintiff from continuation or repetition on these matters. Plaintiff's interests cannot be oversimplified, disregarded, or overlooked. The need to protect Plaintiff and Plaintiff's right to direct Plaintiff's own case cannot be avoided by omitting the salient facts.

Only if the Town would stipulate to the following to end this case, the case could be ended now:

1. Plaintiff is entitled to reasonable fees and other litigation expenses for this action.
2. Fees and expenses of \$6,722.64 as of April 5, 2021 are reasonable as follows: (((\$190/hr. x 93.3 hrs. ÷ 3) plus \$180.32 filing fee) as of March 29, 2021, plus (\$190/hr. x 10.0 hrs. ÷ 3) estimated as of April 5, 2021, assuming expenditure of no more than 10 more hours is required to conclusion, subject to supplementation.
3. The notice of abandonment of the second condemnation attempt by the Town is confirmed to be an abandonment with prejudice, i.e., with stipulation that Plaintiff will not be sued a third time by the Town on the same subject matter.
4. This case is dismissed without prejudice to any other claims of Plaintiff may wish to bring separately.

I.e., if the Town would stipulate to the award and the amount of fees, and stipulate to not suing Plaintiff a third time on the same subject matter, then and only then, reserving Plaintiff's rights to assert other claims in a separate proceeding, the case would be over.

## **II. Plaintiff still needs to pursue and receive fees and expenses.**

Plaintiff is in the process of preparing a petition for award of attorney's fees pursuant to the mandatory fee award provisions of S.C. Code Ann. §28-2-510(C)(pertaining to fees to landowner when condemnor abandons condemnation) or §28-2-510(A)(applicable to landowner's successful challenge to condemnation).

Plaintiff is also in the process of considering the status of the Town's answer in the instant case, the status of discovery already initiated by Plaintiff but not obtained, the relief which may be obtained in the instant action, and whether to seek amendment before or after obtaining discovery.

Plaintiff has also been working on an amended fee petition in the related case under S.C. Code Ann. §28-2-510(A), amidst briefings and hearings initiated by a request by the Town for a delay of over four months in that case.

The matter of fees for abandonment needs to be resolved in an orderly manner within the instant case.

Resolution may be possible by appropriate stipulation of both parties, but not a stipulation only by the Town which may allow for later new positions of the Town, confusion of issues or cases, or creation of other surprise, extra work, or prejudice for Plaintiff. The fee petition in the instant case obviously should not be moved, as the Town requests, to a different case.

It is inappropriate to do so based on the stipulation of only the one party, against which the fee petition lies. It is Plaintiff's fee petition, not the Town's. The Town has taken shifting positions in the related case. A frank review of the history of the matter in general reveals a history in which the Town acknowledges no value in Plaintiff's rights, no value in Plaintiff's property, and no value in Plaintiff's time or expense.

For example, in the initial, preceding, suit by the Town (the "initial suit"), the Town attempted to condemn an easement on expensive property without paying anything for it.

In doing so, the Town ignored numerous statutory, constitutional and common law protections of Plaintiff.

The Town did so again in commencing another action while the first case was pending and being challenged by Plaintiff.

When Plaintiff submitted a fee petition after the grant of summary judgment in Plaintiff's favor in the initial challenge case, the Town's position was that the Town opposed the fees as unreasonable, and wanted over four more months of proceedings.

However, the Town was apparently unable to state why the fees were unreasonable or in what respect they were unreasonable. So the Town asserted that it needed the delay of over four months, stating that the time was needed for discovery after which the Town would seek an entire trial on fees.

That position has already produced extensive further work, expense, and litigation, including separating the work attributable to the two cases, work on an amended fee petition, and detailed marking and protection of private bills in the initial challenge case.

The Town's position on the need for the full four months – half of which has already elapsed -- has since changed, but only to tentative positions of lesser scope, based on what the Town states it does or does not currently foresee the need for.

The Town's request for great delay in some respects has changed to one for unexplained great haste in others. Somewhat similarly, early in the initial case, the Town had filed a motion to expedite the case and all its own motions, and shortly afterwards sought an order blocking all discovery from the Town. Plaintiff has begun discovery in the instant challenge action, but it has not progressed.

Plaintiff is not presently prepared to stipulate in the instant case to bypassing orderly presentation of the fee petition for the abandonment within this case, which is the case from which the fee petition arises. Resolving the matter in a different but related case in a different procedural posture

and leapfrogging over Plaintiff's ability to respond to different issues not even yet raised by the Town is not appropriate.

There is also no reason given for a great to hurry to dismiss the case still subject to having the fees then later determined in the case.

### **III. Plaintiff has not determined whether to seek other relief in this case.**

"Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Rule 54(c), SCRCP.

This challenge action arises after the Town had already once before abandoned its request for an easement. See the Amended Complaint ¶¶35-48 re 2019 cessation of requests for easement, declaration of no need for easement, and 2020 completion of work without easement.

This challenge action arises after the second time the Town has sued Plaintiff on the same subject matter. While fee and expense awards are available, the Town's two suits have caused Plaintiff to incur noncompensable time and expense, suffer defamatory implications if not outright statements from the Town, endure gossip fomented by the Town, and have cast a pall over the state of the title to Plaintiff's property by threats of continued future action.

