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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2024-000438

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**RECEIVED**

UCL 21 2024

**SC Court of Appeals**

Faye P. Croft, Personally and as Trustee  
of the James A. Croft Trust; James A.  
Croft Trust; William A. Harbeson;  
Heyward G. Hutson; James Stephen  
Greene, Jr., Brian Peacher; Robert  
Klinger; Mary Becker; Summerville  
Preservation Society; and Dorchester  
County Taxpayers Association,  
individually, and on behalf of all others  
similarly situated,

Appellants,

v.

Town of Summerville; Town of  
Summerville Redevelopment Corporation;  
Town of Summerville Planning  
Commission; and Town of Summerville  
Board of Architectural Review,

Respondents.

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**RECORD ON APPEAL  
VOLUME I of III**

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Croft; Heyward G. Hutson; James Stephen Greene, Jr., Brian Peachier; Robert Klinger; Mary Becker; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

Town of Summerville; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; and Town of Summerville Board of Architectural Review,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS AS MOOT**

This is an action challenging a "Public Private Partnership Agreement" (PPPA) entered by the Town of Summerville, the Summerville Redevelopment Corporation (SRC) and Applegate and Co. to construct and operate "The Dorchester" --- a boutique hotel, meeting/event space, condominiums, and a parking garage complex in Summerville, South Carolina. The Town was to own and pay to build the event space and parking garage. The developer would own and operate the boutique hotel and sell the individual condominium units.

Per the affidavit of Lisa Wallace, the Town Administrator, the Dorchester project failed because of unanticipated construction costs that became evident in November

2015. The project lingered as Applegate sought to get the Town to agree to an increase in the contract price. The Town did not agree to a contract increase. Litigation commenced between Applegate on one side versus the Town and SRC. There were claims and counterclaims involving alleged breach of contract, promissory estoppel, and quantum meruit. The trial of the Applegate matter was stayed by consent pending the outcome of this action because the parties to that action believed it was likely the present action would determine whether the PPPA contract was valid. However, the validity of the contract was still undecided and the present action was unresolved as of July 2023. At that time, the Town seized an opportunity to resolve the Applegate matter, a release was signed, and the Applegate case was dismissed with prejudice on August 1, 2023.

The Plaintiffs filed this action a declaration that the public-private partnership was void ab initio on a variety of grounds and further requested the court to issue an injunction related to conduct the Plaintiffs claim contributed to the parties entering the PPPA. The complaint, originally filed in December 2014, sought declaratory and injunctive relief, and attorney's fees should the plaintiffs prevail. The case was twice amended, but still sought only declaratory and injunctive relief, and attorney's fees. The individual City Council members and Mayor were dismissed in July 2019. The case was dismissed under Rule 40(J) in January 2022. It was restored in September 2022. After the settlement of the Applegate case, the Defendants filed a motion to dismiss on the grounds of mootness. The matter was heard by this Court on August 24, 2023.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant

of effectual relief impossible for the reviewing court. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). If there is no actual controversy, the court will not decide moot or academic questions." Id. In fact, an appeal of the Board of Architectural Review decision relating to this project was dismissed as moot by the South Carolina Supreme Court in Croft v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021).

It is the Court's view that declaratory and injunctive relief would not afford any meaningful relief here. The project is no longer going forward. The lawsuit between the Town and the Developer is resolved. The Town has sold the land it owned that was to be used as part of the project. Even predicate acts which the Plaintiffs contend were done improperly and contributed to the Town entering into the PPPA have become irrelevant. For example, an amendment to the Comprehensive Plan known as a "Vision Plan" which reference the Dorchester project has been replaced by an entirely new Comprehensive Plan. Ordinances and practices the Plaintiffs allege caused the Mayor to have too much power have been repealed and the Town has gone back to having a full-time Town Administrator.

Plaintiffs believe they should be allowed to proceed forward to obtain the declaration because the issues are "capable of repetition, yet evading review" and are of "public importance." While these are recognized exceptions to the doctrine of mootness, neither of these exceptions to the mootness doctrine apply. It is noteworthy the Supreme Court in the Croft appeal of the Board of Architectural Review matter determined neither

of those exceptions applied to the issues raised in that appeal. And some of the issues the Plaintiffs attempt to raise in this case are the very same issues raised in the appeal Board of Architectural Review case. This includes allegations that the Board of Architectural Review was given an opportunity to review the project in smaller groups of less than a quorum. If those arguments did not cause the Supreme Court to find an exception to the mootness doctrine in the Croft appeal of the Board of Architectural Review decision, then there is no reason to treat these allegations any differently in the present case.

Based on the materials before me, the Defendants' motion to dismiss on the grounds of mootness is GRANTED.

AND IT IS SO ORDERED.

[Judge's Electronic Signature on Final Page]



Dorchester Common Pleas

**Case Caption:** Faye P Croft , plaintiff, et al VS Summerville Town Of , defendant, et al  
**Case Number:** 2022CP1801494  
**Type:** Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-02-23 13:51:53 page 5 of 5

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2014-CP-10-7739

Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate,

Defendants.

FILED  
2015 APR -2 PM 2:46  
JULIE J. ARTHUR  
CLERK OF COURT

CONSENT ORDER  
CHANGING VENUE TO THE  
DORCHESTER COUNTY COURT OF  
COMMON PLEAS

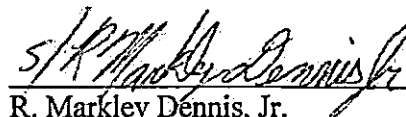
This matter comes before the Court on various Motions filed by the Defendants. In order to avoid a Hearing and testimony, the parties agree as follows:

1. Defendants Applegate & Co., The Dorchester, LLC, and Arthur H. Applegate ("Applegate Defendants") moved the Court for an Order dismissing the Plaintiffs' Amended

AMD

BY CONSENT OF ALL PARTIES, it is further ORDERED that should the Applegate Defendants choose to withdraw their pending motions once they have been docketed for a hearing in Dorchester County, the Applegate Defendants have fifteen (15) days from the date they withdraw their motions to file any other responsive pleadings allowed by the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.

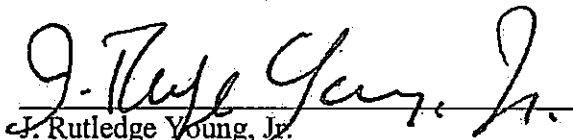


R. Markley Dennis, Jr.  
Chief Administrative Judge  
Ninth Judicial Circuit

This 2<sup>nd</sup> day of April, 2015

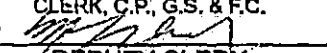
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ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By   
DEPUTY CLERK

**WE MOVE AND CONSENT:**

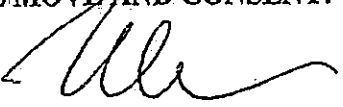
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Robert Jackson, in their capacities as members  
of Town Council; Town of Summerville Redevelopment  
Corporation; Town of Summerville Planning Commission;  
Town of Summerville Board of Architectural Review*



STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr., Brian Peacher; Robert Klinger; Mary Becker; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review

Defendants.

IN THE COURT OF COMMON PLEAS  
IN THE FIRST JUDICIAL CIRCUIT

C.A. NO.: 2015-CP-18-00713

**ORDER DENYING PLAINTIFFS'  
MOTIONS FOR SUMMARY JUDGMENT**

*Charles H. [Signature]*  
CLERK OF COURT  
DORCHESTER COUNTY  
2017 JAN 18 AM 9:09  
CERTIFIED COPY

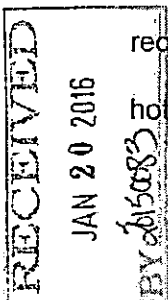
This matter came before the Court on January 19, 2016 for a hearing on Plaintiffs' second and third motions for Partial Summary Judgment. The plaintiff's first motion was previously withdrawn. In Plaintiffs' second and third motions for Partial Summary Judgment, Plaintiffs seek to have the Public-Private Partnership Agreement ("PPPA" or "Agreement") declared void by: 1) attacking the Summerville Redevelopment Corporation's (SRC) alleged failure to adopt a "redevelopment plan." Although the plaintiffs admit the SRC adopted the then-recently prepared "Vision Plan" as a "Redevelopment Plan," the plaintiffs imagine a requirement that a redevelopment commission must independently produce a plan of its

*1/13/20*

own; and 2) asserting the lack of two consecutive-week publications for proposals as a fatal flaw to the PPPA.

The defendants argue the Redevelopment Plan was properly adopted by the SRC. They argue the "Vision Plan" document recently prepared by the Town met all of the requirements of a Redevelopment Plan and was adopted by the SRC after public notice. As to the issue of the lack of two publications: the defendants argue this is an attempt to elevate form over substance. Defendants argue that the statutory framework requires the contract to be awarded to the proposal that best effectuates the intent of the Redevelopment Plan. In this case, the Redevelopment Plan was adopted with the Applegate Plan in hand and defendants argue that no other proposal could have matched the terms of the Redevelopment Plan due to Applegate having under contract the corner property which was an instrumental part of the passages of the Redevelopment Plan which related to this area and project. Based on the argument of counsel and the materials reviewed, this Court is of the view that plaintiffs' motions for summary judgment should be denied.

Some history of the project is necessary to understand the argument and issues. On November 10, 2013, the Town of Summerville advertised in *The Post and Courier* a Request for Proposals ("RFP"), wherein the Town sought "proposals" from developers for the "design" of a boutique hotel on a 1.58-acre tract of land owned by the Town in downtown Summerville. The RFP indicated proposals should outline the "size and design of the hotel" to be built including the number of rooms, number of parking spaces, and existence of any restaurants or lounges to be included, and requested that respondents also consider incorporating a conference center into the design plans. Finally, the RFP required submission of each respondent's "qualifications, including past experience with hotel development, descriptions of similar projects," and required submission of references.



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The Town received only one response to its RFP. Specifically, Applegate & Co.'s proposal addressed all of the items set forth in the RFP, including plans and architectural renderings for a boutique hotel, restaurant, roof top bar and terrace, retail space, parking garage, and a conference center with capacity for 300 people. In addition, the proposal allowed for thirty-four residential units and Applegate & Co. proposed that the Town's 1.58-acre tract would be used in conjunction with a .658-acre tract of adjacent land that Applegate & Co. had under contract. Town Council at its December 18, 2013 duly noticed meeting authorized Mayor Collins to enter into "non-binding negotiations."

Plaintiffs argued in their first motion for summary judgment and thereafter withdrew the argument that this action was improper, arguing that sealed bidding was required. The Town's Purchasing Ordinance provides all purchases or contracts valued at \$25,000 or greater "shall be awarded by competitive, sealed bidding, except as may be provided elsewhere in this chapter." Summerville Code § 2-323(c). "Exceptions" to this general competitive bidding requirement are: (1) purchases for "Professional Services;" and (2) purchases that may be classified as "Sole Source Procurements," which is defined as a purchase whereby there is "only one vendor that can provide a specific product or service." Summerville Code § 2-324(c),(e).

Further, the Applegate & Co. proposal encompassed land in addition to the Town's land. The Defendants take the position that a contract concerning land which can only be provided by one entity is, by definition, a sole source procurement, which was thus further exempt from the competitive, sealed bidding requirements of the Purchasing Ordinance.

The Summerville Redevelopment Corporation was created after the Town received the Applegate and Co. bid and after City Council authorized the Mayor in December 2013 to negotiate with Applegate. In May 2014, the Summerville Redevelopment Corporation ("SRC") was created by the Town Council pursuant to Ordinance No. 14-0502 during a

meeting that was open to the press and the public. The SRC was issued a Certificate of Incorporation by the South Carolina Secretary of State on June 13, 2014.

The seven commissioners comprising the SRC are the members of Summerville Town Council, each "serv[ing] *ex officio* on the board of commissioners of the [SRC] by virtue of his or her service as a councilman on the Town Council." Although they may technically be separate entities on paper, no degree of separation between a municipality and its redevelopment authority is imagined by the Community Development Law. The statute expressly authorizes City Council to run the Redevelopment Corporation. . . In fact, if separate commissioners are established, the governing body may "at any time in its sole discretion . . . assume the direct responsibility for operation of the commission." S.C. Code section 31-10-40.

The SRC adopted the recently prepared "Vision Plan" with minor revisions as its Redevelopment Plan. This was done after a public hearing on June 25, 2014. The Redevelopment Plan adopted by the SRC shows the footprint of this exact project (including the land Applegate had under contract at the corner) on pages 54, 55, 56, 71, 72, and 76. And a text description of the project on p. 73 of the Infrastructure & Development Strategy provides: "The corner of Richardson Avenue and Cedar Street is an opportunity for a mixed used development that could include a hotel, conference center, condominiums, and retail. The proposed illustration at right shows the new mixed use building and parking deck."

#### I. THE ADOPTION OF THE REDVELOPMENT PLAN WAS PROPER.

The Community Development Law does state that the Commission shall, after public hearing, adopt a "Redevelopment Plan" which shall be submitted to the governing body—in this case City Council—and sets forth matters that should be included. The Summerville Redevelopment Corporation determined the recently created "Vision Plan" contained all of the necessary information that is required in a "Redevelopment Plan," S.C. Code section

31-10-100(c), and, after providing for a public hearing on the same, adopted the Vision Plan as its Redevelopment Plan. The Commission thereafter sent the Plan to the Town Council--the same individuals acting in a different capacity--which approved the SRC's plan to adopt the Vision Plan as the redevelopment plan. This was entirely consistent with South Carolina Code. It is the opinion of this court the Vision Plan does in fact substantially comply with the statutory specifications. There was a public hearing on the Redevelopment Plan as provided by law. The Plan was then sent to City Council for adoption.

The plaintiffs cannot cite to any provision which requires a Redevelopment Commission to start from scratch to prepare a Redevelopment Plan. This Court finds no support in the text or in the purpose of Redevelopment Law that would support the idea that the Redevelopment Commission must start from scratch and cannot use materials already prepared or started by the Town. Plaintiffs argue for a degree of separation between the Redevelopment Corporation (SRC) and the governing body (Town) which is not supported in the law. The Community Development Law not only authorizes City Council to sit ex officio on the Redevelopment Corporation, if separate commissioners are established, the governing body may "at any time in its sole discretion . . . assume the direct responsibility for operation of the commission." S.C. Code section 31-10-40. Further, the South Carolina Community Development Law authorizes the redevelopment corporation and governing bodies such as the Town cooperate, share administrative and other services. See S.C. Code section 31-10-140.

## II. LACK OF PUBLICATION DOES NOT VOID THE CONTRACT AB INITIO.

Section 31-10-110(c) provides the basis for plaintiff's position two publications were required. It provides that the Commission shall "invite proposals and shall make all available all pertinent information to any person interested in undertaking a purchase of

property or the redevelopment of any area. . . .” That same section provision provides “After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan . . . .” It is critical that the criteria is conformity with the Redevelopment Plan, not cost. The publication is for the benefit of the Redevelopment Plan---and indirectly the developers who are entitled to have available all information. There is no suggestion that this provision is designed to obtain the lowest bid, or to provide citizens rights to object to the lack of publication.

After publication, the contract is to be awarded to the developer whose proposal best effectuates the intent of the redevelopment plan. The Redevelopment Plan was finalized and adopted after the Town received the Applegate Proposal and negotiated terms. The Redevelopment Plan contained diagrams for the footprint of this project, which included land Applegate had under contract.

Furthermore, this point is raised by plaintiffs who are neighboring property owners, public interest groups and taxpayers. None are developers who desired to enter into a contract with the Town and SRC. Under these facts, the SRC was not required to engage in a meaningless process, nor do these plaintiffs have any private right of action or damage from any technical error in the number of publications.

This is not strictly an action at law. Although legal causes of action are alleged, an action to declare a contract ultra vires and to enjoin further expenditures would be an equitable matter. See Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (declaratory action to declare contract illegal and ultra vires was a mixed action of law and equity). It is well known that equity regards substance over form and disregards technicalities. Rainwater v. Bonnette, 151 S.C. 474, 149 S.E. 254 (1929).

In Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), the Court distinguished between a situation where a competitive bidding

process requires an award at the lowest price ("competitive bidding laws are for the benefit of taxpayers") and Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992). In Lee the Supreme Court found a special-interest group and two citizens did not have standing or an implied right of action under the procurement code. The Lee Court held that "a procurement code does not create an implied right of action for special-interest groups and private citizens." In that case, Lee County entered into a contract whereby a private company took possession of the existing landfill, which was itself leased by the County. The Court first concluded that the agreement with the private company did not require a public hearing as it was not a lease of real property owned by the County. The Court then turned to the question of the County's alleged failure to adopt competitive procurement laws and practices. Here the Court determined that the general issue of procurement did not give the special interest group and the two taxpayer-citizens of Lee County the standing or a private right of action. The Court found that the state procurement code did not expressly provide for any private right of action and that one should not be applied. Implicitly, the Court held that any standing would belong to bidders, not the taxpayers or public interest group.

The statute provides for the Commission to select the proposal that "best effectuates the purposes of the redevelopment plan. . . ." In fact, cost is not even a consideration specified in the statute. Thus, the matter is much closer to Lee than it is Sloan v. School District of Greenville County. In Sloan the court reasoned taxpayer standing and a private right of action because the low bid statutes were for the benefit of taxpayers. Because the "publication" provision of the development is for the benefit of the development corporation and the aims of the redevelopment plan. Arguably, it is also for the benefit of potential redevelopers to ensure the plan is selected that best effectuates the redevelopment plan.

7/13

Plaintiffs as taxpayers and nearby property owners are not the group of individuals whom the publication rule was intended to benefit. These plaintiffs have no private right of action to use this provision to declare this contract void.

Furthermore, the plaintiffs ask this Court to elevate form over substance. It has been said that "equity will not require the performance of a futile act. Equity will not require the doing of a futile task, nor foreclose the rights of a party from obtaining specific performance for failure to do something which in view of all the facts would have been useless." *Alala v. Peachtree Plantations, Inc.*, 292 S.C. 160, 355 S.E.2d 286 (Ct. App. 1987). Similarly, a court should generally construe a statute to avoid an absurd result. *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371 (2008)

The Redevelopment Plan referenced this specific project in words and/or pictures on pages 54, 55, 56, 71, 72, and 76, and those diagrams showed footprints of the structure that included the property at the corner that Applegate had under contract. The text explicitly described the development opportunity at the corner of Richardson and Cedar. Applegate controls that corner. When the Redevelopment Plan was adopted, the Town Council had already requested proposals and received only one proposal.

The plaintiffs' argument is that any technical defect should cause this Court to void the contract. However, there is nothing in the law that supports such a result. Normally, violation of a statute would require some material impact on the fundamental purpose for which the statute was designed. If the goal was conformity with the Plan, then the Applegate proposals was not just the only proposal actually submitted, it is not possible to argue that publication for two weeks would have produced a proposal by a different bidder that was more in conformity with the plan.



Further, the Court is of the view that it would be inconsistent with the purpose and intent of the Redevelopment statutes to declare that every deviation from the statute is a ground for voiding a contract.

III. THE CONTRACT IS EXEMPT FROM THE TWO WEEK PUBLICATION BY VIRTUE OF BEING A "PROFESSIONAL SERVICE" CONTRCT.

The Applegate contract was one which included professional services. The Community Development Law specifically provides that there is no requirement of even one week's publication to enter into a contract for engineering, legal, surveying, professional, or other similar services. S.C. Code § 31-10-110(a).

Courts throughout the country recognize that contracts calling for design, planning and management of facilities are professional services requiring creative skills and individual talents based on education, training or experience, and thus fall outside the scope of competitive bidding.