As late as March 18, 2021, the mayor of the Town sent out a mass public e-mail announcing a determination to continue to "pursue" the easements. In doing so, he continued in the same fashion in which the Town has previously operated, to not disclose to other owners, the actual issues in the two suits so far against each of three landowners.

Plaintiff needs equitable relief, res judicata relief, or if appropriate, relief by sanction, to prevent such repetitive problems. Plaintiff needs some discovery to explore these avenues. Permanent equitable relief, for example, may be available on one or more bases. See S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(barring re-institution of condemnation



permanently, because the condemnor had previously represented that there would be no need for an easement on the landowner's property).

Once the fee award is resolved, and once there is no remaining discovery sought, and once Plaintiff decides there is no additional relief sought under the existing amended complaint or a subsequent amendment or under appropriate motion in the case, it would only then be the traditional time to consider whether the case is over.

This would largely, but not exclusively, depend on whether the Town stipulates not to sue Plaintiff for a third time on the same subject matter. In this regard, the Court could also order now and declare that the Town's abandonment of the condemnation is with prejudice or could otherwise enjoin the Town now from suing Plaintiff for a third time on the same subject matter.

**IV. The procedural and substantive background of this and the initial challenge action are necessary to an understanding of the issues before the Court, including the multiplicity of litigation, evasion of facts, and repeated expense and injury from which Plaintiff needs protection.**

To more fully appreciate the context of the matters which are the subject of the Town's motion and this response, some procedural and substantive background is required for anyone who has not read both case files.

The Town has sued Plaintiff twice on the same subject matter. To say that the act is capable of repetition is an understatement.

The instant "challenge action" is the second of two statutory suits to stop two suits by the Town. That is, the Town sued Plaintiff in June 2020 under the Eminent Domain Procedure Act (the "Act"), seeking to condemn an easement on the oceanfront part of Plaintiff's oceanfront land.

Plaintiff had offered the Town an easement, but the Town sought to condemn an easement with terms and scope Plaintiff believed to be unreasonable. Under the Act, Plaintiff sued to stop the condemnation of the unreasonable easement.

While the Town's suit, the "initial suit," was still pending and stayed, the Town sued Plaintiff again. The Town did so in October 2020 on substantially the same subject matter. Under the Act, Plaintiff then sued, in the instant action, to stop the second condemnation attempt.

The original complaint in the instant challenge action was not adequately answered. Virtually everything was denied by the Town.

Denials shall fairly meet the substance of the averments denied. Rule 8(b), SCRCPP. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Id.

Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11. Id. This is the rule against evasive answers.

The Amended Complaint in the instant challenge action was not adequately answered either. It is long. It was necessary to cover with particularity and precision, numerous chapters of the Town's acts, misrepresentations, evasions and persistent omissions over an extended period of time.

These have included the following, among other things:

- Misrepresentation of the nature and scope of the "renourishment" easement sought in 2019 when first soliciting it and seeking to pay nothing for it.
- Doing so by saying the "renourishment" easement was only for sand placement, sand fence and planting, when the legal document placed the easement two feet from the door of the house, granted perpetual public access within the easement area, granted a perpetual right to restrict the owner's access to that oceanfront part of the owner's property, granted a perpetual right to

tear down and prevent replacement of the owner's improvements within the area, and perpetually subjected the owner's right to build structures for access to the ocean to approval of an unidentified person with no governing standards.

- Misrepresentation publicly of the landowners' good faith offer of an easement of reasonable scope in response to those solicitations from the Town.
- Doing so by omitting all reference to the landowner's offer, omitting all disclosure of the issues, and falsely perpetuating the impression and public representation that the landowner had refused any easement whatsoever.
- Misrepresentation of the nature and scope of the actually contemplated easement to the appraiser hired by the Town when seeking approval of federal participation in part of the project.
- Doing so by asking the appraiser to determine potential land acquisition costs for 109 properties as a condition of obtaining federal approval of federal assistance on that part of the overall proposed renourishment project, but omitting the unreasonable terms to which Plaintiff has objected.
- Filing an unauthorized easement grant from one property owner, Mr. Beattie.
- Active involvement in creating a poorly drafted and unreasonable proposed granting document proposed to become a permanent part of Plaintiff's chain of title.
- Abandonment, altogether, of the request for the easement in 2019.
- Concurrently with such abandonment, publicly announcing intention to perform the work without an easement.
- Concurrently with such abandonment, publicly announcing the scientific likelihood of the lack of necessity of similar work for another 22 years or more.

- Subsequent to such abandonment of the request for the easement, completion of the work for which the easement had been sought.
- Subsequent to abandonment of the request for the easement and completion of such work, disclosing in 2020 a determination to pursue a "program" for only potential work.
- Doing so knowing that the potential work was to be years in the future, with no certainty of future need or occurrence, no assurance of Congressional funding, and no guarantee of future assistance whatsoever, and that the need for the potential work was contrary to the Town's own prior data and estimates the Town obtained and publicized in order to justify the doing of the work, the scope of the work, and the spending on the work, which was now already done.
- Subsequent to abandonment of the request for the easement and completion of the work without such easement, then requesting the easement again, but now only for the mere purpose of joining the uncertain "program" for which the need was unlikely, for which the possible need was remote in time, and under which the receipt of financial help and the actual doing of anything was speculative.
- Repeating prior misrepresentations in making a new request for the easement. I.e., that the "renourishment" easement was for the limited purpose of sand placement, sand fence, and planting.
- Continued publicly broadcast misrepresentation in the May 2020 Council meeting of both (i) the nature and scope of the easement now sought as only for putting sand on the beach and (ii) the landowners' responses to the prior solicitations as being a categorical refusal rather than a good faith offer of a reasonable easement.
- Consequently issuing a resolution insufficient for and invalid for authorizing the condemnation which the Town would later pursue.

- Misrepresentation of the nature and scope of the easement to the appraiser hired to determine the just compensation which should be paid to the landowner if the easements were to be purchased from the landowner or condemned and taken by eminent domain.
- Doing so by asking the appraiser to determine the just compensation which should be paid to the landowner, but omitting from the easement he was asked to appraise, the unreasonable terms to which Plaintiff has objected.
- Commencing a condemnation action seeking an easement containing the unreasonable terms to which Plaintiff has objected, but doing so in a proceeding integrally based on the falsely procured appraisal of an easement of materially more reasonable scope, while withholding the appraisal in violation of the statutory procedure, and while making a false certification in the condemnation papers that the appraisal had been previously provided.
- In seeking condemnation of an easement the entire request for which had been previously abandoned, seeking also to include features and scope previously agreed with one or more landowners not to be necessary features or scope.
- Misrepresenting publicly the nature of, progress of, and positions taken in the litigation.
- Misrepresenting to the Court in moving to dismiss, for a bond, and for special expedited treatment, the likelihood that a storm could wash away all 1.1. million cubic yards of sand in a single event and misrepresenting to the Court that under the “program,” if such an event occurred, the Town would be eligible to have the Corps of Engineers put all 1.1. million cubic yards back, including portions on which there would never be federal involvement.
- Presenting to the Court a resolution created by the Town which was known at the time of creation to be factually false, in which the Town Council falsely states that the materials contained in the resolution were presented to Plaintiff before the October 12, 2021 time of the resolution, impliedly in June 2020.

- Doing so in order to dissuade the Court from granting summary judgment by attaching the false resolution as Exhibit B to the Town's November 24, 2020 brief opposing Plaintiff's motion for summary judgment in the initial action.
- Doing so again on March 17, 2021 by attaching the false resolution to the Town's memorandum in support of the Town's motion to reconsider the granting of summary judgment.
- Approximately two months after Plaintiff's summary judgment motion was filed in the initial challenge actions, commencing a separate condemnation action based on knowingly falsely stated facts in the resolutions purportedly authorizing same.
- Doing so using condemnation notices created in October but falsely dated June 9, 2020.
- Doing so using condemnation notices in which the occurrence of other activities and events is recited falsely if the statements are taken to speak as of June 9, 2020.
- Not adequately answering the factual allegations of the original complaint in the instant challenge action.
- Abandoning the underlying condemnation notice on February 10, 2021.
- Not adequately answering the January 13, 2021 amended complaint in the instant challenge action.
- Seeking dismissal before discovery by Plaintiff on potential additional relief for Plaintiff has progressed, including the deposition of the Town Administrator noticed on January 15, 2021 for February 19 and the answering of January 10, 2021 interrogatories served by Plaintiff.

**V. The case is not federally moot nor practically moot nor moot under South Carolina case law.**

Mootness in federal court is a federal concept. It has been rooted since the 60s in Article III of the United States Constitution, which describes the limited jurisdiction of the federal courts. Article III

setting up the federal judiciary and courts does not govern state courts, except when they are part of the federal judicial system in the course of deciding issues of federal law under concurrent jurisdiction.

Article III of the United States Constitution is not duplicated in Article V of the South Carolina Constitution or anywhere else in the South Carolina Constitution. The South Carolina Constitution does not have a “case or controversy” requirement for jurisdiction of state courts in general.

Nor does the State Constitution have such a requirement or restriction for appellate courts. Cf. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001)(describing mootness as if a doctrine generally confined to appellate forum). The orientation of Curtis and other cases toward mootness as only an appellate concept is not surprising, as by the time a case is on appeal, not only can there be no amendment (unless amendment is the issue), but also the appeal is likely confined to the issues specifically raised. In contrast, the availability of relief is broader and more flexible at the trial level, both through the availability of amendment and through less rigidity in pleading rules, relief rules, and other procedural rules.

Unlike federal trial courts, state general trial level courts are not courts of limited jurisdiction. Like state appellate courts, state trial level courts, being courts operating on a local, rather than national scale and being informed by localized familiarity with local policy and issues, also, for that policy reason, are under no compulsion to emulate federal constitutional considerations unless doing so to avoid conflict with rights assured by the federal constitution to individuals or doing so as a part of the federal court system.

For most of this century, state courts have not been thought bound by the “case of controversy” requirement of Article III, even when deciding questions of federal law. William A. Fletcher, The “Case of Controversy” Requirement in State Court Adjudication of Federal Questions, Calif. Law Rev., Vol. 78, No.2 (Mar. 1990), at 263-264.