Strictly speaking the two week publication provision is not part of a procurement code. But procurement codes provide the closest analogy because they frequently contain an exception from competitive bidding for professional services. In fact, the Town of Summerville also has an exemption from competitive bidding for contracts which are for professional services and this is one of two arguments the Town advances for the method it used to seek proposals and select Applegate.

The South Carolina Supreme Court in 2006 considered the legitimacy and application of a school district's professional services exception to its competitive bidding procedures. Colleton County Taxpayers Assn. v. School District Colleton County, 638 S.E.2d 685 (S.C. 2006). There, School District adopted a resolution designed to allow financing and renovation of existing public school facilities and acquire new facilities, which included contracts with financial advisors, bond attorneys, a bond insurance company, and

a trustee, all without competitive bidding. Id. at 693. Plaintiffs filed suit, alleging the resolution and attendant agreements were void without competitive bidding and challenging the legality of School District's professional services exception to its competitive bidding ordinance. Id. The court rejected plaintiffs' arguments, holding that contracts for professional services were excepted from the competitive bidding requirements. Id. at 693-94. Indeed, this South Carolina Supreme Court holding is in line with what the South Carolina legislature has proclaimed to be the "policy" of this state:

It is the policy of this State to announce publicly all requirements for architect-engineer, construction management, and land surveying services<sup>1</sup> and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

S.C. Code Ann. § 11-35-3210.

The circumstances of the present matter show that the contract included "professional services."

Furthermore, just as in Waste Management, the subject Agreement provides that Applegate & Co. will be responsible for "planning, engineering, administration, managing, promotion, marketing, site work, and vertical construction" of the project, and, significantly, further provides that Applegate & Co. is charged with "management and operation" of all aspects of the project upon completion, including the Town-owned parking garage and conference center. These are duties that are dependent upon the qualifications of the individual and thus require considerations beyond those made available by an invitation for sealed bids. As set forth in the South Carolina Code section referenced above, these are precisely the types of services to be obtained on the basis of "demonstrated competence and qualification," and required utilization of a request for proposals versus an invitation for

---

<sup>1</sup> The South Carolina Code defines "architect-engineer, construction management, and land surveying services" as "design services." S.C. Code Ann. § 33-35-3215(A)(1).

sealed bids. The court holds this contract includes "professional services" and was thus exempt from any two-week publication requirement.

IV. THE SRC WAS NOT REQUIRED TO RE-SOLICIT DESIGN PROPOSALS FOR THE PROJECT, SINCE IT ACCEPTED BY AGREEMENT SERVICES PROVIDED BY THE TOWN

In spirit, intent and by the letter of statute, South Carolina Community Development Law repeatedly calls for the redevelopment corporation and governing bodies such as the Town to act cooperatively to ensure that a redevelopment project is undertaken and brought to fruition, and further specifically calls on the Town to provide assistance to the SRC by way of "administrative" and "other" services which it is otherwise empowered by law to perform. Specifically, the Code provides that a redevelopment commission has "all powers necessary or appropriate" to effectuate a redevelopment project, including the power to act cooperatively with other public bodies:

Powers of a redevelopment commission, in general.

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to those herein otherwise granted:

...  
(2) to cooperate with any government or municipality as defined in this chapter;

...  
(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation...

S.C. Code Ann. § 31-10-90. Additionally, and perhaps more significantly, the Code provides that the SRC may receive administrative and other services to the redevelopment commission:

Powers of public body with respect to planning, undertaking, or carrying out redevelopment project.

(a) For the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

...  
(5) cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan.

(b) Any . . . agreement provided for in this section may be made by a public body without public notice, advertisement, or public bidding.

S.C. Code Ann. § 31-10-140. Town councils are thus vested with broad authority to carry out the goals of urban renewal law, and are given wide discretion and authority by the legislature. The Town is authorized not only to provide "administrative" and "other" services, but indeed is empowered to "do any and all things necessary or convenient" to aid in the furtherance of a redevelopment project. Further, it can enter an agreement for the provision or furnishing of these services without public notice or input.

The South Carolina Community Development Law specifically contemplates and allows for the scenario of the present matter—that the Town would undertake this administrative service of soliciting proposals for a potential redevelopment project that would, if viable, inure to the benefit of the SRC. In fact, the Code twice calls for the Town to confer this benefit upon the SRC, authorizing it to cause administrative services to be furnished to the SRC and calling for the Town to do "any and all things necessary or convenient" to aid in planning and carrying out a redevelopment project. S.C. Code Ann. § 31-10-140(5)&(6). Likewise, the Code calls for the SRC to cooperate with the Town in its furnishing of these services. S.C. Code Ann. § 31-10-90(2). These statutory requirements must be considered along with the Code section relied upon by Plaintiffs, interpreting the several provisions in a way that renders them compatible, not contradictory, and ensuring

the intent of the legislature is not thwarted. Based upon this controlling authority, the Court holds that the Town, by way of its publication of the RFP, properly supplied administrative services which were accepted by the SRC.

**CONCLUSION**

For all of these reasons set forth above, Plaintiffs' Motions for Partial Summary Judgment are DENIED.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Edgar W. Dickson  
Presiding Judge

December 28 2016

Orangeburg, South Carolina

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP1800713Faye P Croft  
James Stephen Greene Jr  
Summerville Preservation  
Society  
Robert KlingerJames A Croft Trust  
Heyward G Hutson  
Brian Peacher  
Taxpayers Association  
Dorchester CountySummerville Town Of  
Terry Jenkins  
Walter Bailey  
Kima Garten Schmidt  
Summerville Redevelopment  
Corporation Town OfWilliam C Collins  
Aaron Brown  
William McIntosh  
Robert Jackson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ 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: \_\_\_\_\_
- ☐ **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: \_\_\_\_\_

## 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.

Edgar Dickson  
Circuit Court Judge2153  
Judge Code12/28/2016  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 1/18/2017, and a copy mailed first class or placed in the appropriate attorney's box on 1/18/2017, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. 1629 Meeting Street Suite A  
Charleston, SC 29405  
Michael T. Rose 409 Central Ave. Summerville, SC 29483

Timothy Alan Domin 126 Seven Farms Dr., Ste. 200  
Charleston, SC 29492  
G. Waring Parker 518 W. Carolina Avenue Summerville, SC  
29483-6632  
Laura Simons Greaver 126 Seven Farms Drive Suite 200  
Charleston, SC 29492-8144

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

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

*Cheryl Graham*

**Court Reporter: Unknown/heard in Orangeburg**

**Cheryl Graham - 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-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.

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP1800713**

|                                                                                                             |                                                                                                                   |                                                                                                                                              |                                                                                  |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <b>Faye P Croft<br/>James Stephen Greene Jr<br/>Summerville Preservation<br/>Society<br/>Robert Klinger</b> | <b>James A Croft Trust<br/>Heyward G Hutson<br/>Brian Peacher<br/>Taxpayers Association<br/>Dorchester County</b> | <b>Summerville Town Of<br/>Terry Jenkins<br/>Walter Bailey<br/>Kima Garten Schmidt<br/>Summerville Redevelopment<br/>Corporation Town Of</b> | <b>William C Collins<br/>Aaron Brown<br/>William McIntosh<br/>Robert Jackson</b> |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|

**PLAINTIFF(S)**

**DEFENDANT(S)**

**Submitted by:**

**Attorney for:** ☐ Plaintiff ☐ Defendant  
☐ 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: \_\_\_\_\_

*Edgar Dickson*  
CLERK OF COURT  
DORCHESTER COUNTY  
2017 APR -4 PM 2:59  
CERTIFIED COPY

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: \_\_\_\_\_

**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.

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

Edgar Dickson

Circuit Court Judge

2153

Judge Code

4/4/2017

Date



**For Clerk of Court Office Use Only**

This judgment was entered on 4/4/2017, and a copy mailed first class or placed in the appropriate attorney's box on 4/4/2017, to attorneys of record or to parties (when appearing pro se) as follows:

**W. Andrew Gowder Jr.** 1629 Meeting Street Suite A  
Charleston, SC 29405  
**Michael T. Rose** 409 Central Ave. Summerville, SC 29483

**Timothy Alan Domin** 126 Seven Farms Dr., Ste. 200  
Charleston, SC 29492  
**G. Waring Parker** 518 W. Carolina Avenue Summerville, SC  
29483-6632  
**Laura Simons Greaver** 320 Venning Street Mt. Pleasant, SC  
29464

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

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

*Cheryl Graham*

\_\_\_\_\_  
**Court Reporter**

\_\_\_\_\_  
**Cheryl Graham - 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-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

\_\_\_\_\_  
**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.

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Faye P. Croft, personally and as Trustee of )  
The James A. Croft Trust; James A. Croft )  
Trust; William A. Harbeson; Heyward G. )  
Hutson; Peter M. Gorman; James Stephen )  
Greene, Jr.; Brian Preacher; Summerville )  
Preservation Society; and Dorchester )  
Taxpayers Association, )

Plaintiffs, )

vs. )

Town of Summerville; William C. Collins, )  
in his capacity as Mayor; Terry Jenkins, )  
Aaron Brown, Walter Bailey, William )  
McIntosh, Kima Garten-Schmidt, and )  
Robert Jackson, in their capacities as )  
members of Town Council; Town of )  
Summerville Redevelopment Corporation; )  
Town of Summerville Planning )  
Commission; Town of Summerville Board )  
of Architectural Review, )

Defendants. )

Civil Action No.: 2015-CP-18-00713

**ORDER DENYING PLAINTIFFS'  
MOTION TO RECONSIDER**

*Edgar W. Dickson*  
CLERK OF COURT  
DORCHESTER COUNTY  
2017 APR -4 PM 2:59  
CERTIFIED COPY

This matter is before the Court on Plaintiffs' Motion to Reconsider an Order of this Court pursuant to Rule 59(e), SCRPC, denying Plaintiffs' Motion for Summary Judgment. After due deliberation and review of the case law and motion of counsel, this Court finds that there is nothing warranting reconsideration of the December 28, 2016 Order of this Court.

THEREFORE, Plaintiffs' Motion to Reconsider is DENIED.



Edgar W. Dickson  
Presiding Judge, First Judicial Circuit

March 30, 2017  
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2017-CP-18-279

APPLEGATE & CO., )  
Plaintiff, )

v. )

TOWN OF SUMMERVILLE, )  
and TOWN OF SUMMERVILLE )  
REDEVELOPMENT CORPORATION, )  
Defendants. )

**CONSENT ORDER TO RESTORE  
AND STAY**

Upon motion of the Plaintiff and with consent of the Defendants, the Court orders that the above captioned case be restored to the trial docket in accordance with the provisions of the SCRCP 40(j). In addition, because the continuation of this matter depends on the outcome of a pending case, this matter is stayed pending the resolution of the pending matter, *Croft et al. v. Town of Summerville*, Civil Action Number 2015-CP-18-713.

AND IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable George M. McFaddin, Jr.  
Chief Administrative Judge

St. George, South Carolina  
\_\_\_\_\_, 2019

**WE SO CONSENT:**

s/Alice F. Paylor

Alice F. Paylor  
ROSEN HAGOOD, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 577-6726

ATTORNEY FOR PLAINTIFF

s/Timothy A. Domin

Timothy A. Domin  
CLAWSON AND STAUBES, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492  
(843) 577-2026

ATTORNEYS FOR DEFENDANTS



Dorchester Common Pleas

**Case Caption:** Applegate & Co VS Summerville Town Of , defendant, et al

**Case Number:** 2017CP1800279

**Type:** Order/Restore Case To Active Docket

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2019-02-22 13:12:28 page 3 of 3

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>Faye P. Croft, personally and as Trustee of<br>the James A. Croft Trust; James A. Croft<br>Trust; William A. Harbeson; Heyward G.<br>Hutson; James Stephen Greene, Jr.; Brian<br>Peacher; Summerville Preservation<br>Society; and Dorchester County<br>Taxpayers Association,<br><br><div style="text-align: right;">Plaintiffs,</div><br><div style="text-align: center;">v.</div><br>Town of Summerville; Town of<br>Summerville Redevelopment Corporation;<br>Town of Summerville Planning<br>Commission; Town of Summerville Board<br>of Architectural Review,<br><br><div style="text-align: right;">Defendants.</div> | IN THE COURT OF COMMON PLEAS<br>FOR THE NINTH JUDICIAL CIRCUIT<br><br>Civil Action No.: 2015-CP-18-713<br><br><br><b>RULE 40(j), SCRPC CONSENT<br/>         ORDER<br/>         STRIKING CASE FROM THE<br/>         ROSTER<br/>         AND RELATED STIPULATIONS</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

This matter comes before the court by consent of the parties. The Plaintiffs above-named and the Defendants above named consent to strike the above-captioned case from the Jury Roster trial docket as a matter of right pursuant to Rule 40(j), SCRPC. Pursuant to the rule, the parties further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken.

After the case is restored, the parties will conduct no further discovery. The case will be restored to the Nonjury Roster and parties will file dispositive motions and whatever other motions are appropriate, and if after the motions are decided there are any remaining issues to decide, the parties will try this case before a judge without a jury. Appeals from the dispositive motions or a nonjury trial will be made according to the South Carolina Rules of Appellate Procedure.

IT IS SO ORDERED

---

George M. McFaddin, Jr.,  
Chief Administrative Judge,  
Third Judicial Circuit

Dated: January 21, 2022

/s/ W. Andrew Gowder, Jr.  
W. Andrew Gowder, Jr.  
Austen & Gowder, LLC  
1629 Meeting Street, Suite A  
Charleston, SC 29405

Michael T. Rose  
Mike Rose Law Firm, PC  
409 Central Avenue  
Summerville, SC 29483

FOR THE PLAINTIFFS

WE CONSENT:

/s/ G. Waring Parker  
G. Waring Parker  
G. Waring Parker Law Firm, LLC  
518 W. Carolina Avenue  
Summerville, SC 29483-6632

/s/ Timothy A. Domin  
Timothy A. Domin  
Clawson and Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492

FOR THE DEFENDANTS



Dorchester Common Pleas

**Case Caption:** Faye P Croft , plaintiff, et al VS Summerville Town Of , defendant,  
et al  
**Case Number:** 2015CP1800713  
**Type:** Order/Dismissal Rule 40J

So Ordered

s/ R. Kirk Griffin 2768

Electronically signed on 2022-01-25 11:44:24 page 3 of 3



STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Case No. 2015-CP-18-00713

Faye P. Croft, personally and as Trustee of  
the James A. Croft Trust; James A. Croft  
Trust; William A. Harbeson; Heyward G.  
Hutson; James Stephen Greene, Jr.; Brian  
Peacher; Summerville Preservation Society;  
and Dorchester County Taxpayers  
Association,

Plaintiffs,

vs.

Town of Summerville; Town of  
Summerville Redevelopment Corporation;  
Town of Summerville Planning  
Commission; Town of Summerville Board  
of Architectural Review,

Defendants.

**CONSENT ORDER RESTORING CASE TO  
THE DOCKET PURSUANT TO RULE 40(j)**

This matter is before the Court pursuant to Plaintiffs' Motion under South Carolina Rule of Civil Procedure 40(j) for an Order restoring the case to the docket. The Motion is timely made within one (1) year of the date this action was stricken. The Defendants consent to the Motion.

IT IS THEREFORE ORDERED THAT the case is hereby restored, and the Clerk of Court shall place the case on the Common Pleas Nonjury Docket and assign the case a new case number.

IT IS SO ORDERED.

\_\_\_\_\_  
R. Kirk Griffin  
Presiding Judge, First Judicial Circuit

Dated: September \_\_\_\_, 2022

/s/ W. Andrew Gowder, Jr.  
W. Andrew Gowder, Jr.  
Austen & Gowder, LLC  
1629 Meeting Street, Suite A  
Charleston, SC 29405

/s/ Michael T. Rose  
Mike Rose Law Firm, PC  
409 Central Avenue  
Summerville, SC 29483

FOR THE PLAINTIFFS

WE CONSENT:

/s/ G. Waring Parker  
G. Waring Parker  
G. Waring Parker Law Firm, LLC  
518 W. Carolina Avenue  
Summerville, SC 29483-6632

/s/ Timothy A. Domin  
Timothy A. Domin  
Clawson and Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492

FOR THE DEFENDANTS



Dorchester Common Pleas

**Case Caption:** Faye P Croft , plaintiff, et al VS Summerville Town Of , defendant,  
et al  
**Case Number:** 2015CP1800713  
**Type:** Order/Restore Case To Active Docket

So Ordered

s/ R. Kirk Griffin 2768

Electronically signed on 2022-09-28 11:26:44 page 3 of 3

ELECTRONICALLY FILED - 2022 Sep 28 12:27 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800713  
ELECTRONICALLY FILED - 2022 Sep 28 12:46 PM - DORCHESTER - COMMON PLEAS - CASE#2022CP1801494

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1801494

Faye P Croft et al  
PLAINTIFF(S)

Summerville Town Of et al  
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:

This matter came before this Court on August 24, 2023 as Defendants' Motion to Dismiss as Moot, filed August 3, 2023. Upon review of the record and filings, Defendant's Motion is GRANTED. Defendants shall submit formal proposed order congruent with the arguments set forth in their memorandum within 15 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 02/09/2024 .

G. Waring Parker for Summerville Town Of, Summerville Redevelopment Corporation Town Of, Summerville Planning Commission Town Of, Summerville Board of Architectural Review Town Of  
Timothy Alan Domin for Summerville Town Of, Summerville Redevelopment Corporation Town Of, Summerville Planning Commission Town Of, Summerville Board of Architectural Review Town Of  
Taxpayers Association Dorchester County  
Summerville Preservation Society  
Brian Peacher  
James Stephen Greene, Jr  
Mary Becker  
Heyward G Hutson  
Robert Klinger  
William A Harbeson  
James A Croft Trust  
Michael T. Rose for Faye P Croft  
W. Andrew Gowder, Jr. for Faye P Croft

## 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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Dorchester Common Pleas

**Case Caption:** Faye P Croft , plaintiff, et al VS Summerville Town Of , defendant, et al  
**Case Number:** 2022CP1801494  
**Type:** Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-02-09 12:50:47 page 3 of 3

## STATE OF SOUTH CAROLINA

COUNTY OF Charleston

## IN THE COURT OF COMMON PLEAS

## CIVIL ACTION COVERSHEET

Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; Peter M. Gorman; James Stephen Greene, Jr.; Brian Peacher; Summerville Preservation Society; and Dorchester County Taxpayers Association;

Plaintiff(s)

vs.