The difference between federal mootness and state mootness has received little judicial attention in some state courts, which have generally followed federal principles of mootness without discussing the root of the federal rule, likely as a general policy matter, or based on a longstanding more general concept of mootness in a lay sense. See Jowers v. S.C.D.H.E.C., 423 S.C. 343, 815 S.E.2d 446 (2018)(citing Byrd v. Irmo H.S., 321, S.C. 426, 468 S.E.2d 861(1996) and collecting cases); and see Anderson v. North Carolina State Board of Elections, 788 S.E.2d 179 (N.C. Ct. App. 2016) (discussing federal constitutional underpinnings and state court policy basis). By contrast with federal courts, in state courts, the exclusion of moot questions simply represents a form of judicial restraint. Anderson.

Once a case first meets the test of technically or superficially being moot, it is then subject to traditional exceptions. See Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008)(skipping the first prong of the inquiry only because the issue was already the law of the case). A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Curtis v. State.

The exceptions include exceptions for cases or issues “capable of repetition yet evading review.” See Roe v. Wade, 410 U.S. 113 (1973)(holding challenge to restrictions on abortion could not be mooted by birth of baby or otherwise no longer being pregnant). See also Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008) and Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996). The instant case is such a case.

The exceptions also include “voluntary cessation” by the opponent and “collateral legal consequences or effect on future events” of not completing the litigation. The instant case fits both of these descriptions as well.

Subsumed in the “capable of repetition” exception is the “voluntary cessation” exception. See Curtis v. State (including broad notions of capability of repetition in the rule). If a defendant



voluntarily terminates the allegedly unlawful conduct after the lawsuit has been filed but retains the power to resume the practice at any time, a court may deem the case nonmoot. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000).

The "heavy burden" of persuading the court that a case has been mooted by the defendant's voluntary actions lies with the party asserting mootness, and the standard for such a determination is a "stringent" one: "if subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior [can]not reasonably be expected to recur." Id. (citing United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968)).

This exception is supported by the Supreme Court because, in addition to ensuring that the defendant is not "free to return to his old ways," there is "a public interest in having the legality of the practices settled." United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953) (citation omitted).

In Laidlaw, an environmental group had filed a citizen suit under the Clean Water Act against Laidlaw. Laidlaw was a company that operated a wastewater treatment plant. The citizens alleged that the plant had discharged far more toxic pollutants into a river than it was allowed under terms of a government-issued permit.

However, after the lawsuit began, Laidlaw began to comply with the discharge limit. The Supreme Court held that this case was not moot because it was a "disputed factual matter" whether the company's substantial compliance with its permit requirements, or its closure of the facility in question, which had occurred after the court of appeals had issued its decision, would make "it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur." Laidlaw, 528 U.S. at 193.

A related exception occurs if a decision or lack of decision by the trial court may affect future events, or have collateral consequences for the parties, even if the matter is on appeal and the appellate court cannot give effective relief in the present case. Curtis, 345 S.C. at 568, 549 S.E.2d at 596; accord Sloan, 365 S.C. at 303, 618 S.E.2d at 878.

In the instant case, the Town has already abandoned the easement request twice and yet has filed suit twice, and the mayor has announced on May 18, 2021 an intent to persist in some manner. The parties are still in the trial level court. The circumstances described hereinabove demonstrate that not only is the case not moot, but that even if it were perceived to be superficially so, at least three exceptions to dismissal for mootness apply.

Accordingly, the Town's motion to dismiss for mootness should be denied. It is also therefore not unreasonable to require the Town, as the party bringing a second suit against Plaintiff and threatening a third, to properly answer the amended complaint, to answer already pending interrogatories, to produce any documents the Town has not previously produced, and produce the Town Administrator, and perhaps others, for a deposition. Accordingly, the Town's motion for protection from discovery should be denied as well.

Respectfully submitted,

s/M. Baron Stanton

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*Attorney for Sunset Lodge, LLC*

3/30/21

March 31, 2021 Town memorandum in support of motion to stop discovery and to dismiss on face of the complaint as moot

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT OF THE       |
|                         | ) | FIFTEENTH JUDICIAL CIRCUIT        |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) | <b>DEFENDANT’S MEMORANDUM</b>     |
| Plaintiff,              | ) | <b>IN SUPPORT OF THE</b>          |
| v.                      | ) | <b>MOTION TO DISMISS</b>          |
|                         | ) | <b>AND</b>                        |
| Town of Pawleys Island, | ) | <b>MOTION FOR PROTECTIVE</b>      |
|                         | ) | <b>ORDER REGARDING DISCOVERY</b>  |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

The Defendant, TOWN OF PAWLEYS ISLAND (“Town”), hereby submits the following combined Memorandum in Support of its Motion to Dismiss and Motion for a Protective Order regarding discovery, as follows. Identical memoranda are being filed in the “Stanton” (2020-CP-22-0930), “Beattie” (2020-CP-22-0931), and “Sunset Lodge” (2020-CP-22-0932) cases.

This matter is related to two sets of condemnation challenge actions involving three properties, sometimes referred to informally by counsel as the “Challenge 1” cases and “Challenge 2” cases. This action is part of the second set of challenge actions. To aid the Court’s understanding of the procedural aspects of this action and the associated matters, the Town provides the following general chronology:

- a. In or around June 2020, Town undertook to serve on the plaintiff a Condemnation Notice through which it sought to acquire a beach renourishment easement (referred to in the pleadings herein as the “Existing Notice”).
- b. On July 21, 2020, the plaintiff and two related parties filed separate challenge actions (Civil Action No.’s 2020-CP-22-0600, -0601 and -0602, referred to in the pleadings herein as the “Existing Actions”).

- c. In or around October 2020, Town undertook to deliver to plaintiff's counsel for service a separate, new Condemnation Notice (referred to in the pleadings herein as the "New Notice") with revisions reflecting certain objections asserted in the first set of challenge actions.
- d. On November 12, 2020, the plaintiff in this and two related actions filed new challenge actions challenging the "New Notices" (Civil Action No.'s 2020-CP-22-0930, -0931 and -0932, referred to in the pleadings herein as the "New Actions").
- e. On January 20, 2021, Judge Michael Nettles issued an order granting plaintiffs' motions for summary judgment in the first set of cases. The order noted that the ruling "is without prejudice to another attempt and attendant defenses if applicable." (Summary Judgment Order p.13).
- f. On February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in this and the other "New Actions" (i.e., the second set of cases).
- g. On March 5, 2021, Town filed the subject motions in the "New Actions."
- h. At a hearing on March 19, 2021, Judge Nettles denied the Town's motion to alter or amend the summary judgment order in the first set of cases, subject to revision of one portion of the factual discussion (formal revised order forthcoming).

**1.) This action is moot based on Town's abandonment of the subject condemnation notice and should be dismissed without prejudice pursuant to Rule 12(c), SCRC**

The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town's filing of the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. Plaintiff alleges on page 58, Paragraph 372 of the Amended Complaint that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." The S.C.

Eminent Domain Procedure Act specifically contemplates the power of a condemnor to abandon a condemnation. *See, e.g.*, S.C. Code Ann. §§ 28-2-230(B), -510(C). The New Notice has now been formally abandoned and withdrawn. Any condemnation action the New Notice initiated has therefore been extinguished and warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470.

Accordingly, based on the pleadings, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings dismissing the action pursuant to Rule 12(c), SCRCPP. "Any party may move for a judgment on the pleadings under Rule 12(c), SCRCPP. A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). The motion is limited to matters within the pleadings. Rule 12(c), SCRCPP.

"Mootness has been defined as follows: 'A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief'." Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (citing Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). "In the civil context, there are three general exceptions to the mootness doctrine." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. . . . Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. . . . Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id.

In evaluating whether a moot issue is capable of repetition, yet evading review, “the action must be one which will truly evade review.” Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). “[A]n action that is capable of repetition does not necessarily evade review.” Id. (citing Seabrook v. City of Folly Beach, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). Sloan involved an appeal of a trial court ruling that a Freedom of Information Act challenge to the defendant’s refusal to produce certain records became moot when the records were produced. As the Sloan Court explained,

In Seabrook, the plaintiffs brought an action against the city alleging that the city imposed conditions on a residential development for which it had no authority. 337 S.C. at 304, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal this Court found that the issue was moot, and that although the scenario was capable of repetition, it did not evade review.

The instant case is analogous to Seabrook. Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.

Sloan at 27, 630 S.E.2d at 478. In other words, a matter susceptible to “evading review” is something which by its nature “usually becomes moot before it can be reviewed.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (citing S.C. Dep’t of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990)).

As indicated in this analysis, South Carolina has never applied a “stringent” analysis of “voluntary cessation” of conduct as the plaintiff asserts is applied in federal appellate courts. See Plaintiff’s Memo. in Opposition (discussing Laidlaw). The case of Jowers v. S.C. Dep’t of Health & Env’t Control, 423 S.C. 343, 815 S.E.2d 446 (2018), cited by plaintiff for the proposition that South Carolina follows federal mootness principles, is in fact a case involving separate doctrines of standing and ripeness. Instead, South Carolina law is clear that “[t]he utilization of an exception under the

mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

In the present action, any future attempt to condemn a similar or identical easement would be inherently susceptible to judicial review. S.C. Code Ann. § 28-2-470 (“Proceedings to challenge condemnor's right to condemn”). Town has no interest in and absolutely nothing to gain by repeatedly initiating condemnation actions and then “evading review.” *See, e.g.*, S.C. Code Ann. § 28-2-510(A) and (C) (providing for landowner recovery of attorney fees in challenge actions and withdrawn condemnation actions). This is clearly distinguishable from a wastewater treatment plant sporadically violating effluent limitations, Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000), or a challenge to “[s]hort-term student suspensions [which], by their very nature, are completed long before an appellate court can review the issues they implicate.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996).

Instead, Town has abandoned the “New Notice” underlying this challenge action based on the procedural issues ruled upon in Judge Nettles’s January 20, 2021 summary judgment order in the related “Challenge 1” cases and a desire to avoid unnecessary litigation of the same and additional procedural objections raised by the plaintiff in this case. If the substantive objections the plaintiff has raised relating to public necessity, “bad faith”, and other issues do eventually need to be adjudicated, then this should occur in the context of a condemnation action that has not been abandoned or ended by summary judgment. For the same reasons discussed above, any claim the plaintiff may wish to assert to injunctive relief is also moot unless and until a new condemnation action is pursued.