2014-CP - 10-

Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review; Applegate & Co.; The Dorchester, LLC; and Arthur H. Applegate

Defendant(s)

Submitted By: W. Andrew Gowder  
Address: 16 Charlotte Street  
Charleston, SC 29403

SC Bar #: 2411  
Telephone #: 843-727-2229  
Fax #: 843-727-2231  
Other:  
E-mail: wag@p-tv.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

## NATURE OF ACTION (Check One Box Below)

- |                                                   |                                                           |                                                                                             |                                                        |
|---------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Contracts                | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury                                            | <input type="checkbox"/> Real Property                 |
| <input type="checkbox"/> Constructions (100)      | <input type="checkbox"/> Dental Malpractice (200)         | <input type="checkbox"/> Assault/Slander/Libel (300)                                        | <input type="checkbox"/> Claim & Delivery (400)        |
| <input type="checkbox"/> Debt Collection (110)    | <input type="checkbox"/> Legal Malpractice (210)          | <input type="checkbox"/> Conversion (310)                                                   | <input type="checkbox"/> Condemnation (410)            |
| <input type="checkbox"/> Employment (120)         | <input type="checkbox"/> Medical Malpractice (220)        | <input type="checkbox"/> Motor Vehicle Accident (320)                                       | <input type="checkbox"/> Foreclosure (420)             |
| <input type="checkbox"/> General (130)            | <input type="checkbox"/> Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330)                                           | <input type="checkbox"/> Mechanic's Lien (430)         |
| <input type="checkbox"/> Breach of Contract (140) | 20 -CP-                                                   | <input type="checkbox"/> Products Liability (340)                                           | <input type="checkbox"/> Partition (440)               |
| <input type="checkbox"/> Other (199)              | <input type="checkbox"/> Notice/ File Med Mal (230)       | <input type="checkbox"/> Personal Injury (350)                                              | <input type="checkbox"/> Possession (450)              |
|                                                   | <input type="checkbox"/> Other (299)                      | <input type="checkbox"/> Wrongful Death (360)                                               | <input type="checkbox"/> Building Code Violation (460) |
|                                                   |                                                           | <input type="checkbox"/> Other (399)                                                        | <input type="checkbox"/> Other (499)                   |
| <input type="checkbox"/> Inmate Petitions         | <input type="checkbox"/> Administrative Law/Relief        | <input type="checkbox"/> Judgments/Settlements                                              | <input type="checkbox"/> Appeals                       |
| <input type="checkbox"/> PCR (500)                | <input type="checkbox"/> Reinstatement Drv. License (800) | <input type="checkbox"/> Death Settlement (700)                                             | <input type="checkbox"/> Arbitration (900)             |
| <input type="checkbox"/> Mandamus (520)           | <input type="checkbox"/> Judicial Review (810)            | <input type="checkbox"/> Foreign Judgment (710)                                             | <input type="checkbox"/> Magistrate-Civil (910)        |
| <input type="checkbox"/> Habeas Corpus (530)      | <input type="checkbox"/> Relief (820)                     | <input type="checkbox"/> Magistrate's Judgment (720)                                        | <input type="checkbox"/> Magistrate-Criminal (920)     |
| <input type="checkbox"/> Other (599)              | <input type="checkbox"/> Permanent Injunction (830)       | <input type="checkbox"/> Minor Settlement (730)                                             | <input type="checkbox"/> Municipal (930)               |
|                                                   | <input type="checkbox"/> Forfeiture-Petition (840)        | <input type="checkbox"/> Transcript Judgment (740)                                          | <input type="checkbox"/> Probate Court (940)           |
|                                                   | <input type="checkbox"/> Forfeiture-Consent Order (850)   | <input type="checkbox"/> Lis Pendens (750)                                                  | <input type="checkbox"/> SCDOT (950)                   |
|                                                   | <input type="checkbox"/> Other (899)                      | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960)           |
|                                                   |                                                           |                                                                                             | <input type="checkbox"/> Zoning Board (970)            |
|                                                   |                                                           |                                                                                             | <input type="checkbox"/> Public Service Comm. (990)    |

ROA 0041

- |                                                 |                                                                                    |                                                                                      |                                                       |                                                         |
|-------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------------|
| <b>Special/Complex /Other</b>                   |                                                                                    |                                                                                      | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Environmental (600)    | <input type="checkbox"/> Pharmaceuticals (630)                                     | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) |                                                       |                                                         |
| <input type="checkbox"/> Automobile Arb. (610)  | <input type="checkbox"/> Unfair Trade Practices (640)                              | <input type="checkbox"/> Other (799)                                                 |                                                       |                                                         |
| <input type="checkbox"/> Medical (620)          | <input type="checkbox"/> Out-of State Depositions (650)                            | <input type="checkbox"/> Other (799)                                                 |                                                       |                                                         |
| <input checked="" type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) |                                                                                      |                                                       |                                                         |
|                                                 | <input type="checkbox"/> Sexual Predator (510)                                     |                                                                                      |                                                       |                                                         |

Submitting Party Signature: \_\_\_\_\_

*W. A. Lewis*

Date: \_\_\_\_\_

12.19.14

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, personally and as Trustee of the  
James A. Croft Trust; James A. Croft Trust;  
William A. Harbeson; Heyward G. Hutson;  
Peter M. Gorman; James Stephen Greene, Jr.;  
Brian Peachier; Summerville Preservation  
Society; and Dorchester County Taxpayers  
Association;

Plaintiffs,

v.

Town of Summerville; William C. Collins, in  
his capacity as Mayor; Terry Jenkins, Aaron  
Brown, Walter Bailey, William McIntosh,  
Kima Garten-Schmidt and Robert Jackson, in  
their capacities as members of Town Council;  
Town of Summerville Redevelopment  
Corporation; Town of Summerville Planning  
Commission; Town of Summerville Board of  
Architectural Review; Applegate & Co.; The  
Dorchester, LLC; and Arthur H. Applegate,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-10-

**COMPLAINT**

FILED  
2014 DEC 19 PM 4:43  
JULIE A. HARRIS  
CLERK OF COURT  
BY \_\_\_\_\_

Each of the above-named Plaintiffs brings the following actions seeking declaratory,  
injunctive and legal relief. For their complaint, the Plaintiffs state as follows:

**I. PRELIMINARY STATEMENT**

1. This is a civil action for declaratory and injunctive relief brought for violations  
and threatened violations of, inter alia, Article X, Section 11, of the Constitution of the State of  
South Carolina; the South Carolina Community Development Law, S.C. Code Ann. § 31-10-10  
et. seq.; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994,

S.C. Code Ann. § 6-29-310 et. seq.; the South Carolina Building Codes law, S.C. Code Ann. § 6-9-5 et. seq.; the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 et. seq.; S.C. Code Ann. § 6-1-730 (use of revenue from local hospitality tax); S.C. Code Ann. § 6-7-10 (planning by local governments); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, et. seq.; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, et. seq.; the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324 and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members residing within the Town of Summerville, to (1) obtain a declaration from the Court that purported contracts and provisions of those purported contracts between and among some of the Defendants are ultra vires, null and void ab initio, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of all provisions of those contracts; and (3) otherwise remedy certain violations of various federal and state-protected regulatory, statutory and Constitutional rights afforded to each of the plaintiffs in this action by the Constitution of the United States; by the Constitution and statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the Town of Summerville, South Carolina.

3. The allegations against the Defendants, as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all times relevant were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this court.

## II. PARTIES

### A. The Plaintiffs

5. Faye P. Croft ("Croft" or "Faye Croft") is a taxpayer in the Town of Summerville, South Carolina ("Town" or "Summerville"), and is the Trustee and the beneficiary of the James A. Croft Trust, which owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC. Croft has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Croft and the James A. Croft Trust that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of their property and the ability to rent their property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of their property.

6. The James A. Croft Trust ("Croft Trust") is a trust created under the laws of the State of South Carolina, for which Faye Croft is the trustee and the beneficiary and which owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC.

7. The Summerville Preservation Society ("Preservation Society") is a non-profit corporation incorporated in 1972 under the laws of the State of South Carolina; and is a 501(c)(3) federally tax exempt organization. The mission of the Preservation Society is to protect the historic fabric of Summerville by preserving Summerville's historic structures, neighborhoods and public spaces, by controlling the growth and development that affects it, and by enhancing the quality of life in the Town. The Preservation Society is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in Summerville and/or Dorchester County, South Carolina.

8. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the Town of Summerville and/or Dorchester County, South Carolina.

9. William A. Harbeson ("Harbeson") is a resident of and a taxpayer to the Town of Summerville, and owns land located in Summerville. Harbeson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Harbeson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the reduction in value of his property increased traffic and noise, flooding, and other impairments to the use and enjoyment of his property.

10. Heyward G. Hutson ("Hutson") is a resident of and a taxpayer to the Town of Summerville, owns residences on land located in Summerville at 207 West Richardson Avenue and 200 South Pine Street, and is President of Plaintiff Summerville Preservation Society. Hutson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Hutson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the diminishment in value of his property and the ability to rent his property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of his property.

11. Peter M. Gorman ("Gorman") is a resident of and a taxpayer to Summerville and a representative of the East Historic District Civic Association in Summerville, and has standing as a Plaintiff in this action as a taxpayer.

12. James Stephen Greene, Jr. ("Greene") is a resident of and a taxpayer to Summerville, and has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Greene being caused and that will continue to be caused by the actions of the Defendants due to increased traffic and noise, flooding, and other impairments to the use of his property.

13. Brian Peacher ("Peacher") is a resident of and a taxpayer to Summerville, and has standing as a Plaintiff in this action as a taxpayer.

14. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual plaintiffs and those represented by the organizations named as plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to Plaintiffs, not common to all members of the general public.

15. Each of the above-described Plaintiffs alleging tax payer standing has as an overriding public purpose or concern as the basis for his suit on behalf of his fellow taxpayers the proper use and allocation of tax receipts by the Town and its civic bodies, named as Defendants in this action. This question is of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the Town and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and Town ordinances, procedures specifically designed to ensure wise management of the public fisc.

16. Each of the organization plaintiffs (Preservation Society and DCTA) has standing based on the individualized injury that has been or will be suffered by its members as a result of the actions of the Defendants described in this Complaint. The members of both organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claim the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.

17. Each of the plaintiffs, whether alleging taxpayer standing, actual injury to their real or personal property or acting on behalf of organizational members, has suffered an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

**B. The Defendants**

18. The Town of Summerville is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

19. The Town of Summerville Redevelopment Corporation ("RDC") is purportedly a public body and a body corporate and politic purportedly created and organized pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10 et. seq.

20. William C. Collins ("Collins") is the Mayor of the Town of Summerville and the Chairman of and a Commissioner of the RDC, and is being sued only in his official capacities.

21. Terry Jenkins ("Jenkins") is a member of the Town Council of Summerville and the Vice-Chairman of and a Commissioner of the RDC, and is being sued only in his official capacities.

22. Aaron Brown ("Brown") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

23. Walter Bailey ("Bailey") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

24. William McIntosh ("McIntosh") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

25. Kima Garten-Schmidt ("Garten-Schmidt") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in her official capacities.

26. Robert Jackson ("Jackson") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

27. Applegate & Co. ("Developer" or "Applegate") is a corporation incorporated under the laws of the State of South Carolina and a "Redeveloper" as defined in S.C. Code Ann. § 31-10-20(11). Upon information and belief, Developer's main office and principal place of business is 4130 Faber Place Drive # 111, North Charleston, South Carolina, in Charleston County.

28. "SPE" as used in this Complaint is a "special purpose entity" created or to be created by the Developer. Should the Developer create this entity, Plaintiffs reserve the right under the South Carolina Rules of Civil Procedure to amend to add that to-be-formed business entity as a Defendant.

29. The Dorchester, LLC, is a limited liability company incorporated under the laws of the State of South Carolina.

30. Arthur H. Applegate (together with Applegate & Co., referred to as the "Developer" or "Applegate") is President of Applegate & Co.; a Manager of The Dorchester, LLC; and the promised personal guarantor of a \$3.75 million loan sought to be made by the RDC to the Dorchester, LLC. Upon information and belief, Applegate is a resident of Charleston County.

31. The Town of Summerville Planning Commission ("Planning Commission") is an organization created by the Town of Summerville by Ord. No. 1997-1003, 11-12-1997 and Ord. No. 08-0902, 10-8-2008, as provided in S.C. Code 1976, § 6-29-310 et seq.

32. The Town of Summerville Board of Architectural Review ("BAR") is an organization created by the Town of Summerville by Ord. No. 2000-0901, § 13-5, 10-11-2000 and Ord. No. 06-0701, 8-9-2006, as provided in S.C. Code 1976, § 6-29-870 et seq. See Sec. 32-175 of the Summerville Town Ordinances. The members of the BAR are appointed and removed by the Mayor of Summerville with the approval of the Summerville Town Council.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

33. The creation, regulation, financing and implementation of development by a municipality of the State of South Carolina, including but not limited to the Defendant Town of Summerville, is governed by the requirements of the United States and the South Carolina Constitutions; State of South Carolina statutes; and the rules, regulations and customs of the Town of Summerville.

#### **A. SOUTH CAROLINA CONSTITUTION**

34. Article 10, Section 11 of the South Carolina Constitution states, in relevant part, as follows:



"Credit of State and political subdivisions.

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution . . . . Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation." (Emphasis added.)

35. Article 10, Section 14 of the South Carolina Constitution states, in relevant part, as follows:

"Bonded indebtedness of political subdivisions.

(1) "[P]olitical subdivisions" shall mean the . . . incorporated municipalities of the State . . . .

(2) The political subdivisions of the State shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe . . . in the following categories and in no others:

(a) General obligation debt; and

(b) Indebtedness payable only from a revenue producing project or from a special source as provided in subsection (10) of this section.

(3) "General obligation debt" shall mean any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.

(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision." (Emphasis added.)

36. Article 10, Section 14(10), of the South Carolina Constitution states, in relevant part, as follows:

"Bonded indebtedness of political subdivisions.

(10) Indebtedness payable solely from a revenue producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the General Assembly may prescribe by general law; provided, that the General Assembly may authorize by general law that indebtedness for the purpose of redevelopment within incorporated municipalities and counties may be incurred, and that the debt service of such indebtedness be

provided from the added increments of tax revenues to result from any such project. Any and all indebtedness incurred pursuant to the provisions of this subsection shall contain a statement on the face thereof specifying the sources from which payment is to be made and shall state that the full faith, credit, and taxing powers are not pledged therefor." (Emphasis added.)

## B. SOUTH CAROLINA STATUTES

### (1) COMMUNITY DEVELOPMENT LAW

37. S.C. Code Ann. § 31-10-20 states in part as follows:

"Definitions.

(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(8) "Municipality" means any incorporated city or town or any county.

(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area;

The term "redevelopment project" may also include the preparation of a redevelopment plan, including the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project." (Emphasis added.)

38: S.C. Code Ann. § 31-10-30 (a) states in part as follows:

"Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality: . . ." (Emphasis added.)

39. S.C. Code Ann. § 31-10-60 states in part that a "commission may delegate to one or more of its members, agents, or employees such of its powers as it deems necessary to carry out the purposes of this chapter; subject always to the supervision and control of the whole commission." (Emphasis added.)

40. S.C. Code Ann. § 31-10-70 states in part as follows:

"No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project . . . ."

41. S.C. Code Ann. § 31-10-90 states in part as follows:

"A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers . . . including . . .

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and with the approval of the governing body of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several redevelopers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property . . . in accordance with the redevelopment plan . . . ; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to

terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;

(Emphasis added.)

42. S.C. Code Ann. § 31-10-100 states in part as follows:

"Contents of redevelopment plan; public hearing prior to adoption of plan; approval by governing body or parent municipality; modification:

(a) A redevelopment plan must be sufficiently complete to indicate its relationship to definite local objectives such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area

(b) A commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

(3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;

(4) a preliminary site plan of the redevelopment area;

(5) a statement of the proposed changes, if any, in zoning ordinances or maps;

(6) a statement of any proposed changes in street layouts or street levels;

(7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;

(8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and

(9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the

redevelopment plan as previously approved by the governing body, the modification must similarly be approved by the governing body as provided above." (Emphasis added.)

43. S.C. Code Ann. § 31-10-110 states in part as follows:

"Contracting by commission for certain services; advertisement for bids from persons interested in purchasing or redeveloping property; commission's real estate transactions under redevelopment plan:

(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. . . . All conveyances made under the authority of this subsection shall contain

restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;

(2) a statement of the use intended for each part of the proposed redevelopment;

(3) the amount, if known, of the consideration to be paid;

(4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and

(5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter." (Emphasis added.)

44. S.C. Code Ann. § 31-10-120 states in part as follows:

"Power of commission to issue and sell bonds . . .

(a) The commission may issue bonds on which the principal and interest are payable:

(1) exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds;

(2) exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

. . . The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality or the State and neither the municipality nor the State is liable on them, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this chapter. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional



or statutory debt limitation or restriction. . . . Bonds may be issued by a commission under this chapter notwithstanding any debt or other limitation prescribed in any statute. This chapter without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance is not subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) . . . Prior to the public sale of bonds hereunder, the commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds in a newspaper of general circulation in the commission's area of operation. . . ." (Emphasis added.)

45. S.C. Code Ann. § 31-10-150 states in part as follows:

"Notice of intent to issue bonds.

Prior to issuing any bonds under this chapter, a commission shall publish notice in a newspaper of general circulation in the municipality of its intent to issue such bonds . . . . Any interested person may within twenty days after the publication of such notice, but not thereafter, challenge the proposal of the commission to issue such bonds by action initiated in the circuit court for the circuit in which the commission is located. . . ." (Emphasis added.)

46. S.C. Code Ann. § 31-10-160 states in part as follows:

"Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The books and records of a commission are at all times open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required by the municipality shall be made." (Emphasis added.)

## (2) SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994

**(a) Local Planning Commission**

47. S.C. Code Ann. § 6-29-310 states in part that a "local planning commission" means a municipal planning commission . . . ."

48. S.C. Code Ann. § 6-29-340(B) states in part as follows:

"Functions, powers, and duties of local planning commissions.

. . . [T]he local planning commission has the . . . duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements." (Emphasis added.)

49. S.C. Code Ann. § 6-29-360(B) states in part that "[t]he commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and

determinations, which record must be a public record. " (Emphasis added.) The Summerville Planning Commission violates this statutory public record requirement by not keeping a copy of its records on the Town website, even though it keeps records of other Town meetings on its website; by not creating and making its records available to the public timely; and by requiring requests pursuant to the Freedom of Information Act in order to obtain a copy of its records.

50. S.C. Code Ann. § 6-29-340 states in part that "[t]he governing authority may provide for the reference of any matters . . . to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report." (Emphasis added.)

51. S.C. Code Ann. § 6-29-340(B) states in part as follows:

"Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element . . . ;
- (2) an economic development element . . . ;
- (3) a natural resources element . . . ;
- (4) a cultural resources element . . . ;

(5) a community facilities element . . . ;

(6) a housing element . . . ;

(7) a land use element . . . ;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . . .

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years." (Emphasis added.)

52. S.C. Code Ann. § 6-29-520 states in part as follows:

"... [N]otice of meetings; recommendations by resolution;  
transmittal of recommended plan;

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or

element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan." (Emphasis added.)

53. S.C. Code Ann. § 6-29-530 states in part as follows:

"Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction." (Emphasis added.)

54. S.C. Code Ann. § 6-29-540 states in part as follows:

"Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities, establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community.

at least thirty days prior to awarding a contract or beginning construction.  
..." (Emphasis added.)

55. S.C. Code Ann. § 6-29-720 states in part as follows:

"(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts . . . . Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter." (Emphasis added.)

56. S.C. Code Ann. § 6-29-760 states in part as follows:

"Procedure for enactment or amendment of zoning regulation or map;  
notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission. (Emphasis added.)

#### (b) Board of Architectural Review

57. S.C. Code Ann. § 6-29-870 states in part as follows:

"Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . . .

(B) The board shall consist of not more than ten members . . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record. (Emphasis added.)

58. S.C. Code Ann. § 6-29-880 states in part as follows:

"Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision."

59. S.C. Code Ann. § 6-29-880 states in part as follows:

"Definitions.

(2) 'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) 'Market based incentives' mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays;

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and



promoting infill development, mixed use and accessory dwellings.”  
(Emphasis added.)

60. S.C. Code Ann. § 6-29-1120 states in part as follows:

“The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.” (Emphasis added.)

61. S.C. Code Ann. § 6-29-1130 states in part as follows:

“Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; . . . . In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public

hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county." (Emphasis added.)

62. S.C. Code Ann. § 6-29-1150 states in part as follows:

"Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. . . ." (Emphasis added.)

### (3) South Carolina Freedom of Information Act

63. S.C. Code Ann. § 30-4-20 states in part as follows:

"Definitions. (a) "Public body" means any . . . organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known. . . ." (Emphasis added.)

64. S.C. Code Ann. § 30-4-20 states in part as follows: "Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public. . . ." (Emphasis added.)