Under the second exception to the mootness doctrine, this case and the related actions are discrete disputes involving three properties and do not give rise to any “imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis at 568, 549 S.E.2d at 596. The third exception to mootness doctrine contemplates an appellate situation in which, because “a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Id. As this matter is not on appeal, and does not involve review of any prior trial court decision, this exception is not relevant.

**2.) Any claims related to the “Existing Challenge Action” should be dismissed pursuant to Rule 12(b)(8), SCRCF**

To the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to a separate prior condemnation notice and condemnation action, another action (referenced in the Amended Complaint as the “Existing Challenge Action”) is already pending between the same parties for the same claim (subject to the recent summary judgment order, with a pending fee petition by the plaintiff), and this present action should be dismissed pursuant to SCRCF 12(b)(8). It should be noted that Judge Nettles’s summary judgment order in favor of plaintiff in that action specifically states that the ruling “is without prejudice to another attempt and attendant defenses if applicable.” (Summary Judgment Order p.13).

**3.) The Town seeks protection from the burden and expense of additional discovery sought by Plaintiff on factual issues in this moot action**

Finally, the Town has moved for relief in the form of protection from any obligation to respond to plaintiff’s written discovery requests in this action or to produce the Town Administrator for a deposition. This relief is requested on the grounds that (a) as set forth above, the challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary and inappropriate; (b) such discovery would be unreasonably

burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCPP; and (c) such protection is necessary to protect Town from entirely unnecessary burden, expense, and annoyance in this action, Rule 26(c), SCRCPP.

### **Conclusion**

In conclusion, the Defendant Town of Pawleys Island respectfully requests that the Court dismiss this action, without prejudice and subject to any right the Plaintiff may have to assert a claim to reasonable attorney fees, litigation expenses, and costs in this action pursuant to § 28-2-510(C), and order that the Town be protected from the discovery sought by the plaintiff.

Respectfully submitted,

s/ William C. Dillard, Jr.  
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March 31, 2021

March 31, 2021 Landowner memorandum in reply, opposing dismissal and stopping discovery

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF GEORGETOWN    | ) | CIVIL ACTION NO. 2020-CP-22-00932 |
|                         | ) |                                   |
| Sunset Lodge, LLC,      | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| Town of Pawleys Island, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

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PLAINTIFF'S REPLY MEMORANDUM IN OPPOSITION TO  
THE TOWN'S MARCH 5, 2021 MOTION TO DISMISS  
AS MOOT AND IN OPPOSITION TO THE TOWN'S  
MOTION FOR PROTECTION FROM DISCOVERY

Plaintiff file a brief responding to Defendant Town's motion on March 30, 2021. On March 31, 2021, the Town filed a brief referring to Plaintiff's brief. Plaintiff hereby replies, opposing the motion.

The Town reiterates that the Town moves this Court for an order dismissing the action "without prejudice" based on the pleadings, pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, on the ground, only, that the action is moot.

**The standard of decision of Rule 12(c) outright prohibits the relief requested.**

The standard for a Rule 12(c) motion is not a standard calling for Plaintiff to carry a burden of proof, or for the Court to decide the credibility of facts or to provide accommodations to the moving party. It is not even a summary judgment standard under which Plaintiff has to come up with evidence or disputes of fact. The standard calls for every well pled-fact the Plaintiff has pled to be believed.

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRPC. When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or

conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

The standard is thus the same as a Rule 12(b)(6) motion. A Rule 12(c) motion by a defendant is in essence, a Rule 12(b)(6) motion made after answering, with the added assertion by the defendant that nothing the defendant has pled lends any help to the complaint in stating any claim on any basis. Nothing the defendant affirmatively pleads to benefit itself is accepted for purposes of the motion and Plaintiff is under no requirement to negate any of it.

A complaint under a 12(c) motion is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Falk.

"A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment." Lydia v. Horton, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000), rev'd on other grounds; Douglass ex. rel. Louthian v. Boyce, 336 S.C. 318, 323, 519 S.E.2d 802, 805 (Ct. App. 1999) (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991)).

"Our courts have held the pleadings should be construed liberally so that substantial justice is done between the parties." Falk, 341 S.C. at 287, 533 S.E.2d at 353. "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." Id.

Like the practice under Rule 12(b)(6), the motion must be denied unless the pleadings, liberally construed, do not state facts sufficient to warrant relief on any theory, whether prayed for or identified in the complaint or not. Like the practice under Rule 12(b)(6), even if this standard is met, the proper course is to grant the motion with leave to amend the complaint. This leave should be provided as part of the ruling on the motion. However, in the event a plaintiff makes such a motion, leave to amend "shall be freely given." Rule 15(a), SCRCP, provides in relevant part that "a party may amend his

pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCPP.

"The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). There is seldom any such prejudice unless the motion is made on the eve of trial or after a deadline in a scheduling order, and even this may be an insufficient degree of prejudice because it can be relieved by continuance. In the instant case, the case is fairly young and the Town answered the Amended Complaint only days ago, and while Plaintiff has sought discovery, none has been obtained.