65. S.C. Code Ann. § 30-4-70 states in part as follows:

"Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . .

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

67. S.C. Code Ann. § 30-4-80 states in part as follows:

"Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. (Emphasis added.)

68. S.C. Code Ann. § 30-4-90 states in part as follows:

“Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . . .”

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . . .”

69. S.C. Code Ann. § 30-4-100 states in part as follows:

“Injunctive relief, costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and

a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof."

70. S.C. Code Ann. § 30-4-100 states in part as follows:

**"Penalties.**

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense."

**V. GENERAL FACTUAL ALLEGATIONS**

**A. AGREEMENTS**

71. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio, including but not limited to each of the following:

**(i) "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT"**

72. On July 9, 2014, the Town of Summerville, the RDC and the Developer signed a purported agreement and contract entitled a "PARTICIPATION AGREEMENT" and a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ["Partnership Agreement"] BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE & CO." (the "PARTIES"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. This Partnership Agreement causes

the Town of Summerville and the RDC to be "partners" with the Developer, which is a private entity owned and controlled and that may become owned and controlled by persons unknown to the Town and the RDC and who may be or become undesirable as partners to the Town and the RDC. This Partnership Agreement is a "Redevelopment Contract" as defined by SC Code Section 31-10-20(14), and causes the Town and the RDC to contribute property, including real property and millions of dollars of loans, interest free and unsecured, to the Developer in a joint venture for the purpose and with the intended effect of making profits for the Developer, a private for-profit entity, the Town and the RDC. In this Partnership Agreement, Applegate & Co. is a "Redeveloper" within the meaning of Section 31-10-20(11).

73. The Partnership Agreement states that:

A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY;

B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space;"

C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY;

D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and desires to create a partnership to provide for the efficient and timely development of the proposed project" (emphasis added);

E. The Developer will "construct a new mixed-use project" ("Project") . . . that will include both private and public improvements . . . expected [to cost] approximately \$20,000,000 . . ."

F. The Developer entered into a contract to purchase .65 acres of property adjacent to the TOWN PROPERTY and that .65 acres will be combined with the TOWN PROPERTY to constitute the "PROJECT SITE" where the Project will be built and operated; and

G. The Developer will "construct public improvements" and "manage and operate, or cause the management and operation by means of the SPE of, [sic] the public parking garage and conference center . . ." Partnership Agreement, at 1-2.

The "Project" reference above is a "Redevelopment Project" as defined by S.C. Code Section 31-10-20(14),

74. The Partnership Agreement defines the "PRIVATE IMPROVEMENTS" portion of the Project as "privately-owned improvements" consisting of the following: (a) a "hotel of approximately 74,000 square feet, containing no less than 65 rooms . . . retail and restaurant space . . . and a rooftop bar" and (b) "approximately 34 residential condominium units and shared common space." Partnership Agreement, at 2. The RFP by the Town did not include a request for condominium or housing units.

75. The Partnership Agreement defines the "PUBLIC IMPROVEMENTS" portion of the Project as "publicly-owned improvements," with the PROJECT SITE consisting of the following: (a) "Conference Center," with at least 10,000 square feet of conference/event space; (b) "Parking facilities and parking garage," with at least 179 spaces. Partnership Agreement, at 2-3.

76. The Partnership Agreement requires that the Town of Summerville do the following: "[s]ubject to approval of its Bond Counsel and closing on bond financing": (a) convey to the RDC the TOWN PROPERTY by deed for use for the PROJECT; and (b) gift to the RDC a grant of \$8,950,000 "for purposes of participation in the PROJECT. . . ." Partnership Agreement at 3.

77. The Partnership Agreement requires that the RDC do the following:

A. "Subject to approval of the TOWN's Bond Counsel and closing on bond financing" provide "GAP FINANCING" consisting of "an unsecured loan to the Developer or the SPE with a limited, subordinate personal guarantee of Arthur H. Applegate . . . ending upon completion of construction of the Hotel, Parking Garage, and

Conference Center" in the amount of \$3,750,000 to be repaid by the Developer as follows:

- (1) "[A]t no interest for a period of 24 months to assist in financing the PRIVATE IMPROVEMENTS;"
- (2) Making interest payments of 3.75% to the RDC at the end of 24 months "until the DEVELOPER or the SPE obtains permanent financing for the PROJECT;" and
- (3) "[B]ased on the terms of the construction loan for the PROJECT, with final payoff of the GAP LOAN no later than final maturity of the Developer's construction loan . . ." (emphasis added);

B. Make a "PUBLIC IMPROVEMENTS INVESTMENT" in the PROJECT

by:

- (1) Conveying a portion of the TOWN PROPERTY to the Developer or the SPE;
- (2) Funding up to \$5,200,000 to pay costs of the PUBLIC IMPROVEMENTS; and

C. Lease up to 55 parking spaces to the Developer or the SPE for twenty years "to support the residential portion of the project," with the Developer or the SPE purchasing those parking spaces within twenty years. Partnership Agreement, at 3-4.

78. The Partnership Agreement states that regarding the repayment of the \$3,750,000 loaned by the RDC to the Developer or the SPE, with required interest, the "RDC agrees to maintain a subordinate position to the Construction Lender and the Equity Investors with respect to the" PRIVATE IMPROVEMENTS; and that "this [Partnership] Agreement and its exhibits may be collaterally assigned to the construction lender." Partnership Agreement, at 7 (emphasis added);

79. The Agreement requires a "PROPERTY SWAP" by the Town, the RDC and the Developer, as follows: ". . . the PARTIES shall [exchange] title to certain property within the PROJECT SITE. . . . The DEVELOPER will form a special purpose entity ("SPE") to acquire



and transfer title and own and operate the PROJECT SITE . . . resulting in the RDC owning the parcel that will contain the parking garage and the parcel that will contain the conference center, and the SPE owning the remaining parcel(s)." Partnership Agreement, at 5.

80. The Partnership Agreement states in part the following regarding "site and architectural design":

"The project site and architectural design will be based on the conceptual [sic] provided in Exhibit F . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval."

DEVELOPER agrees that all development, construction, operation and leasing of the PROJECT will be done in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental or quasi-governmental entities, agencies or instrumentalities relating to the development, use or condition of the PROJECT . . ." Partnership Agreement, at 5-6 (emphasis added).

81. The Partnership Agreement requires that "should the PROJECT not proceed to construction as a result of default of this [Partnership] Agreement by the TOWN or RDC, the RDC agrees to pay the DEVELOPER for those preconstruction costs incurred for the PUBLIC IMPROVEMENTS and for PRIVATE IMPROVEMENTS by the DEVELOPER or the SPE . . . up to . . . \$400,000) . . ." Partnership Agreement, at 7 (emphasis added).

82. Paragraph 11 of the Partnership Agreement states in part as follows:

"ISSUANCE OF LIMITED OBLIGATION BONDS: . . . "[T]he PARTIES acknowledge that the obligations of the Town and the RDC hereinafter are contingent upon the TOWN's ability to issue, upon reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount sufficient, together with other funds (if any) of the TOWN identified by the TOWN for such purpose, to fund the GAP LOAN and the costs of the PUBLIC IMPROVEMENTS, all of which shall be of a nature which satisfies the criteria set forth in Section

6-1-730 of the Code of Laws of South Carolina 1976, as amended.”  
(Emphasis added.)

83. Paragraph 15b of the Partnership Agreement states in part that the “RDC represents to the TOWN and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this [Partnership] Agreement and shall . . . continue to have such power and authority throughout the term of this [Partnership] Agreement.” Partnership Agreement, at 8-9 (emphasis added)..

84. Paragraph 15h of the Partnership Agreement states that the “DEVELOPER may not assign its rights in this [Partnership] Agreement without the prior written consent of the TOWN and the RDC.” Partnership Agreement, at 9. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or the SPE to sell ownership or control of itself to any third party without the consent of the Town or the RDC. The Partnership Agreement exposes the Town of Summerville and the RDC to liability, potentially unlimited, for wrongful acts by the Developer and/or the SPE, and does not require the Developer or the SPE to indemnify the Town or the RDC for damages caused them by the wrongful acts of the Developer.

85. The Partnership Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Partnership Agreement, at 10.

86. Exhibit “A” to the Partnership Agreement consists of a “Project Site Illustration,” which defines the land area of the PROJECT SITE referenced above.

**(2) “PARKING GARAGE/CONFERENCE CENTER  
OPERATION AGREEMENT”**

87. Exhibit "B" to the Partnership Agreement consists of a "PARKING GARAGE/ CONFERENCE CENTER OPERATION AGREEMENT" ("Operation Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

88. At the time The Dorchester, LLC signed the Operation Agreement, the Dorchester, LLC did not exist. It was incorporated on October 16, 2014.

89. The Operation Agreement states that:

A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a "Request-for-Proposals. ("RFP") for private development of the TOWN PROPERTY";

B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space";

C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY; and

D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and to create a partnership to provide for the efficient and timely development of the project" (emphasis added). Operation Agreement, at 1-2.

90. Section 1 of the Operation Agreement states that the "RDC hereby appoints the Manager as its exclusive independent contractor for the management of the Conference Center and the Parking Garage, and the Manager accepts such appointment . . ." Operation Agreement, at 2..

91. The Operation Agreement states in part that:

A. "The Manager shall prepare a marketing program for the Conference Center and the Parking Garage and shall supervise the marketing activities for the Conference Center and the Parking Garage including all advertising layouts, brochures, and campaigns. Advertising expenses shall be paid as operating expenses of the Conference Center and the Parking Garage." (Emphasis added.) Section 3(c), at 3.

B. " . . . The RDC understands that the Manager may offer discounts of up to 50% off of the published rates and charges to patrons of the hotel located on the Project Site for use of the Conference Center or spaces in the Parking Garage." (Emphasis added.) Section 3(d)(ii), at 3.

C. "The Manager shall contract on behalf of the RDC . . . for the maintenance and repair of heating and air conditioning systems and for other extraordinary repairs . . . . In the event that repairs of an emergency nature are required at a time when it is impractical to consult with the RDC as to cost, the Manager is hereby authorized to contract on behalf of the RDC to undertake such repairs and shall promptly notify the RDC of such action." Section 3(g)(ii), at 4-5 (emphasis added).

D. "The Manager is hereby authorized to purchase all materials, equipment, tools, appliances, supplies, and services reasonably necessary for proper maintenance and repair of the Conference Center or the Parking Garage." Section 3(g)(iv), at 4 (emphasis added).

E. " . . . The Manager is hereby authorized at the reasonable expense of the Conference Center or the Parking Garage, as applicable, to make contracts for all necessary renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan." Section 3(h)(i), at 4 (emphasis added).

F. "The Manager shall make arrangements and execute any necessary agreements for water, electricity, gas, telephone, data, CATV, internet, sewage and trash disposal, vermin extermination, snow removal, landscape care and related utilities and services for the Conference Center and the Parking Garage. The Manager is hereby authorized to make such contracts on behalf of the RDC as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services, if any, shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(i), at 4-5 (emphasis added)..

G. All staffing to manage and operate the Conference Center and Parking Garage "shall be employees of the Manager, its Affiliates, or Subcontractors. "The compensation, including fringe benefits, of the employees performing on-site functions shall be within the Manager's sole discretion. . . . The Manager shall be reimbursed for reasonable compensation, including fringe benefits, payable to all employees performing on-site functions," and for all taxes and other reasonable expenses regarding personnel. "Such reimbursements shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(j), at 5 (emphasis added).

92. The Operation Agreement states that "It is the expectation of the RDC that the Manager shall . . . provide a high level of customer service to the users of the Conference Center and the Parking Garage." Section 3(I), at 5. This provision is illusory because it imposes no duty on and contains no covenant by the Manager.

93. The Operation Agreement provides that "certain functions and services" of the public conference center and garage shall be shared with the Private Improvements . . . ." Section 5, at 6.

94. Section 7 of the Operation Agreement states that "RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Exhibit A." Operation Agreement, at 6.

95. Section 9(a) of the Operation Agreement states as follows:

"During the initial one (1) year term of this Agreement, the Manager shall be compensated for its services hereunder by the RDC by payment of a management fee in the amount of \$3,000.00 per month . . . ." Section 9(a), at 7.

This Operation Agreement went into effect on July 1, 2014, the date it was executed.

96. Section 10 of the Operation Agreement states in part as follows:

"If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete . . . any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. . . . In the event that the RDC fails promptly to commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay,

upon written demand, to the Manager. . . ." Section 10, at 7. (emphasis added).

97. Section 12 of the Operation Agreement states that the "Manager may not transfer, assign, pledge, or hypothecate . . . its rights, duties, or obligations under this Agreement without the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager." Section 12, at 7-8. This Operation Agreement does not prevent, restrict or limit the ability of the Manager to sell or give ownership or control of itself to any third party and thereby transfer its duties and obligations under this Operation Agreement to whomever or whatever gains control or ownership of the Manager, without the consent of the RDC. Further, these statements in Section 12 are illusory, because there is no restriction in the Operation Agreement on the ability of any person or entity to become an Affiliate of the Manager.

98. Section 13 of the Operation Agreement states in part as follows:

"(a) This Agreement shall be in effect for an initial term of one (1) year, beginning on the date of execution and delivery hereof and ending one year later. The Manager and the RDC may extend the term of this Agreement for an additional one year period up to fifteen (15) years by their mutual agreement on the Manager's compensation under Section 9 for such renewal term." Section 13, at 8 (emphasis added).

99. The Operation Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Operation Agreement, at 12.

### **(3) "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION"**

100. Attachment "A" to the Operation Agreement consists of a "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION" ("Parking Lease Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

101. At the time The Dorchester, LLC signed the Parking Lease Agreement, The Dorchester, LLC did not exist as a corporate entity recognized by the Secretary of State of South Carolina.

102. The Parking Lease Agreement states in part that the RDC is a 501(c)(4) organization. It is not.

103. The Parking Lease Agreement states in part that:

A. "The Town of Summerville . . . created the RDC . . . to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space. . . ."

B. "Applegate & Co. . . . agreed in the Public-Private Partnership Agreement . . . to construct Private Improvements . . . including approximately 34 residential condominium units . . . and to construct Public Improvements . . . including the Parking Garage . . . and further to manage and operate, or cause the management and operation [sic] the public Parking Garage . . . as detailed in the PPP Agreement by means of [The Dorchester, LLC] pursuant to the terms of the Parking Garage/Conference Center Operation Agreement . . ."

C. The "RDC has agreed . . . to lease 55 spaces in the Parking Garage to the [The Dorchester, LLC] for a twenty (20) year term to support the Residential Units per the terms of this Lease;" and

D. The "RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage . . .;" Parking Lease Agreement, at 1.

104. The Parking Lease Agreement states in part that:

A. "The "RDC leases to [The Dorchester, LLC] and [The Dorchester, LLC] hereby leases from the RDC . . . fifty-five (55) parking spaces . . . for a period of twenty (20) years commencing on [date not stated]; Parking Lease Agreement, at 1.

- B. "... [T]he RDC hereby agrees to sell to [The Dorchester, LLC], and [The Dorchester, LLC] hereby agrees to purchase from the RDC ... all or any portion of the [55 parking spaces] ..."
- C. "... Tenant shall have the exclusive use of the [55 parking spaces] for the operation and maintenance by Tenant of automobile parking spaces to be sublet to owners of the Residential Units and for any other associated lawful purposes;" and
- D. The RDC shall maintain Commercial Property insurance, Commercial General Liability insurance and other insurance for the benefit of the RDC and The Dorchester, LLC. (Emphasis added.) Parking Lease Agreement, at 1-4.

105. The Parking Lease Agreement requires the RDC to indemnify and save harmless The Dorchester, LLC from losses, by stating as follows:

- A. "The RDC shall indemnify and save harmless [The Dorchester, LLC] from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of negligence or willful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease...." Paragraph 13, at 5 (emphasis added);
- A. "ENVIRONMENTAL MATTERS: ... The RDC shall and hereby does indemnify [The Dorchester, LLC] and hold [The Dorchester, LLC] harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by [The Dorchester, LLC] in connection therewith) suffered by [The Dorchester, LLC] by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors. . . . " Paragraph 15; at 6-7 (emphasis added); and
- B. "... [E]ach party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease." Paragraph 28, at 9 (emphasis added).



106. The Parking Lease Agreement requires the RDC to pay costs and expenses associated with the parking garage, including for taxes; insurance; debt service; repair, maintenance and operation expenses related to the Premises; and "any other costs . . . ." paragraphs 15-16, at 7; and that the RDC "provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises." In contrast, The Dorchester, LLC's "costs and expenses . . . shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to" the Parking Lease Agreement. Paragraph 15, at 7.

107. The Parking Lease Agreement provides that The Dorchester, LLC "may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this lease upon payment to the RDC of one month's rent as an early termination fee." Paragraph 20, at 8 (emphasis added). In contrast, the "RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default [after a ten day opportunity to cure any Tenant default] . . . and upon ninety (90) days written notice to the Tenant." Paragraphs 18, 20, at 8.

108. The Parking Lease Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC.

#### (4) "GRANT AND PROPERTY CONVEYANCE AGREEMENT"

109. Exhibit "C" to the Partnership Agreement consists of a "GRANT AND PROPERTY CONVEYANCE AGREEMENT FOR TOURISM AND OTHER ECONOMIC DEVELOPMENT PROJECTS" ("Property Conveyance Agreement"), dated July 9, 2014, between the Town of Summerville and the RDC.

110. This Property Conveyance Agreement states in part as follows:

A. The "TOWN and the RDC determined that the development of [sic] mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage . . . ("PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community;"

B. The "TOWN owns approximately 1.58 acres of property . . . that is necessary for the development of the PROJECT;"

C. On July 9, 2014, the "TOWN passed Ordinance No. \_\_\_\_\_ [sic], approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. ( : . . "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT;"

D. "The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT;"

E. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$5,200,000 for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT;"

F. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$3,750,000 for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT; and

G. "The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT;"

111. The Property Conveyance Agreement was signed on behalf of the RDC by its Chairman but not by any other person or entity on behalf of the RDC.

##### (5) "PROMISSORY NOTE/LOAN AGREEMENT"

112. Exhibit "D" to the Partnership Agreement consists of a "PROMISSORY NOTE/LOAN AGREEMENT" ("Promissory Note Loan Agreement"), undated and unsigned, to be signed by The Dorchester, LLC for the benefit of the RDC.

113. This Promissory Note Loan Agreement states in part as follows:

A. The Dorchester, LLC promises to pay the RDC \$3,750,000; "together with any interest due on the unpaid balance on the following terms";

B. "The payment obligation hereof by [The Dorchester, LLC] is subordinate in all respects to the payment obligations of [The Dorchester, LLC] to the Construction Lender . . . and to the Equity Investors . . .;"

C. "No interest shall be due for 24 months from the date of the funding by [the RDC]. Interest on this note shall begin the day following 24 months from the funding by [the RDC] at the rate of 3.75% per annum. . . . [T]he Note shall be due and payable in full with all accrued interest on or before forty-eight (48) months from the date of funding by the [RDC];" and

C. "Collateral: The Note is unsecured." (Emphasis added.)

114. One of the "Equity Investors" referenced in the paragraph above will be the Defendant Developer and/or Defendant Arthur H. Applegate personally.

#### (6) "GUARANTEE OF PROMISSORY NOTE"

115. Attached to the "Promissory Note Loan Agreement" is a "GUARANTEE OF PROMISSORY NOTE" ("Promissory Note Guarantee"), undated and unsigned, to be signed by Arthur H. Applegate personally for the benefit of the RDC.