It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998).

In the instant case, Plaintiff has already explained in Plaintiff's brief opposing the motion why under South Carolina law, the case is not "moot," because the case is not on appeal and there is relief which can still be sought and ordered, particularly as long as the Town avoids declaring that its "abandonment" of the condemnation is a permanent abandonment, with prejudice.

Applying the Rule 12(c) standard straightforwardly, as the parties and the Court are required to do, the Town is taken to be admitting for the purposes of its motion, all 375 paragraphs of the Amended Complaint. Those paragraphs, taken as true, provide a basis for a permanent, across-the-board bar on further action by the Town, as well as permanent preclusive relief on aspects of what the Town has now sued for twice.

The Amended Complaint, in addition to alleging some things which may eventually require a criminal referral, alleges, among other things, that the Town previously abandoned its request for an easement, then declared publicly that the previously sought easement was unnecessary, then completed what the Town had described as the project – the placement of all the sand in the “renourishment project.” Not only is this admitted for the purposes of the motion, but it is true anyway.

Relying on this represented lack of necessity and relying on the Town’s declaration that no easement would be sought by the Town, and relying on other representations of the Town – also alleged in the Amended Complaint – that the sand would last potentially over 22 years and that the Town had a fiscally sound plan in place to pay for it, Plaintiff took no steps to stop the Town’s work on Plaintiff’s property. Plaintiff took no steps, even though the sand was obviously very close to the house, encroached on pilings in a way which would inhibit working on them, obviously blocked access for work or other purposes, blocked views, and interrupted access to and use of the beach for months. Plaintiff obviously proceeded with improvements or modified improvements in light of the work being over and there being no threat of destruction, and inevitably deferred other things and plans the work precluded. The Town is estopped from ever asserting the easement to be necessary and therefore is estopped from ever condemning it. Condemnation is only allowed for taking real property “necessary for any public purpose.” S.C. Code Ann. §28-2-210.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that almost every act of the Town from the first time easements were requested, through subsequent efforts to coerce capitulation, through public proceedings purporting to authorize condemnation, through dealings with the appraiser, through the initial legal proceedings themselves, through subsequent fraudulent public proceedings purporting to ratify or re-authorize condemnation, through the subsequent legal proceedings, have been heavily infused with misrepresentation, knowing falsity, bad

faith, abuse of discretion, and abuse of public power and finances. This fact may allow permanent relief and damages.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that the only alleged future “need” by the Town for any easement at all after possibly more than 22 years is so vague, indeterminate, and remote as to be beyond the pale of necessity as reasonably and legally understood.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that the project was completed in a manner inconsistent with the excessive scope of easement the Town sought, and the excessive scope will not be needed in the future no matter at what remote point an easement might be someday be argued to be needed again. Therefore, the details of this excessive scope can be established preclusively for Plaintiff’s protection.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that Certain features in the condemnation papers have already been agreed to be unnecessary and, in some cases, have been removed for others as unnecessary. Therefore, the details of these particular unnecessary features can be established preclusively.

Additionally taken as true for purposes of the Town’s motion are the following paragraphs describing a Town Council incapable of ever getting free of the undue influence of its “all-in” Administrator, incapable of understanding the legal context or truth of what it is doing, and therefore incapable of ever exercising discretion in the intelligent good faith manner contemplated and required by case law:

237. Introducing the purpose of proposing the Publicized Proposed Resolution, Mr. Durant states (at close to mark 33:49 on the video time counter), “Essentially, this document is a document that defines the use of the area of the easement that we are asking for.”

238. Mr. Durant does not state, and perhaps Council is unaware, that the document then presented to Council, the Publicized Proposed Resolution, does not define the use to which the easement may be put any further than did the June 2020 Existing Notice, and, for example, does not define, or even purport to define, “public use” at all.



239. Mr. Durant does not state, and perhaps Council is unaware, that he has not yet added any language at all to define “public use” or further define any other use of the easement, but he states at c.34:43, “There is a couple of things that we might want to tweak on there as far as defining public use and that sort of thing.”

240. He adds at c. 36:08 that he will “meet with Ryan and go through the definition.”

241. Mr. Holliday, at c. 35:27, understands that the entire purpose of the resolution is proposed to be supplied, not at the meeting, but after the fact, as he inquires whether the resolution could be approved subject to Mr. Durant “making the change you just discussed, since you don’t have that particular language in there tonight.”

242. In a self-lauding added clarification of Council’s purpose in considering the Publicized Proposed Resolution that is before them, Mr. Henry emphasizes at c.38:51, that the easement “is limited to very specific uses, thus it is a ‘use easement,’ and it is not a taking. It is a clarification of those key points.” “It” refers to the Publicized Proposed Resolution, but “it” does no such thing; it contains no new clarifications, it contains no new definitions, and it contains no new narrowing, limitation, or specification of uses. Again, apparently no one on Council read the document or asked what on earth Mr. Henry was referring to.

243. As another example of “saying it doesn’t make its so,” nothing in the Publicized Proposed Resolution or in the Existing Notice “limits the easement to very specific uses”; it is exactly the opposite: the impetus of the present litigation (other than fraudulent behavior of Town actors, frivolous assertions, abusive use of Town power and resources, etc.) is that the easements proposed by the Town consume over a page clarifying just how oppressively and dangerously broad the easement is and contain virtually no limiting language or definitions at all; this same verbiage remained intact in the Publicized Proposed Resolution.