116. The Promissory Note Guarantee states in part as follows:

A. "In consideration of . . . \$3,750,000 . . . and in consideration of the extension of credit to The Dorchester, LLC . . . [Arthur H. Applegate] does hereby . . . guarantee to [the RDC] . . . payment of the principal and interest due on the" Promissory Note Loan

Agreement " and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject . . . to the following limitations:

1. This guarantee shall be effective . . . only for the period of time beginning with the first disbursement of funds . . . and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center . . ." [and]
2. The obligation of the guarantor . . . is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors . . . which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder." (Emphasis added.)

**(7) "The Dorchester Estimated Public Improvements Budget"**

117. Exhibit "E" to the Partnership Agreement consists of an "Estimated Public Improvements Budget" showing, inter alia, that the RDC would pay \$260,000 to a private entity as a "Development Fee."

**(8) "Conceptual Site and Architectural Illustrations"**

118. Exhibit "F" to the Partnership Agreement consists of eight "Conceptual Site and Architectural Illustrations."

**B. CHRONOLOGICAL HISTORY OF EVENTS**

119. While a candidate for Mayor of Summerville in 2011, Defendant Collins announced that as Mayor he would build a boutique hotel in downtown Summerville (the "boutique hotel project"). Since his election in 2011, Defendant Collins has orchestrated and contrived actions, some unlawful and some shams, to accomplish that campaign pledge, in conspiracy with other Defendants and for the special benefit of private parties, including real estate developers and others. These actions include, but are not limited to, conducting private,

secret meetings; holding meetings confidentially and without proper notice; obscuring and withholding information from the public; misleading, defaming, intimidating and bullying citizens to prevent or impede their ability to exercise their rights, influence public opinion and oppose Defendants' actions; purporting to cause the Town of Summerville to enter into a "partnership" with private parties; executing invalid contracts on behalf of governmental entities; making unlawful pledges of public assets in purported contracts; unlawfully delegating authority; exerting and attempting to exert improper influence on governmental decision makers; failing to follow required substantive and procedural laws; and exposing taxpayers to excessive, unnecessary, unlawful and unjustified risks.

120. During 2012 and through the present, members of the Summerville Town Council and its governmental subdivisions frequently have excused themselves from public meetings to confer "behind closed doors" in "executive sessions," to discuss and reach consensus on issues pertaining to the boutique hotel project. The only information provided to the Plaintiffs and the rest of the public regarding these executive session discussions was that they pertained to an "economic development or redevelopment project," the leasing of properties, the sale of real estate or a proposed master plan. Despite statements made for the record upon returning from executive sessions that no actions had been taken, ordinances, motions and resolutions pertaining to an "economic development or redevelopment plan" invariably followed. For example, on December 18, 2013, the Town Council held a Special Meeting during which members excused themselves into executive session. Upon re-adjournment of the public special meeting from the executive session, Town Council authorized the Mayor "to enter into non-binding negotiations with the company that recently submitted an economic development proposal." The minutes of the meeting state that "Council returned to public session . . . and announced that no action was

taken” during the executive session. Plaintiffs now know that the words “economic development proposal” meant the boutique hotel project; and the “company” meant Defendant Applegate & Co.

121. On information and belief, during 2012 through November 10, 2013, Defendant Collins asked three or more experienced hotel developers, including Defendant Applegate, who has participated in many real estate development projects in the Town of Summerville, to build a privately financed boutique hotel on 1.58 acres of land owned by the Town of Summerville near the intersection of West Richardson Avenue and Cedar Street in Summerville. Each developer consulted declined to build a boutique hotel at that location because it was not economically feasible to do so.

122. Unable to get a private developer to finance the boutique hotel at that location, on October 7, 2013, Defendant Town of Summerville contracted with the Lawrence Group, headquartered in Charlotte, North Carolina, “for the development of a master plan for the Town of Summerville.” On information and belief, the Lawrence Group was hired to develop this “master plan” for the purpose, in whole or in part, of attempting to justify the Town’s participation in financing the boutique hotel project with a private developer.

123. On November 10, 2013, the Town of Summerville published in the Charleston Post and Courier newspaper a “Request for Proposal” (“RFP”) for “developers with hotel experience interested in building a boutique hotel. . . on a 1.58 acre tract of land [owned by the Town] in the downtown historic district” of Summerville “as a public-private partnership with the town.” The RFP notice was published only once, in violation of S.C. Code Ann. § 31-10-110(c), and did not mention or request a proposal for any condominiums or any other residential

units. Moreover, the public was allowed only 26 days, until December 6, 2013, with the Thanksgiving holidays intervening, to submit bids.

124. Not surprisingly, given the short notice, there was only one proposal submitted in response to the RFP. That response was an 18-page document submitted by Defendant Applegate & Co., on December 6, 2013, which states in part as follows:

"Enclosed . . . is a proposal . . . to develop a mixed use project on a 1.58 acre tract of land owned by the Town and an adjacent .658 acre tract of land that Applegate & Co. has under contract in the downtown historic district. The project consists of a 66 room boutique hotel, a restaurant, a roof top bar, a roof top terrace, retail space, a conference center with seating capacity for a three-hundred person seated dinner, thirty-four high end residential units, a one hundred and fifty-seven space parking deck and twenty-nine surface spaces." (Emphasis added.)

Defendant Applegate & Co.'s response included a proposal for "thirty-four high end residential units," even though the RFP did not mention or request a proposal for those units. This constitutes a non-responsive bid. If "residential units" (i.e., condominiums) were desired by the Town or necessary to make the boutique hotel project viable and to procure competing bids, the Town should have issued a new RFP. By failing to republish an RFP that included a reference to residential units, the Town deprived itself, the Plaintiffs and other bidders, including qualified minority bidders, of the benefits of free and open competition.

125. Upon information and belief, Defendant Applegate & Co. contracted to acquire the .658-acre tract adjacent to the location of the proposed boutique hotel project prior to its submission to the Town of a response to the RFP on December 6, 2013, because Defendant Applegate had received assurances from one or more of the Defendants in advance of the RFP or submission of Defendant Applegate's response to the RFP that Defendant Applegate & Co. would win the bid. In addition, Defendant Collins stated in August, 2014, that he had named the

boutique hotel "The Dorchester," which is the name Defendant Applegate & Co. had used for the boutique hotel project in its bid submission in response to the Town's RFP on December 6, 2013. In addition, upon information and belief, the submission included a picture of a complex boutique hotel project design at the corner of South Cedar Street and Richardson Avenue in Summerville that was enabled by Defendant Applegate's having been informed about the content, location, and timing of the RFP before the RFP was advertised, thereby causing Defendant Applegate to have started creating that design before the publication of the RFP. Therefore, the award of the bid to Defendant Applegate & Co. resulted from anticompetitive collusion, bid rigging and/or fraud between the Developer and the Town. The 1.58-acre tract of land owned by the Town and the .658-acre tract of land purchased or to be purchased by Defendant Applegate & Co. are adjacent properties in the official historical district of Summerville and are listed on the National Register of Historic Places:

126. The response to the RFP by Applegate & Co. included in part the following "financing and transactional structure" proposal:

" . . . Without limited guarantees from the Town of Summerville and firm lease commitments, the ability to finance the project would be extremely remote. Because what is being proposed for the site has no precedent, there are no available comps to be used to appraise the project. While the development team is extremely bullish on the probability of success, the bullish stance is based upon intuitive intangibles that come from many years of development experience and numerous successful projects. Unfortunately, commercial banks do not make loans based upon a developer's intuition and past success. The project is ideally suited to be a model private-public partnership.

Applegate & Co. is attempting to structure the deal in such a way that the base case would, at worst, result in a revenue neutral outcome for the Town . . . and, at best, would result in substantial economic benefits to the Town. . . . All net revenue produced from the garage and the conference center would be paid to the Town on a monthly basis. . . . The Pro forma rebate to the town is currently projected to be \$12,917 per month from the garage and \$18,750 per month from the conference center. The Town's



portion of the property taxes are projected to be \$9,672 annually for the garage and \$11,160 annually for the conference center. . . . The sponsor/ developer would look to the Town to contribute the 1.58-acre tract owned by the Town in exchange for an ownership interest in the Hotel. . . .

. . . . Based upon hard costs the total annual tax on the Hotel would be \$368,628. It should be noted that a significantly lower property tax has been used for the Hotel operating Pro forma. It was based upon a lower assessed value and some type of tax relief. If the Hotel, in fact, had to pay taxes of \$368,628, it would significantly reduce the viability of the project. It would further be proposed that the Town would provide a limited guaranty for that portion of the construction loan pertaining to the Hotel. . . .

It is anticipated that the bank providing the construction financing will do so based upon equity in the amount of 20% of the total project cost (\$6,056,725) and the bank making a loan for 80% of the total project cost (\$24,226,901). Applegate & Co., the Town's land, and local partners will provide the required equity." (Emphasis added.)

127. The period for bids to be submitted was between November 10 and December 6, 2013, which included the Thanksgiving Holiday. This was an insufficient period for allowing a reasonable response to the RFP. The Town and its officials contrived, colluded and limited the time period for responding to the RFP deliberately so that only Applegate & Co., with advance notice of the RFP, could prepare a response based on nonpublic, insider knowledge about the project gained from one or more Defendants prior to publication of the RFP. On information and belief, preparation for the response to the RFP by Applegate & Co. began long before publication of the RFP on November 10, 2013, and Applegate & Co. was awarded a contract in response to the Town's RFP, to the exclusion of all other potential bidders, due to advance knowledge of the RFP and advance knowledge of the Town's acceptance of a proposal that included residential units.

128. On May 14, 2014, the Town of Summerville did the following to advance the boutique hotel project:

- A. Introduced as a first reading an ordinance to create a "redevelopment commission" called the "Town of Summerville Redevelopment Commission," pursuant to SC Code SECTION 31-10-30;
- B. Discussed a "proposed economic development project," which was "code" for the boutique hotel project, in an executive session that lasted 51 minutes; those discussions are unknown to the public; and
- C. Passed a second and final reading of an ordinance to change the zoning of property on West Richardson Avenue in Summerville owned by the Town, from B2 "Neighborhood Business Center" to B3 "General Business."

These actions were taken without the public being aware that their purpose was to arrange and advance the boutique hotel project. Upon information and belief, this first reading of the ordinance to create the RDC was taken without the Town having published notice as required by law.

129. On May 28, 2014, the Town held a Special Council Meeting, at which it passed the "second and final reading of an ordinance to create the" RDC. Immediately afterwards, the RDC held its first meeting, at which the RDC adopted its by-laws; elected its officers, including Mayor Collins as Chairman and Lisa Wallace as Secretary, and elected each member of the Town Council as a member of the RDC. This meeting of the RDC was held illegally, and its actions therefore are invalid, because notice of the meeting had not been provided as required by law, after the RDC had come into existence, and the RDC had not been lawfully created. When these actions by the Town and the RDC were taken on May 28, 2014, all the Plaintiffs and all or nearly all Summerville residents were unaware, and reasonably could not have been aware, of the nature, purpose, function and existence of a "redevelopment commission" and the RDC, and that this entity would in any way finance or otherwise promote or facilitate the transfer of public funds to a private developer for the purpose of building a privately owned boutique hotel project in Summerville.

130. On June 4, 2014, Town Council held a Special Meeting at which the Lawrence Group presented only a partially completed version of its proposed "Vision Plan" for the Town of Summerville to a combined meeting of the Summerville Town Council, the Summerville Planning Commission and the Master/Vision Plan Advisory Committee. This meeting was not properly held or noticed. At this Special Council Meeting, the Lawrence Group "advised that the revised documents will be provided to the town next week and the town will make them available to the public via the town website."

131. On June 9, 2014, the Town of Summerville Planning Commission published a notice of a public hearing purporting to advise the public of a Public Hearing to be held on June 16, 2014, using the following language: "Request to amend the Town's [sic] current Comprehensive Plan 2009-2011 with the prepared Vision Plan as an update and exhibit that further details the potential implementation strategies for the Comprehensive Plan." This notice was confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing. There was no mention of a boutique hotel project in the notice.

132. On June 9, 2014, at approximately 5 p.m., a "draft" of the Lawrence Group's "Vision Plan," consisting of approximately 375 pages, first appeared on the Town's website. This was the first publication of the Vision Plan and the first opportunity for Summerville citizens to read the Vision Plan. The publication of the Vision Plan afforded no effective opportunity for Summerville residents who do not use the internet to review the Vision Plan. Among the Vision Plan's recommendations was one to create a Redevelopment Commission and a Redevelopment Fund to "organize a public/private partnership" to act as an agent for the Town in getting development contracts financed with public and private funds. Vision Plan, Code and

Policy Report, Sec. 6.1 and Sec. 6.5, at 38. The Vision Plan also mentions a boutique hotel at the corner of South Cedar Street and West Richardson Avenue as a "development opportunity," see Vision Plan, Infrastructure and Development Plan, at 72; but not as a top ten priority, see Vision Plan, Infrastructure and Development Plan, at 109 and Vision Plan, Reconnaissance Report, at 36. The Vision Plan posted on the Town's website is still referred to as a "draft" of June 9, 2014.

133. At a meeting of the Summerville Town Council on June 11, 2014 (two days after the draft Vision Plan was posted on the Town's website), the Summerville Town Council passed the "[I]ntroduction and first reading of an ordinance (by title only) to amend the Town of Summerville Comprehensive Plan as amended by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan." (Emphasis added.) This notice is confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing. There was no mention of a boutique hotel project in the notice of the meeting or at the meeting. Prior to June 11, 2014, there was inadequate notice and no public hearing as required by law of Council's intention to update or amend the Town's Comprehensive Plan (60 pages) with the new Vision Plan (375 pages). Prior to the first reading on June 11, 2014, the public had inadequate opportunity to review and understand the Lawrence Group's Vision Plan and to be aware of and understand that the Town would amend or update the Town's Comprehensive Plan with the Vision Plan.

134. On June 13, 2014, the Secretary of State of the State of South Carolina issued a Certificate of Incorporation for the "Summerville Redevelopment Corporation." The Summerville Redevelopment Corporation was not validly created, and its purported meetings and activities were not validly noticed and held, in part because notices were not timely made

and pertained to a "Summerville Redevelopment Commission" rather than the "Summerville Redevelopment Corporation." (Emphasis added.)

135. On June 16, 2014, the Town published notice of a meeting of the "Summerville Redevelopment Corporation" to be held on June 25, 2014, having in part the following agenda:

"II. . . . Public hearing on the Summerville Redevelopment Commission's Proposed Redevelopment Plan (Town's Vision Plan)" and

III. . . . Adoption of Summerville Redevelopment Plan (Town's Vision Plan) and recommendation for approval by Summerville Town Council."

This notice was insufficient and unlawful, in part because: (1) the notice was not timely published; (2) the notice was published by the Town but was not published by the RDC, which did not yet validly exist; (3) the notice was inadequate and confusing as it was published regarding a "Proposed Redevelopment Plan" of the Summerville Redevelopment Commission rather than of the separate entity called the Summerville Redevelopment Corporation; (4) the notice was for a meeting of the Summerville Redevelopment Corporation, but S.C. Code Section 31-10-100(d) requires that the "commission [not the corporation] shall hold a public hearing prior to adoption of a redevelopment plan;" and (5) the public did not know and could not reasonably have known timely the final content of the Town's Vision Plan or the meaning of the phrase "Adoption of Summerville Redevelopment Plan."

136. The Summerville Redevelopment Commission and the Summerville Redevelopment Corporation could adopt a redevelopment plan only by following the requirements of the South Carolina Community Development Law, which were circumvented and not followed when the Town adopted its Vision Plan; when the Town, rather than the RDC, published a Request for Proposals; and when the RDC adopted as its Redevelopment Plan the

Town's Vision Plan, rather than going through the procedure laid out in the statute for creation and adoption of a Redevelopment Plan, which requires, inter alia, public hearings and public input. Therefore, any purported adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Commission or the Summerville Redevelopment Corporation was void and unlawful.

137. On Wednesday, June 25, 2014, beginning at 5:30 p.m., the Summerville Redevelopment Corporation purported to hold a meeting and a public hearing regarding its proposed adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Corporation. This public meeting and hearing were unlawful because, inter alia, notice of the meeting was insufficient; the RDC had not been lawfully created; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan. It is likely that there was no participation by the public at this public meeting, because the public was not adequately put on notice of the meaning and significance of the actions to be discussed at the public hearing, due to the failure of the Town and the RDC to follow the Community Development Act, the open meetings law under FOIA and the rapidity of Defendants' actions and Defendants' repeated use of undefined terminology interchangeably and inconsistently in their public notices, including "Vision Plan," "Master Plan," "Comprehensive Plan," "economic development plan," "Redevelopment Plan," "Summerville Redevelopment Commission" and "Summerville Redevelopment Corporation."

138. According to the minutes of the June 25, 2014, meeting referenced above, after approving prior meeting minutes, the Chairman "announced the next item was a public hearing on the Redevelopment Corporation's proposed Redevelopment Plan and called for any comments

from the public. There being no comments offered, Chairman Collins declared the public meeting closed." There was no mention at this meeting of a boutique hotel. Immediately after closing the public hearing portion of the meeting, the RDC passed a resolution adopting the Town's Vision Plan as the RDC's Redevelopment Plan. This resolution was unlawful because, inter alia, notice of the meeting was insufficient and unlawful; the RDC had not been lawfully created; the RDC had not created a Redevelopment Plan as required by the Community Development Law; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan.

139. On June 30, 2014, the RDC applied to the United States Internal Revenue Service ("IRS") for an Employer Identification Number ("EIN"). The RDC has applied to the IRS for a 501(c)(4) tax-exempt status, which is inconsistent with the RDC's contractual obligation it has assumed to make interest-free loans to private developers. The 501(c)(4) tax-exempt status is inconsistent with the RDC being in a profit-making partnership with the for-profit Developer and other private for-profit party Defendants.

140. On July 7, 2014, the Town's Finance Committee held a meeting at which Defendant Collins announced that he had removed language about 880 residential homes from the Town's Vision Plan. This statement was made after the purported adoption of the Town's Vision Plan as the RDC's Redevelopment Plan, on June 25, 2014. Moreover, the reference to the 880 residential units has not been removed from the Vision Plan appearing on the Town's website.

141. At a date unknown to the Plaintiffs, the RDC may have published notice of a meeting to be held on July 9, 2014, having in part the following new business on the meeting's

agenda: "Authorize Chairman [Collins] to finalize negotiations and execute a Public/Private Partnership Agreement between the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co." This notice, if published, was untimely, unclear, confusing, insufficient, unlawful and invalid. Neither the notice, the minutes, nor any other communication published by the Defendants informed the public that the purpose of the "Public/Private Partnership" would be the construction of a boutique hotel project and its financing, including interest-free and unsecured loans to the Developer, the issuance of bonds and the use of other Town funds from unspecified sources. Moreover, the RDC's authorization of Chairman Collins to negotiate and execute the Partnership Agreement on behalf of the RDC containing provisions unknown to the RDC is ultra vires and constitutes an unlawful delegation of authority by the RDC.

142. On July 9, 2014, the Town held a meeting (not a public hearing) at which (a) a second reading of an ordinance was given by Town Council to update and amend the Town's Comprehensive Plan with the Town's Vision Plan; (b) the Town Council passed a resolution approving the adoption by the RDC on June 25, 2014, of the Vision Plan as the RDC's Redevelopment Plan; and (c) Town Council passed a motion to allow Defendant Collins to finalize negotiations and execute a Public-Private Partnership Agreement between the Town, the RDC and Defendant Applegate & Co.. At this meeting, Town Council also voted "to amend the Town's Comprehensive Plan by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan," according to minutes of the meeting. The motion allowing Defendant Collins to sign a contract on behalf of the Town containing provisions to be negotiated by him constituted an unlawful delegation of authority by the Town.