244. Mr. Henry adds at c. 38:51, “Because the phrase ‘public use’ is in the easement – what exactly is that -- that is the whole gist of what we are trying to do here.” While the ordinary meaning of “public use” is far from mysterious, the Publicized Proposed Resolution does nothing to state exactly what “public use” is, and leaves it to be understood by its plain ordinary meaning.

245. At the meeting, at approximately 37:25, the Town Attorney confirmed a requested clarification from Mr. Green (c. 37:00) that the “change in language is to address the concerns of the citizens or property owners who have objected to the easement.”

246. The Town Attorney confirmed (c. 37:25), “Yeah, and I think it also provides clarification for all the folks who have signed easements out there as well.” There is nothing in the Publicized Proposed Resolution which does so, nor does the later harmful revision help the matter in any way.

247. The Town Attorney at c. 37:55, added, “The homeowner’s property is just subject to the use and for renourishment purposes only.”

248. It is of course unclear whether the Town Attorney is representing what the document then before the Council – the Proposed Publicized Resolution -- says, or what he expects the document to say in the future.

249. In fact, the document then before Council contained no explicit limitation of public use to “renourishment purposes only,” nor any narrowing of what was meant by “renourishment purposes.”

250. In fact, the Town has essentially argued in the past in its opposition to summary judgment, in circular fashion, that “for the purpose of renourishment” means anything which is included in the easement the Town has sought, i.e., that anything that is in the proposed easement, is, because it is in the easement, for renourishment purposes.

251. Mr. Durant continued at c.38:04, “And it sort of just identifies what renourishment purposes are.”

252. Again, the statement is less than clear on what “it” is – the document then before Council and the Existing Notice, or the nonexistent “it” -- some future altered version of one of these documents.

253. The document then before Council contained no identification of what “renourishment purposes” are.

254. Mr. Durant continued at 38:19, “So, to the extent that anybody uses the easement, it is going to be subject to what the use is as defined by the condemnation notice.”

255. Again, this begs the question – never considered by Council – of what “the use is as defined by the condemnation notice.” The term “public use” is not defined or limited at all, and was not defined or limited later.

256. Council and the Town Attorney exhibited, at best, confusion and lack of understanding of even the simplest aspects easements, condemnation, and what constitutes property in America.

257. They also exhibited an inability or refusal to read the language in the documents they were promulgating and blithely indulged in a shell game with present tense and future tense which concealed what they were not doing and what they were doing. They made no discernment between what document or verbiage existed and what document or verbiage did not exist at the time of the meeting.

258. For example, they clarified and emphasized in completely illusory and meaningless fashion no less than three times that the easement they were condemning was distinguished as being a less onerous subspecies of thing they called a “use easement.” (Durant, c. 34:05 (It is a “use easement”); Durant, c. 37:45 (“There have been incorrect statements out there ... this is a use easement”); Henry, 38:35 (It is “limited to very specific uses, thus it is a ‘use easement’”).

259. All easements are for the purpose of use; all easements are interests in property; and all condemnations are takings.

260. An easement is a nonpossessory right to use.

261. There is no separate species of easement known as a “use easement.”

262. By way of further example of the fundamental “misunderstanding” of Council and its counsel of the nature of property and the principles, objects and constraints of the process they were indulging in, they no less than twice emphasized self-assuredly that condemnation of the easements was “not a taking.” (Henry, c. 38:07; Henry, c. 38:35). Mr. Henry at c.38:51 described this as one of two “key points” they were “making” with whatever present or future resolution he was referring to.

263. The act of condemning is, by definition, the act of taking. The Town commenced a condemnation action.

264. Easements and other property may not be taken without just compensation.

265. Paying just compensation when taking by condemnation is not prohibited by the State and federal constitutions.

266. Paying for property involuntarily taken through condemnation does not make it not a taking. Taking and paying for an easement, as opposed to taking and paying for a fee simple interest in real property, also does not make the taking of the easement not a taking.

267. All condemnations are takings.

268. The “takings clause” of U.S. Constitution provides that “nor shall private property be taken for public use, without just compensation. The “takings clause” of the South Carolina Constitution provides, “private property shall not be taken for private use without the

consent of the owner, nor for public use without just compensation being first made for the property.”

269. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also does not understand any of the significance of what it has embarked on doing to its property owners all up and down the beach.

270. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also cannot be trusted to read and understand the “definitions” proposed to be added to the document and determine whether what is written accomplishes the Council’s stated purpose, or any purpose, or some other purpose.

271. At the October 12, 2020 meeting, the Council never once discussed any of the objecting three property owner’s concerns with the terms.

For the reasons above, and for the reasons stated in Plaintiff’ preceding brief, the Town’s Rule 12(c) motion must be denied. Accordingly, the Town’s motion to not be required to answer pending interrogatories, to not be required to present Mr. Fabbri for deposition pursuant to the notice previously served, and to not be required to respond to other discovery must be denied as well.

Respectfully submitted,

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3/31/21