143. As a result of the above, Defendants believed that the Vision Plan officially had become the Town's Comprehensive Plan; that the RDC was in place, through which the Town could funnel money to Defendant Applegate; and that Council therefore could proceed to inform the public, for the first time, that the "economic development project" the Town repeatedly had been discussing in executive sessions was the boutique hotel project; it would consist of a hotel, parking garage, events facility, swimming pool, restaurants and condominiums; it would involve a Public-Private Partnership between the Town, the RDC and a private real estate developer as well as a bond offering, forgiveness of real estate taxes, interest-free and unsecured loans and other financial concessions to Defendant Applegate & Co.

144. The Mayor, Applegate & Co., Applegate and other Defendants had been negotiating in secret at least since December 18, 2013, when, at a Special Council Meeting, after an Executive Session, the Mayor was authorized to enter into non-binding negotiations with "the company that recently submitted an economic development proposal." The Defendants did everything they could to avoid public awareness and scrutiny of, and to keep secret, as long as possible, the plans for the boutique hotel project and the Public-Private Partnership Agreement, in part by discussing those matters without public knowledge and obscuring them in the fine print and hundreds of pages of the Vision Plan. As late as July 4, 2014, Defendant Collins was quoted in the Summerville Journal Scene newspaper saying that "no Vision Plan project in particular is at the top of the list for the town. If the costs of all the proposed ideas were to be added up the total would accumulate to billions of dollars. We have to do what we can pay for." Five days later, on July 9, 2014, after the Council finally had spent seven months developing the Vision Plan, attempting to form the RDC and causing the Town and the RDC to adopt the Vision

Plan as an amended update to the Town's Comprehensive Plan the Defendants disclosed to the public their plans for a boutique hotel project.

145. Despite it being pursued as a Redevelopment Project under the Community Development Law, no public hearing has ever been held by the Summerville Town Council, the Town Finance Committee or the Town Planning Commission concerning the boutique hotel project, ignoring the requirements of this state statute.

146. Only one reference to the boutique hotel complex appears in the Vision Plan. The Vision Plan contains over 300 pages, does not recommend that a boutique hotel project be built in Summerville and does not list the boutique hotel project as one of the 10 priority recommendations of the Vision Plan to be implemented during the next five years. The Vision Plan is not a Redevelopment Plan created and adopted according to South Carolina law, and the boutique hotel project was neither created nor adopted as a Redevelopment Plan under state law.

147. Two public hearings were held concerning the Vision Plan, one by the Town's Planning Commission on June 16, 2014, and one by the Town's Redevelopment Commission on June 25, 2014. The boutique hotel project was not discussed during these hearings.

148. On October 6, 2014, the Town's Board of Architectural Review held a meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At this meeting BAR Chairman Phillip Dixon intimidated and denied the First Amendment free speech rights of citizens attending the meeting by limiting comments and questions by members of the public about the project to three minutes. Dixon repeatedly stated that the public could address only the appearance of the Developer's drawings but make no other comment, and warned that, if any member of the public spoke in opposition to the project, he or she would be gavelled out of order and escorted from the room by the two

policemen standing at the back of the meeting room. This consideration by the BAR of the Developer's plans for a boutique hotel project violated the First Amendment rights of Plaintiffs and others; and the Developer's plans were reviewed without, as required by law, the Developer previously having submitted to the BAR a completed application available for review by the public and without those plans previously having been approved by the RDC.

149. On October 27, 2014, the Town sent Defendant Faye Croft a written "courtesy notice" of a meeting of the Defendant BAR to be held on November 3, 2014, regarding the boutique hotel project. Characterizing this notice as a "courtesy" was misleading because that notice was required by law.

150. On November 3, 2014, the BAR held a second meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At this meeting BAR Chairman Phillip Dixon again limited public input, in violation of the First Amendment, as described above regarding the previous BAR meeting held on October 6, 2014. This consideration by the BAR of the Developer's plans for a boutique hotel project was illegal because it violated the First Amendment rights of Plaintiffs and others; because the Developer's plans were reviewed without, as required by law, the Developer having previously submitted to the BAR a completed application available for review by the public; and because those plans had not previously been approved by the RDC. Plaintiff Hutson read to the BAR the following statements in Paragraph 8a of the Partnership Agreement to demonstrate to the BAR that its review of Defendant Applegate's plans was unlawful:

"The project site and architectural design will be based on the conceptual provided in Exhibit F . . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval. (Emphasis added.)"

Despite the above, the BAR did consider Defendant Applegate's plans for a boutique hotel project and told him to return with revised drawings for further consideration by the BAR.

151. Because Defendant Mayor Collins and Defendant Town Council members failed and refused to hold public hearings regarding the boutique hotel project, on November 6, 2014, the Summerville Preservation Society and the East Historic District Civic Association held a public meeting at Dorchester County Council Chambers at which citizens discussed and expressed their concerns about, and opposition to, the boutique hotel project. Mayor Collins and all Defendant Town Council members were invited to attend this meeting. Only Council members Walter Bailey and Robert Jackson attended part of the meeting. On information and belief, Defendants failed and refused to hold public hearings to avoid a public demonstration and airing of opposition to the boutique hotel project and its attendant financial risks.

152. In response to learning that the Summerville Preservation Society and the East Historic District Civic Association would sponsor and hold a public hearing about the project on November 6, 2014, Defendant Collins and the Town scheduled and held in response an "informational meeting" (not a public hearing) on November 12, 2014. That tightly controlled meeting was allowed to last only one hour, most of which time was used by proponents of the project selected by Mayor Collins, who controlled who would speak, and when. Mayor Collins began the meeting by allowing Defendant Applegate about thirty minutes to promote and explain his latest design of the project, followed by a succession of several proponents of the project being allowed by the Mayor to speak, often about sports history and other irrelevancies, to orchestrate and control the information provided at the meeting to avoid or minimize negative comments against the project.

153. On November 12, 2014, immediately after the Town's "informational meeting" referenced above, the RDC held a meeting "to review for approval conceptual plans for The Dorchester Project," which is the name given to the boutique hotel project.

154. On November 19, 2014, one or more of the Defendants placed, and authorized the placement of, a full-page advertisement on page 8B of the *Summerville Journal Scene* newspaper stating that the "Residences at the Dorchester," which are the condominiums of the boutique hotel project, are "Now Available For Sale!" and soliciting buyers to "reserve your Condominium Home" now. That advertisement also states in part:

"The Residences at the Dorchester are part of Summerville's new Boutique Hotel Complex and offer residents all of the Hotel Amenities including a fine dining Restaurant, Roof-top Bar, Pool, Fitness Center, Garage Parking, Conference Rooms, and Business Center.

Sales Office Hours are Tuesday-Saturday from 10-6 . . .  
ResidencesatDorchester.com"

This advertisement contains false and misleading representations and information because the project has never been approved, and may never be approved, by the BAR and other required authorities; the Public-Private Partnership Agreement and other actions by the Defendants are unlawful; and the pictures of the proposed condominiums for sale, shown in the advertisement as being for sale, specifically have not been approved by the BAR after two previous BAR meetings.

155. This 66-room hotel/rooftop bar/restaurant/garage/34 condo/convention center/swimming pool project complex on two acres of land in the heart of the Historic District at one of the town's busiest intersections appears to be the highest priority of Mayor Collins and the Town Council. Construction will take two years and require the destruction of several historic houses and the oldest pine in the "Flowertown in the Pines." (The town motto is "The

Pine is Sacred.") The anticipated and highly touted 60 new jobs created by the project will be mostly low-paid room cleaners and garage attendants.

156. Previous "boutique" hotels in Summerville have failed because, unlike Charleston, Summerville is not an overnight destination for tourists or business travelers necessary to sustain an expensive hotel and convention center. Moreover, the Summerville market has become more competitive with two new hotels, Courtyard by Marriott and Residence Inn, in Summerville near Interstate-26.

157. If the boutique hotel project fails, the town-owned convention center and garage will also fail, leaving taxpayers with a staggering \$12 million debt and a two-acre "white elephant" in the heart of downtown Summerville.

158. Most of the traffic from developments in newly annexed areas is channeled through the Historic District, where the main railroad crossings leading to I-26 are located. Traffic is the No. 1 complaint of Summerville residents, and the hotel/condo complex will greatly aggravate the congestion.

159. The boutique hotel project is too massive for the selected location.

160. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to subsidize a private development that may not be and probably is not feasible.

161. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to compete with other Summerville businesses that collect the taxes that will be used to finance the boutique hotel project.

162. The Town has been failing, and will continue to fail, in violation of its Comprehensive Plan, to fix dangerous sidewalks; add or replace antiquated street lights; put electrical lines and wires underground; prevent continued flooding; fix dangerous and decaying

roads, and create and maintain other necessities for public health and safety, opting instead to finance and promote the boutique hotel project. Many of these infrastructure repairs are recommended in the Town's Comprehensive Plan and in the Vision Plan.

163. Plaintiffs' and other Summerville residents' requests to Defendants to review feasibility, market assessment and traffic studies have been ignored or thwarted. Defendant Mayor Collins replies to requests for information and review of the project by claiming and exclaiming, "It is a done deal!"

164. Defendants that are governmental entities have responded to Plaintiffs' requests for documents pertaining to the boutique hotel project pursuant to FOIA either by not responding at all or with prohibitive fees and unreasonable delays, instead of producing the public documents requested.

165. Defendant Collins and other Defendants have promoted the boutique hotel project using, under the color of state law, deceptive, intimidating, bullying and other unlawful actions and tactics that violate Plaintiffs' First, Fifth and Fourteenth Amendment rights to free speech and association, due process and equal protection of the laws, and other laws and customs, causing injury to their protected property and liberty interests, including but not limited to each of the following:

- A. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- B. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;

- C. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- D. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to FOIA requests and conducting business in secret and non-transparently;
- E. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- F. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- G. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- H. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- I. Violating numerous State and Town laws, ordinances and customs, as stated herein; and
- J. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.



166. Defendants have violated, and have conspired to violate, the Constitution of the United States, the Constitution of the State of South Carolina, due process of law, the equal protection of the laws, and various State and Town statutes, ordinances, regulations and customs, in numerous respects, including but not limited to the following:

A. The Partnership Agreement violates Article 10, Section 11 and Article 10, Section 14 of the South Carolina Constitution in numerous respects, including but not limited to the following:

1. Neither the State of South Carolina nor any of its subdivisions, including the Town of Summerville and the RDC, may be in a "partnership" with any private person or entity or indemnify or pledge to indemnify any private person or entity for any reason;
2. The Partnership Agreement purports to make the Town and the RDC "partners" with a private Developer, thereby making the Town, the RDC and the Developer fiduciaries with each other in conflict with the Town's and the RDC's fiduciary obligations to the taxpayers; thereby making a private Developer an agent of the Town and the RDC with the actual, implied and apparent authority to act for and bind in contract the Town and the RDC; and potentially exposing the Town and the RDC to unlimited liability for unlawful acts of private parties;
3. The Partnership Agreement requires the Town and the RDC to indemnify private parties for losses that may be suffered by the Developer, thereby potentially exposing the Town and the RDC to great and unlimited liability and which require the RDC to compensate private parties for any environmental damage, which could be astronomical, given that the project will be located on or near where one or more gas stations existed for decades and from which petroleum may have leaked and may leak causing contamination;
4. The Partnership Agreement does not require the private Developer to indemnify the Town or the RDC for damages caused them by the wrongful acts of the private Developer;
5. The Partnership Agreement purports to require the Town and the RDC to pay attorney's fees and costs to the private Developer;

6. The Partnership Agreement purports to require the Town and the RDC to be a "partner" with a private Developer owned and controlled, and which may become owned and controlled, in whole or in part, by parties unknown and unacceptable to the Town or RDC and who may be irresponsible and undesirable as partners of the Town and RDC;
7. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or of the special purpose entity ("SPE") formed or to be formed by the Developer to acquire and transfer title and own and operate property to sell ownership or control of themselves to any third party without the consent of the Town or the RDC;
8. The Partnership Agreement requires the RDC and the Town to pledge or loan its credit for the benefit of the private Developer, which is an individual, company, association or corporation;
9. The Partnership Agreement requires that the Town and the RDC become joint owners in an association or joint venture among the Town, the RDC and the private Developer;
10. The Partnership Agreement provides that \$3,750,000 to be loaned to the private Developer by the RDC using proceeds which may be obtained by bond indebtedness of the Town, and which will or may be general obligation debt;
11. The Partnership Agreement provides that the \$3,750,000 loaned to the private Developer by the RDC, interest free and unsecured, will be used for development of private facilities, including the hotel;
12. The Partnership Agreement provides that \$5,200,000 will be granted to the private Developer by the RDC using proceeds obtained by bonded indebtedness of the Town, which will or may be general obligation debt "together with other funds (if any) of the Town identified by the Town for such purpose;" Partnership Agreement, Para 11, at 7;
13. The Partnership Agreement provides that the \$5,200,000 granted to the private developer will be used to develop public buildings, including a conference center and a garage, which will benefit substantially the private developer, give little or no benefit to the public as they are not needed by the Town or recommended by or listed as a priority in the Town's Comprehensive Plan or Vision Plan;

14. The existence of a partnership including the Town and the RDC with a private Developer creates impermissible conflicts of interest between the partnership and the Town, obligated by law to regulate the boutique hotel project that is the subject of the partnership;
15. The Partnership Agreement requires the Town and the RDC to spend monies and to incur potential liabilities that could or would drain and prevent tax monies from being spent on infrastructure improvements and other greater priorities, including those stated as priorities in the Town's Comprehensive Plan and Vision Plan;
16. The Partnership Agreement requires the Town and the RDC to use tax-dollars collected from certain businesses to finance the creation and operation of businesses that will compete directly with the businesses from which those tax dollars were collected;
17. The Partnership Agreement provides that the Manager who would operate the private hotel and condominiums is the same as the Manager who would operate the public convention center and garage, and that the public convention center and garage would be operated in certain respects for the benefit of the private hotel and condominiums, thereby creating conflicts of interest and comingling of functions, property, costs and profits among private and public parties; and
18. There is no effective remedy for the RDC and the Town if the Developer does not repay the \$3,750,000 loan.

B. The Partnership Agreement and all agreements attached thereto are unlawful, invalid and void ab initio for many reasons, including but not limited to the following:

1. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a Redevelopment Plan and the Redevelopment Project that are the subjects of the Partnership Agreement;
2. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
3. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540 , in part because Defendants have authorized new

structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;

4. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
5. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist as a legal entity;
6. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has not approved the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
7. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
8. The RDC did not validly have officers at the time the Partnership Agreement was signed by the Chairman of the RDC;
9. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
10. Upon information and belief, Defendant Town of Summerville (not the RDC) selected Defendant Applegate & Co. as the Redeveloper through a seemingly competitive bid process for the boutique hotel project as a result of anti-competitive collusion;
11. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
12. The Town's failure to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate & Co. deprived the Town, Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition; and
13. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases continue to be

missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract.

C. The Defendants have violated the Community Development Law in numerous respects, including but not limited to the following:

1. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
2. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
3. The RDC has not prepared or caused to be prepared, and has not recommended, Redevelopment Plans for a Redevelopment Project to the Town of Summerville; instead, the Town has prepared Redevelopment Plans, and the RDC has purported to adopt and implement the Town's Redevelopment Plans and Project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
4. The RDC has not entered into contracts "in accordance with the Redevelopment Plan" created by the RDC as required by S.C. Code Section 31-10-90(6) and other provisions of the Community Development Act;
5. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project not to be maintained to contrive a false claim that the area was "blighted" or a "conservation area," in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;
6. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;

7. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by the Secretary or the Assistant Secretary of the RDC;
8. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment Commission, as required by SC Code Section 31-10-30(a);
9. Required public notice was not published by the RDC before the RDC met and conducted business;
10. The RDC did not follow the proper procedures for creating a Redevelopment Plan, as defined by S.C. Code Section 31-10-20(15);
11. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;
12. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
13. Upon information and belief, the RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
14. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the Redevelopment Plan as hereinafter prescribed," as required by S.C. Code Section 31-10-100( b), because the RDC has not created a Redevelopment Plan as required by the Community Development Law that could be approved by the Town;
15. The RDC has not created a Redevelopment Plan as required by the Community Development Law that contains any of the requirements in S.C. Code Section 31-10-100( c); instead, the Town hired third parties to create a

"Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;

16. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100(d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
17. The RDC violated all of the provisions of SC Code Section 31-10-100(e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible. . .," and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
18. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a Redevelopment Plan to the Town;
19. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a Redevelopment Plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);
20. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the Redevelopment Plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the Redevelopment Plan by the Town and after public notice and award as specified in subsection (c) of this section"; the RDC has not created a Redevelopment Plan, has not obtained the Town's approval of a Redevelopment Plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and (c); and
21. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law,

including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;

D. The Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 in numerous respects, including but not limited to the following:

1. Plaintiff Faye Croft was not provided adequate or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
2. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility; and
3. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project.
4. The Town violated S.C. Code Sec. 6-29-530 by failing to notice and hold a public hearing on the amendment and update of the Comprehensive Plan.

E. The Defendants have violated the Town's ordinances in numerous respects, including but not limited to the following:

1. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior



to initiating any changes covered by this article." (Emphasis added.)

2. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed form, required as a prerequisite to the BAR's considering the boutique hotel project;

F. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes, Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:

1. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
2. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; discussion of environmental, feasibility and traffic comments was delivered in the second BAR meeting about the boutique hotel project despite the Chairman's admonitions; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
3. The BAR threatened opponents of the project with removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
4. BAR members wine and dined with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;

5. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
6. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
7. The BAR failed to have and to publish clear and adequate procedures;
8. The public has not been allowed an opportunity to examine BAR minutes to verify their scope and content;
9. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
10. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
11. The BAR has not informed the public of its right to appeal BAR decisions.

G. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so deficient as to be meaningless, invalid and unlawful;

H. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest; and

I. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings.

### III. CAUSES OF ACTION

#### FOR A FIRST CAUSE OF ACTION

#### VIOLATIONS OF SOUTH CAROLINA CONSTITUTION

167. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

168. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, violate provisions of the South Carolina Constitution, including but not limited to Article 10, Section 11 and Article 10, Section 14.

169. As a direct and proximate result of the Defendants entering into and implementing the above-referenced agreements, the Plaintiffs have been damaged and will continue to be damaged in numerous respects, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; and suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; and by having to incur additional harm and losses, as described above.

## **FOR A SECOND CAUSE OF ACTION**

### **ULTRA VIRES; VOID AB INITIO**

170. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

171. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, are ultra vires, invalid and void ab initio.

172. As a direct and proximate result of the Defendants entering into and implementing the above-referenced invalid agreements, the Plaintiffs have been damaged and will continue to

be damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, and by having to incur additional harm and losses, as described above.

#### **FOR A THIRD CAUSE OF ACTION**

##### **VIOLATIONS OF SOUTH CAROLINA COMMUNITY DEVELOPMENT LAW**

173. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

174. Actions by the Defendants referenced herein violate provisions of the South Carolina Community Development Law.

175. As a direct and proximate result of the Defendants violating the South Carolina Community Development Law, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, and by having to incur additional harm and losses, as described above.

#### **FOR A FOURTH CAUSE OF ACTION**

##### **VIOLATIONS OF SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994**

176. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

177. Actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

178. As a direct and proximate result of the Defendants violating the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, the Plaintiffs have been

damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, and by having to incur additional harm and losses, as described above.

#### **FOR A FIFTH CAUSE OF ACTION**

##### **VIOLATIONS OF SOUTH CAROLINA FREEDOM OF INFORMATION ACT**

179. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

180. Actions by the Defendants referenced herein violate provisions of S.C. Code Ann. § 30-4-10 et seq., quoted above, in numerous respects, including but not limited to giving inadequate notice of public meetings, abuse of executive sessions, failing and refusing to provide notifications of meetings of public bodies and failing to provide minutes within a reasonable time.

181. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 30-4-10 et seq., the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose, and by having to incur additional harm and losses, as described above.

#### **FOR A SIXTH CAUSE OF ACTION**

##### **VIOLATIONS OF S.C. CODE ANN. § 6-1-730**

182. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

183. Actions by the Defendants referenced herein violate S.C. Code Ann. § 6-1-730.

184. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 6-1-730, the Plaintiffs have been damaged and will continue to be damaged by having to pay and

risking having to pay additional and unlawful taxes, for an improper purpose, and by having to incur additional harm and losses, as described above

**FOR A SEVENTH CAUSE OF ACTION**

**VIOLATIONS OF SUMMERVILLE'S  
ORDINANCES, RULES, REGULATIONS AND CUSTOMS**

185. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

186. Actions by the Defendants referenced herein violate ordinances, rules, regulations and customs of the Town of Summerville, including but not limited to the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, et. seq.; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, et. seq.; and the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324.

187. As a direct and proximate result of the Defendants violating ordinances, rules, regulations and customs of the Town of Summerville, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, and by having to incur additional harm and losses, as described above.

**FOR AN EIGHTH CAUSE OF ACTION**

**VIOLATIONS OF FIRST AMENDMENT RIGHTS BY PLAINTIFFS CROFT, CROFT  
TRUST AND HARBESON ONLY**

188. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

189: Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust and Harbeson, and other taxpayers and members of the public, of their rights of free association, speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- B. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- C. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging excessively for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- D. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
- E. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman; and
- F. The BAR intimidated opponents of the project with threats of removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman.

190. As a direct and proximate result of the Defendants violating the First Amendment rights of Plaintiffs Croft, Croft Trust and Harbeson, and others, those Plaintiffs have been damaged and will continue to be damaged by having their First Amendment rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; and by having to incur additional harm and losses, as described above.

#### **FOR A NINTH CAUSE OF ACTION**

#### **VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT BY PLAINTIFFS CROFT, CROFT TRUST AND HARBESON ONLY**

191. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

192. Plaintiffs have liberty interests and property interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Plaintiffs violated S.C. Code Ann. § 6-29-760(D) by rezoning the property of Defendant Croft as described above. S.C. Code Ann. § 6-29-760(D) is arbitrary, unreasonable, capricious and irrational, and violates substantive due process. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust and Harbeson, and other taxpayers and members of the public, of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendment



to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- B. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- C. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- D. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- E. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- F. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- G. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable rules, notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;

- H. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- I. Violating numerous State Constitutional provisions and statutes, and numerous Town laws, ordinances and customs, as stated herein; and
- J. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.
- K. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a redevelopment plan and the redevelopment project that are the subjects of the Partnership Agreement;
- L. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
- M. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540, in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- N. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
- O. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist;
- P. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has rejected the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;

- Q. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
- R. The RDC did not validly have officers and by-laws at the time the Partnership Agreement was signed by the Chairman of the RDC;
- S. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
- T. Upon information and belief, Defendant Town of Summerville selected Defendant Applegate & Co. as the winning bid for the boutique hotel project as a result of anti-competitive collusion, bid-rigging and fraud;
- U. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
- V. The Town's failure to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate & Co. deprived the Town, Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition; and
- W. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases continue to be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract.
- X. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
- Y. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
- Z. The RDC has not prepared or caused to be prepared, and has not recommended, redevelopment plans for a redevelopment project to the

Town of Summerville; instead, the Town has prepared redevelopment plans, and the RDC has purported to adopt and implement the Town's redevelopment plans and project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;

AA. The RDC has not entered into contracts "in accordance with the redevelopment plan" created by the RDC as required by SC Code Section 31-10-90(6) and other provisions of the Community Development Act;

BB. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project to not be maintained to contrive a false claim that the area was blighted or a conservation area, in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;

CC. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;

DD. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by anyone as the Secretary or the Assistant Secretary of the RDC;

EE. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment commission, as required by SC Code Section 31-10-30(a);

FF. Required public notice was not published by the RDC before the RDC met and conducted business;

GG. The RDC did not follow the proper procedures for creating a redevelopment plan, as defined by SC Code Section 31-10-20(15);

HH. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;

- II. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
- JJ. The RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
- KK. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the redevelopment plan as hereinafter prescribed," as required by SC Code Section 31-10-100( b); because the RDC has not created a redevelopment plan as required by the Community Development Law that could be approved by the Town;
- LL. The RDC has not created a redevelopment plan as required by the Community Development Law that contains any of the requirements in SC Code Section 31-10-100( c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;
- MM. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100( d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
- NN. The RDC violated all of the provisions of SC Code Section 31-10-100( e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval;" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
- OO. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a redevelopment plan to the Town;
- PP. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a redevelopment plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);

QQ. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the redevelopment plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the redevelopment plan by the Town and after public notice and award as specified in subsection ( c) of this section"; the RDC has not created a redevelopment plan, has not obtained the Town's approval of a redevelopment plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and ( c);

RR. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;

SS. Plaintiff Faye Croft was not provided sufficient or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;

TT. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;

UU. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project;

VV. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article." (Emphasis added.)

WW. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed application form, required as a prerequisite to the BAR's considering the boutique hotel project;

XX. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:

YY. BAR members wine and dine with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;

ZZ. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information, and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;

AAA. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;

BBB. The BAR failed to have and to publish clear and adequate procedures;

CCC. The public has not been allowed an opportunity to examine BAR minutes timely to verify their scope and content and to correct any errors in those minutes;

DDD. the BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;

EEE. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;

FFF. The BAR has not informed the public of its right to appeal BAR decisions;

GGG. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so deficient as to be meaningless, invalid and unlawful;

HHH. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest; and

III. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings.

193. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs Croft, Croft Trust and Harbeson, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise flooding, obstructions of views, and other impairments to the use of property; and by having to incur additional harm and losses, as described above.

#### **FOR A TENTH CAUSE OF ACTION**

#### **VIOLATIONS OF EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT BY PLAINTIFFS CROFT, CROFT TRUST AND HARBESON ONLY**

194. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.



195. Plaintiffs have property and liberty interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust and Harbeson, and other taxpayers and members of the public, of their rights to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to the following:

A. Giving Defendants Applegate & Co., Arthur F. Applegate and others insider information not provided to the Plaintiffs helping Defendants Applegate & Co., Arthur F. Applegate and others to advance the boutique hotel project to the detriment of the Defendants;

B. Giving Defendants Applegate & Co., Arthur F. Applegate and others more time and latitude to speak for the boutique hotel project that Defendants Croft, Croft Trust and Harbeson, and others, were given to speak against the boutique hotel project; and

C. Unreasonably discriminating against Plaintiffs Croft, Croft Trust and Harbeson by giving Defendants Applegate & Co., Arthur F. Applegate and others more favorable treatments under the law than Defendants Croft, Croft Trust and Harbeson, and others, were given.

194. As a direct and proximate result of the Defendants' violations of the equal protection rights of Plaintiffs Croft, Croft Trust and Harbeson, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened, and

by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; and by having to incur additional harm and losses, as described above.

#### IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

(1) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the Constitution of the State of South Carolina;

(2) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, are and always have been ultra vires, unlawful, null and void ab initio, having no and never having had any force or effect;

(3) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Community Development Law;

(4) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;

(5) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate ordinances, rules, regulations and customs of the Town of Summerville;

(6) The Request for Proposal published by the Town regarding the boutique hotel project, referenced above, is null, void and unenforceable;

(7) The award by the Town and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above, is null, void and unenforceable; and

(8) Defendants have violated the South Carolina Freedom of Information Act;

B: Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

(1) Implementing in any way, including paying, directly or indirectly, any money pursuant to, the Public-Private Partnership Agreement, any provision thereof, and any agreement attached thereto or associated therewith;

(2) Implementing in any way, directly or indirectly, the award by the Town of Summerville and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above;

(3) Violating the South Carolina Community Development Law;

(4) Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994;

(5) Violating the South Carolina Freedom of Information Act;

(6) Violating ordinances, rules, regulations and customs of the Town of Summerville applicable to development;

(7) Violating the First Amendment rights of the Plaintiffs;

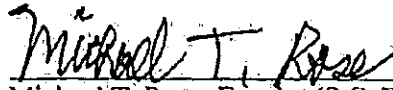
(8) Violating the substantive and procedural due process rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution;

(9) Violating the equal protection rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution; and

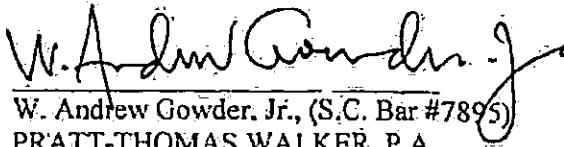
(10) Any and all other such acts as this Court deems appropriate for injunctive relief;

D. Award the Plaintiffs the costs of this action, including attorneys' fees.

Respectfully submitted,



Michael T. Rose, Esquire (S.C. Bar #4910)  
MIKE ROSE LAW FIRM, PC  
406 Central Ave.  
Summerville, SC 29483  
Phone: 843-871-1821  
Facsimile: 843-478-7595 mrose5@sc.rr.com  
Counsel for Plaintiffs



W. Andrew Gowder, Jr., (S.C. Bar #7895)  
PRATT-THOMAS WALKER, P.A.  
Post Office Drawer 22247  
Charleston, South Carolina 29413-2247  
Phone: 843/727-2229 wag@p-tw.com  
Counsel for Plaintiffs.

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE  
UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ., CODE OF LAWS OF  
SOUTH CAROLINA 1976, AS AMENDED.**

STATE OF SOUTH CAROLINA    )  
                                          )  
                                          )  
                                          )  
COUNTY OF DORCHESTER    )  
                                          )

PUBLIC-PRIVATE PARTNERSHIP  
AGREEMENT BETWEEN TOWN OF  
SUMMERVILLE, TOWN OF SUMMERVILLE  
REDEVELOPMENT CORPORATION AND  
APPLEGATE & CO.

THIS PARTICIPATION AGREEMENT is made and entered into as of July 9, 2014 by and between the Town of Summerville, a body corporate and a municipal corporation of the State of South Carolina (the "TOWN"), the Town of Summerville Redevelopment Corporation ("RDC"), a 501(c)(4) nonprofit organization, and Applegate & Co., a corporation incorporated under the laws of the State of South Carolina ("DEVELOPER," and together with the TOWN and RDC, "PARTIES").

WHEREAS, the TOWN owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue, specifically known as TMS# 137-07-4-002 and TMS# 137-07-04-005 (together, "TOWN PROPERTY"); and, in seeking to accelerate continued revitalization of its downtown, openly soliciting a Request-for-Proposals for private development of the TOWN PROPERTY; and

WHEREAS, the TOWN received a high quality proposal from the DEVELOPER for a mixed-use development that includes a hotel, residential units and retail space the TOWN considers beneficial to the economic growth of Summerville; and

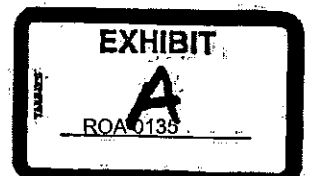
WHEREAS, the DEVELOPER has entered into a contract to purchase approximately 0.65 acres of property adjacent to the TOWN PROPERTY, specifically known as TMS# 137-07-04-004 and TMS# 137-07-04-003 ("DEVELOPER PROPERTY", and together with the TOWN PROPERTY, "PROJECT SITE" as illustrated in Exhibit A ); and

WHEREAS, public infrastructure improvements, including a public parking garage, a conference center and streetscape improvements are necessary to service the proposed project as well as future development in the area; and

WHEREAS, the TOWN desires to facilitate the development of both public and private improvements through strategic capital investments, financial assistance and conveyance of a portion or all of the TOWN PROPERTY; and

WHEREAS, the TOWN established the RDC to facilitate financing and funding for various community and economic development projects within the municipal limits of Summerville, and desires to create a partnership to provide for the efficient and timely development of the proposed project; and

WHEREAS, the PARTIES are interested in entering into agreements to formalize responsibilities of each party for the PROJECT.



NOW THEREFORE, KNOW ALL BY THESE PRESENTS that the TOWN, RDC and DEVELOPER in consideration of the premises and the mutual covenants and agreements herein contained do hereby agree as follows:

1. **DEVELOPER COMMITMENTS.**

a. **DEVELOPMENT RESPONSIBILITY AND CAPITAL INVESTMENT.**

- i. DEVELOPER will procure all necessary easements or property rights and construct a new mixed-use project on the PROJECT SITE along West Richardson Avenue, South Cedar Street and West 2<sup>nd</sup> South Street, that will include both private and public improvements as defined in Sections 1(b) and 1(c) (together referred to as "PROJECT"). The project will represent an expected total private capital investment of approximately Twenty Million and No/100 Dollars (\$20,000,000.00), and the DEVELOPER will use its best effort to complete the Project within twenty four (24) months of execution of this Agreement but in no event later than thirty (30) months.
- ii. DEVELOPER agrees, as part of the PROJECT, to construct public improvements as described in Paragraph 1c, and further to manage and operate, or cause the management and operation by means of the SPE (as defined in Section 6(a)) of, the public parking garage and conference center upon completion of the project as detailed in this Agreement and in the Parking Garage/Conference Center Operation Agreement attached as Exhibit B.
- iii. DEVELOPER will be responsible for all things directly related, as well as incidental, to the construction of the PROJECT. This includes, but not limited to, planning, engineering, administration, managing, promotion, marketing, site work, and vertical construction.

b. **PRIVATE IMPROVEMENTS.** For purposes of this Agreement, "PRIVATE IMPROVEMENTS" include the following privately-owned improvements located inside the boundaries of the PROJECT SITE, unless specifically indicated otherwise.

- i. A hotel of approximately 74,000 square feet, containing no less than 65 rooms; active lower level retail and restaurant space that engages the street and a rooftop bar/restaurant.
- ii. Approximately 34 residential condominium units and associated shared common space.

c. **PUBLIC IMPROVEMENTS.** For purposes of this Agreement, "PUBLIC IMPROVEMENTS" include the following publicly-owned improvements located inside the boundaries of the PROJECT SITE, unless specifically indicated otherwise.

- i. Conference Center with no less than 10,000 square feet of conference/event space.

- ii. Parking facilities and parking garage with no less than a total combined of 179 spaces (22 surface spaces and 157 garage spaces).
  - iii. Associated streetscape improvements along West Richardson Avenue, South Cedar and West 2<sup>nd</sup> South Streets, including: Demolition, relocation, construction, widening and paving of sidewalks, streets and roads; undergrounding of stormwater, sewer and water utilities; lighting; and landscaping.
  - iv. Improvements located outside the boundaries of the PROJECT SITE which confer a benefit on property located within the PROJECT SITE, limited to sidewalks, streets, roads, streetscapes, landscaping, street lights, traffic signals, grading and paving for streets, roads, sidewalks, crosswalks, curb-cuts and ramps.
  - v. Infrastructure costs with respect to the above described Public Improvements including related design, engineering, permitting, and site work costs, notwithstanding that such costs may also benefit the Private Improvements.
2. **TOWN COMMITMENTS.** Subject to approval of its Bond Counsel and closing on bond financing under terms acceptable to it, the TOWN hereby agrees to commit to the following.
- a. TOWN will convey to RDC the TOWN PROPERTY by deed. The TOWN PROPERTY shall be used solely for the development of the PROJECT. Any other use of the TOWN PROPERTY shall require approval by the TOWN.
  - b. TOWN will gift to the RDC a grant in the amount of Eight Million Nine Hundred and Fifty Thousand and No/100 Dollars (\$8,950,000) for purposes of participation in the PROJECT, per the terms of the Grant Agreement attached as Exhibit C.
3. **RDC COMMITMENTS.** Subject to approval of the TOWN's Bond Counsel and closing on bond financing under terms acceptable to it, the RDC hereby agrees to commit to the following.
- a. **GAP FINANCING.** RDC will provide an unsecured loan to the DEVELOPER or the SPE with a limited, subordinate personal guarantee of Arthur H. Applegate for the period of time beginning with the first disbursement of the GAP Loan and ending upon completion of constructions of the Hotel, Parking Garage, and Conference Center, in the amount of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000) ("GAP LOAN") at no interest for a period of 24 months to assist in financing the PRIVATE IMPROVEMENTS per the terms of the Promissory Note attached in Exhibit D. At end of 24 months the DEVELOPER will begin to make monthly interest payments to the RDC at the rate of 3.75% until the DEVELOPER or the SPE obtains permanent financing for the PROJECT. Funds will be repaid based on the terms of the construction loan for the PROJECT, with final payoff of the GAP LOAN no later than final maturity of the Developer's construction loan as provided in Section 10(c) hereof.
  - b. **PUBLIC IMPROVEMENTS INVESTMENT.**

- i. RDC will convey a portion of the TOWN PROPERTY to the DEVELOPER or the SPE as outlined in Section 4 of this Agreement.
  - ii. RDC will fund up to Five Million Two Hundred Thousand and No/100 Dollars (\$5,200,000.00) ("PUBLIC IMPROVEMENTS INVESTMENT") to cover costs associated with the construction of the PUBLIC IMPROVEMENTS, as generally allocated in the budget provided in Exhibit E. RDC will make payments monthly for such PUBLIC IMPROVEMENT as expenses are incurred by the DEVELOPER or SPE. DEVELOPER agrees to provide documentation of these expenses to RDC, in a format as approved by the RDC. RDC agrees to reimburse those expenses within 30 days of submittal by the DEVELOPER or SPE.
  - c. **RESIDENTIAL PARKING.** RDC will lease up to 55 spaces to DEVELOPER or the SPE for a term of twenty (20) years to support the residential portion of the project per the terms of the Parking Garage/Conference Center Operation Agreement attached in Exhibit B. The DEVELOPER or the SPE will be obligated to purchase such parking spaces no later than the end of such twenty (20) year term.
4. **PROPERTY LINE ADJUSTMENT PLAT, SITE PLAN AND AS-BUILT SURVEY.**
- a. **PROPERTY LINE ADJUSTMENT PLAT AND SITE PLAN.** Within sixty (60) days after the execution of this Agreement, DEVELOPER will (i) instruct its surveyor to prepare and submit for review by, and approval from, the RDC a plat necessary to adjust and relocate the property lines within the PROJECT SITE ("PROPERTY LINE ADJUSTMENT PLAT"), and (ii) using the PROPERTY LINE ADJUSTMENT PLAT, instruct its architect and/or engineer to prepare a drawing showing the proposed improvements to be constructed on the PROJECT SITE ("SITE PLAN"). The SITE PLAN will show the parking garage and the conference center located on separate subdivided parcels, each with a separate tax map identification number. Upon approval by the RDC of the PROPERTY LINE ADJUSTMENT PLAT, DEVELOPER will submit the PROPERTY LINE ADJUSTMENT PLAT to the appropriate governmental authority for approval to prepare for closing of the construction loan and the property swap as outlined in Section 6 of this Agreement.
  - b. **AS-BUILT SURVEY.** Upon completion of the PROJECT, the DEVELOPER will have prepared an as-built survey of the PROJECT SITE.
5. **RIGHT-OF-ENTRY, TESTS AND STUDIES.** The PARTIES agree to allow each other, as well as their employees, agents, contractors and subcontractors, to enter upon the PROJECT SITE, and while thereon, make surveys, take measurements, perform test borings or other tests of surface and subsurface conditions, make engineering, environmental and other studies and inspect the PROJECT SITE for purposes of the PROJECT. The PARTIES shall provide to each other copies of all surveys, tests, studies and inspection reports made on PROJECT SITE within 30 days of completing such surveys, tests, studies and inspections. Upon commencement of construction of the Project, such rights of entry shall not interfere with construction



activities and shall be limited to reasonable rights of entry during normal business hours, and subject to all necessary regulations and restrictions necessary for safety in accordance with the Town's regulations and procedures.

6. **PROPERTY SWAP.**

- a. At or before the closing of the DEVELOPER'S or SPE's construction loan, the PARTIES shall effectuate a property swap by exchanging title to certain property within the PROJECT SITE. The exact boundaries of the parcels will be determined by the PROPERTY LINE ADJUSTMENT PLAT as referenced in Paragraph 4a. The DEVELOPER will form a special purpose entity ("SPE") to acquire and transfer title and own and operate the PROJECT SITE. The property swap will likely occur simultaneously with the construction loan closing transaction, and will be accomplished through the execution, delivery and recording of a series of deeds conveying the parcels shown on the PROPERTY LINE ADJUSTMENT PLAT, resulting in the RDC owning the parcel that will contain the parking garage and the parcel that will contain the conference center, and the SPE owning the remaining parcel(s).
- b. The RDC will convey title to the SPE by good and sufficient limited warranty deed, subject only to matters approved by the SPE. The SPE will convey title to the RDC by good and sufficient limited warranty deed, subject only to matters approved by the RDC. Notwithstanding the foregoing, the RDC's obligation to convey the TOWN PROPERTY is contingent upon the DEVELOPER and the RDC reaching a mutual agreement on the PROPERTY LINE ADJUSTMENT PLAT per Paragraph 4a and other conditions as outlined in this Agreement.

7. **PROJECT BONDING AND INSURANCE.** Prior to the property swap as outlined in Section 6 of this Agreement, the DEVELOPER will provide the RDC with the following: Evidence of any insurance coverage reasonably required by the RDC; an executed environmental indemnity agreement and an executed completion guaranty, from DEVELOPER and pertaining to the PROJECT; evidence of any construction bonding as may reasonably be required in the sole discretion of the RDC to insure completion of the PROJECT; and any additional documentation or security reasonably required by the TOWN to acquire financing for the PROJECT, including the issuance and sale of bonds.

8. **PROJECT DESIGN AND CONSTRUCTION.**

- a. **SITE AND ARCHITECTURAL DESIGN.** The project site and architectural design will be based on the conceptual provided in Exhibit F, and as agreed upon by the PARTIES. Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.
- b. **REGULATORY APPROVALS AND PERMITS.** DEVELOPER agrees that all development, construction, operation and leasing of the PROJECT will be done in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental or quasi-governmental entities, agencies or

instrumentalities relating to the development, use or condition of the PROJECT, including, without limitation, all building code and zoning requirements applicable to the PROJECT on the date any permits for the PROJECT are issued and any design guidelines provided to DEVELOPER by the TOWN. DEVELOPER is responsible for obtaining all necessary governmental approvals and permits, including those related to certificates of appropriateness and zoning, for the PROJECT. DEVELOPER will provide to the RDC copies of all such approvals and permits that are from entities other than the TOWN.

- c. **PROCUREMENT.** For purposes of procuring contractors and vendors to construct, operate and lease PUBLIC IMPROVEMENTS, DEVELOPER agrees to use procurement practices which seek to secure the greatest value for the public good with the most efficient means available in accordance with reasonable business standards.

9. **ACCEPTANCE AND DEDICATION OF PUBLIC IMPROVEMENTS.**

- a. **PARKING GARAGE AND CONFERENCE CENTER.** When the Conference Center and Parking Garage portion of the PUBLIC IMPROVEMENTS are completed, the DEVELOPER shall provide written notice to the RDC of its completion and request a final inspection of the project for approval and acceptance of the RDC. Within 10 business days after receipt of notice from the DEVELOPER of completion of the PUBLIC IMPROVEMENTS, the RDC shall perform an inspection of the PUBLIC IMPROVEMENTS and provide written notice to the DEVELOPER if the RDC determines that the DEVELOPER has failed to construct any of the PUBLIC IMPROVEMENTS in accordance with applicable plans and specifications, the governmental permits and approvals or RDC/TOWN standards. Such notice shall provide specific, itemized descriptions of how the PUBLIC IMPROVEMENTS does not comply with the aforementioned standards. The DEVELOPER shall have a period of 90 days to pursue and complete the cure of such defects; provided, however, if such cure requires a longer period, such 90-day period shall be extended so long as the DEVELOPER is diligently pursuing the cure of such defects, unless and until the RDC reasonably objects in writing to such longer period.
- b. **DEDICATION OF OTHER PUBLIC IMPROVEMENTS.** DEVELOPER or the SPE will dedicate all other public improvements as described in Paragraphs 1c(iii) and 1c(iv) of this Agreement to the appropriate local or state authorities. All improvements in the road rights-of-way shall go through the South Carolina Department of Transportation (SCDOT) encroachment permit process and must be approved by the RDC prior to submitting to SCDOT.

10. **CONSTRUCTION BUDGET AND FINANCING.**

- a. DEVELOPER will, no later than two hundred seventy (270) days of execution of this Agreement, provide the RDC with (i) a final construction cost breakdown for the PUBLIC IMPROVEMENTS and (ii) evidence acceptable to the RDC of a loan commitment from a financial institution acceptable to the RDC (in the RDC's reasonable discretion) (the "Construction Lender") for construction

financing (the "Construction Loan") and any required equity from investors (the "Equity Investors") sufficient to complete construction of the PROJECT.

- b. The PARTIES acknowledge that certain pre-construction expenditures will be necessary prior to the DEVELOPER beginning construction of the PROJECT, including but not limited to geotechnical and environmental studies, engineering, and civil and architectural design, and that some of the expenditures will be associated with the PUBLIC IMPROVEMENTS as part of a mixed-used development project. Therefore, should the PROJECT not proceed to construction as a result of default of this Agreement by the TOWN or RDC, the RDC agrees to pay the DEVELOPER for those preconstruction costs incurred for the PUBLIC IMPROVEMENTS and for PRIVATE IMPROVEMENTS by the DEVELOPER or the SPE, as substantiated in writing, up to Four Hundred Thousand and No/100 Dollars (\$400,000).
- c. The RDC acknowledges that the DEVELOPER's Construction Lender will likely require a first lien position on the parcels within the PROJECT SITE that will contain the hotel and the residential condominiums. The RDC further acknowledges that the Equity Investors will likely require a second lien position on the PRIVATE IMPROVEMENTS, with regard to payment of interest on their investment in the PROJECT as well as the return of their capital investment. RDC agrees to maintain a subordinate position to the Construction Lender and the Equity Investors with respect to the same. In any event, at such time as the DEVELOPER refinances the Construction Loan to permanent financing and pursuant to Paragraph 3a, the DEVELOPER or the SPE shall repay the RDC in full in the amount of the Gap Loan, plus all accrued but unpaid interest attributable to the same, at the time of the closing of the permanent loan. The parking garage and conference center shall not be part of the Construction Lender's collateral, although it is understood that this Agreement and its exhibits may be collaterally assigned to the construction lender.

11. ISSUANCE OF LIMITED OBLIGATION BONDS. Subject to the provisions of Section 10(b) hereof, the PARTIES acknowledge that the obligations of the Town and the RDC hereunder are contingent upon the TOWN's ability to issue, upon reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount sufficient, together with other funds (if any) of the TOWN identified by the TOWN for such purpose, to fund the GAP LOAN and the costs of the PUBLIC IMPROVEMENTS, all of which shall be of a nature which satisfies the criteria set forth in Section 6-1-730 of the Code of Laws of South Carolina 1976, as amended.

12. LEASE, OPERATION AND MAINTENANCE OF PUBLIC IMPROVEMENTS. Upon completion of the PROJECT, DEVELOPER agrees to enter into, or cause the SPE to enter into, an agreement to maintain and operate the parking garage and conference center portion of the PUBLIC IMPROVEMENTS per the terms as specified in the Parking Garage/Conference Center Operation Agreement attached as Exhibit B and in accordance with the requirements of Internal Revenue Service Revenue Procedure 97-13 or any successor guidelines.

13. **FAILURE TO COMPLETE PUBLIC IMPROVEMENT PROJECT.** If the DEVELOPER or SPE starts but fails to complete all or a portion of the PUBLIC IMPROVEMENTS within a reasonable time period after commencement of construction (except delays due to force majeure), the RDC shall have, in addition to any other rights and remedies which may be available under this Agreement or at law, the right to draw on the Bond proceeds to complete the PUBLIC IMPROVEMENTS, and reduce the amount of PUBLIC IMPROVEMENT INVESTMENT to which the DEVELOPER is entitled under Paragraph 3b(ii) of this Agreement in the amount necessary to complete the applicable PUBLIC IMPROVEMENTS. If the RDC exercises its rights to remedy or complete all or a portion of the PUBLIC IMPROVEMENTS as set forth above, the DEVELOPER agrees that it shall make, or cause the SPE to make, any further assignments to the RDC of any construction contracts, professional services contracts (e.g., architectural, engineer or prime contractors) and rights to use plans, drawings and specifications, and any governmental permits or approvals for such PUBLIC IMPROVEMENTS, as may be necessary for the RDC to complete such PUBLIC IMPROVEMENTS.
14. **NOTICES.** All, notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by overnight courier, or by fax, with evidence of delivery, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder.
- a. **DEVELOPER:** Applegate & Co., a South Carolina Corporation, 4130 Faber Place Dr., Suite 111, N. Charleston, SC 29405
  - b. **TOWN:** Town of Summerville Mayor, 200 S. Main St., Summerville, SC 29483
  - c. **Copy to Town Attorney:** Town of Summerville Attorney, 200 S. Main St., Summerville, SC 29483.
15. **GENERAL PROVISIONS.**
- a. The TOWN represents to the RDC and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this Agreement and shall, subject to changes in applicable law beyond the control of the TOWN, continue to have such power and authority throughout the term of this Agreement. The TOWN further represents that it will use reasonable efforts and act in good faith in the performance of its obligations under this Agreement.
  - b. The RDC represents to the TOWN and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this Agreement and shall, subject to changes in applicable law beyond the control of the RDC, continue to have such

power and authority throughout the term of this Agreement. The RDC further represents it will use reasonable efforts and act in good faith in the performance of its obligations under this Agreement.

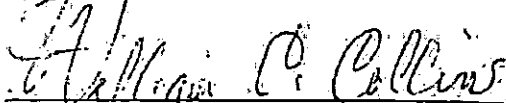
- c. The DEVELOPER represents to the TOWN and RDC that it has full power and authority to perform its obligations under, as and when required by this Agreement and shall continue to have such power and authority throughout the term of this Agreement. The DEVELOPER further represents that it will use reasonable efforts and act in good faith in the performance of its obligations under this Agreement.
- d. No remedy provided herein is exclusive, and each party hereto shall have all remedies available to it at law and in equity.
- e. All promises made by the TOWN or the RDC in this Agreement are intended to be promises to the DEVELOPER in the TOWN's and the RDC's business capacity, and no provisions herein are intended to create a duty where none otherwise exists from the TOWN to the owners, officers, employees, agents, patrons, guests or tenants of the DEVELOPER, and no such person shall be deemed to have any entitlement as a third party beneficiary of this Agreement. The DEVELOPER acknowledges that certain undertakings by the TOWN are subject to enactments of approving ordinances or resolutions, and in some cases, a public hearing, by the Town Council with respect to the matters discussed herein.
- f. This Agreement supersedes all prior discussions and agreements between the parties with respect to the PROJECT. This Agreement contains the sole and entire understanding between the parties, and all other promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties, if any, are merged into this Agreement. Nothing in this agreement exempts DEVELOPER from compliance with all local, state, and other authorized jurisdiction permitting processes, building code, or land use requirements.
- g. No modifications, amendments or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by all of the Parties hereto.
- h. The DEVELOPER may not assign its rights in this Agreement without the prior written consent of the TOWN and the RDC.
- i. This Agreement shall be governed by and construed under the laws of the State of South Carolina.

**16. MEDIATION / ARBITRATION.** Any dispute, controversy, difference or claim arising out of, relating to or in connection with this Agreement (a "**Claim**"), shall be negotiated by the parties within twenty (20) days of written notice of a Claim ("**Dispute Notice**"). Such Dispute Notice shall indicate in bold or capital letters that it is a Dispute Notice being filed under the Agreement. If no agreement is reached within such 20-day period, the parties agree to submit the claim to arbitration, as provided in the South Carolina Uniform Arbitration Act, Title 15, Chapter 48 of the Code of Laws of South Carolina ("**Arbitration**"). In the event the parties submit a dispute to Arbitration, it shall be undertaken in Charleston, South Carolina. Either party

may submit the Claim to Arbitration. The party requesting Arbitration shall give a written demand for Arbitration to the other party by registered or certified mail. The demand shall set forth a statement of the nature of the dispute, the amount involved and the remedies sought. No later than thirty (30) calendar days after the demand for Arbitration is served, the parties shall jointly select and appoint an arbitrator. If the parties do not agree on the selection of an arbitrator, each party shall select one arbitrator by written notice to the other party no later than thirty-five (35) calendar days after the demand for Arbitration is served and the two so selected shall select a third arbitrator no later than forty-five (45) calendar days after the demand for Arbitration is served. Such arbitrator shall be knowledgeable in the areas of law governing this Agreement. The failure of a party to select an arbitrator, or the failure of an arbitrator to provide a selection of a third arbitrator, within the times provided herein, shall eliminate the selection of an arbitrator by such party, and the arbitrator shall be the arbitrator selected by the other party in a timely manner. The arbiter's award shall include (i) a provision that the prevailing party in such Arbitration shall recover its costs of the Arbitration and reasonable attorneys' fees from the other party, and (ii) the amount of such costs and fees.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

**TOWN OF SUMMERVILLE, SOUTH  
CAROLINA**



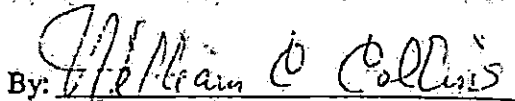
Mayor, Town of Summerville, South Carolina

ATTEST:



Clerk, Town Council of the  
Town of Summerville, South Carolina

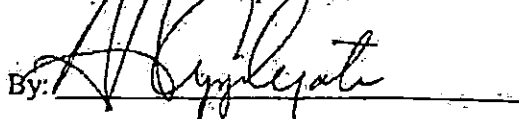
**TOWN OF SUMMERVILLE  
REDEVELOPMENT CORPORATION**

By: 

Its: Chairman

**APPLEGATE & CO.**

a South Carolina Corporation

By: 

Its: President

## **EXHIBITS**

- **Exhibit A - Project Site Illustration**
- **Exhibit B - Parking Garage/Conference Center Operation Agreement**
- **Exhibit C - Grant Agreement**
- **Exhibit D - Promissory Note**
- **Exhibit E - Estimate Public Improvements Budget**
- **Exhibit F - Conceptual Site and Architectural Illustrations**





**APPLEGATE & CO.**  
COMMERCIAL REAL ESTATE

Exhibit A

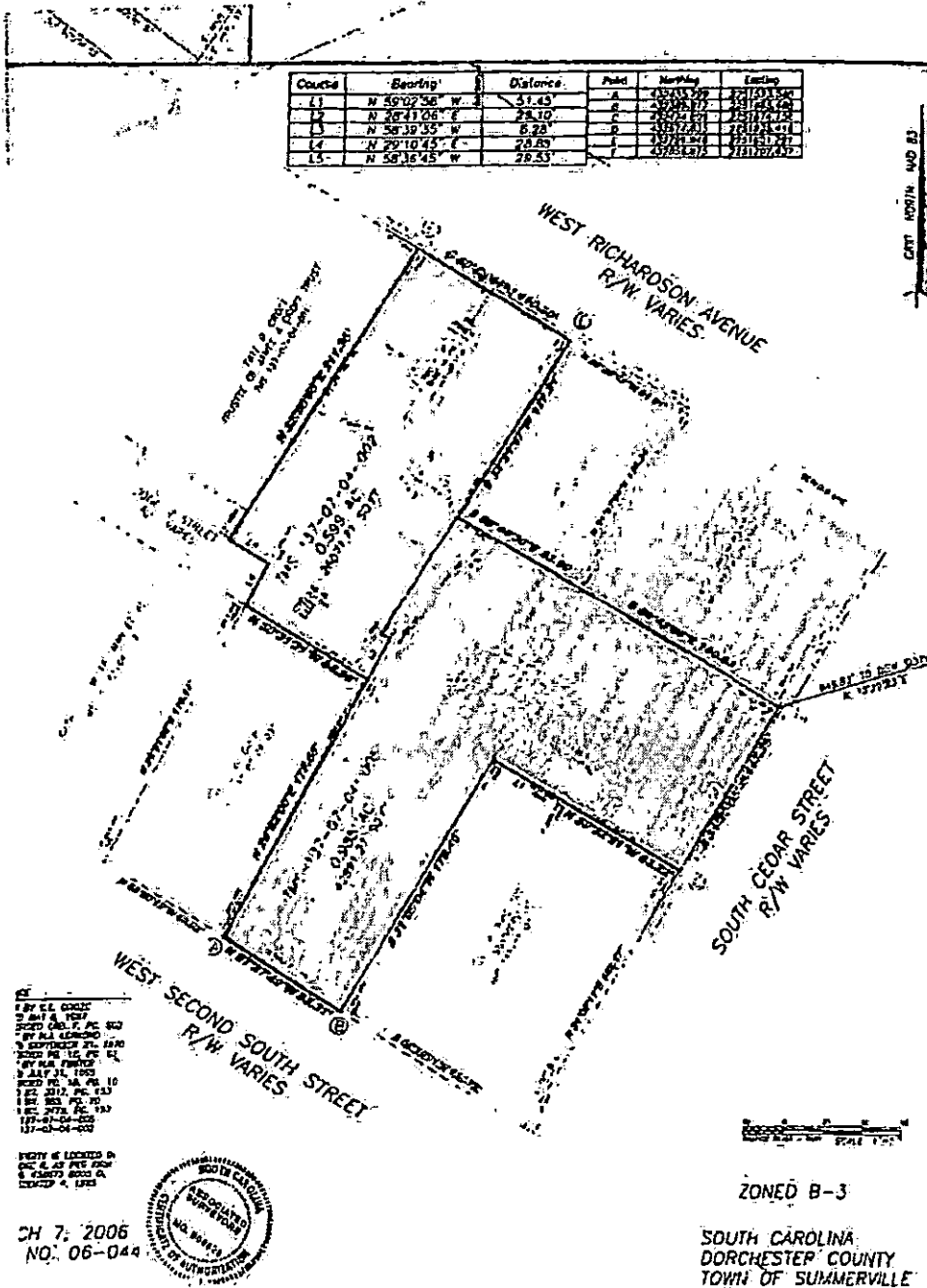


EXHIBIT B

PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT  
(The Dorchester)

Between

TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION,  
as the Owner

and

THE DORCHESTER, LLC,  
as Manager

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Attachment A – Parking Lease Agreement

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT  
(The Dorchester)

THIS PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT (this "Agreement"), made and entered into as of July 9, 2014, is between TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION (the "RDC"), a 501(c)(4) organization, and THE DORCHESTER, LLC, a South Carolina limited liability company (the "Manager").

WITNESSETH:

WHEREAS, the Town of Summerville, South Carolina (the "Town"), owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue, specifically known as TMS# 137-07-4-002 and TMS# 137-07-04-005 (together, "Town Property"), and, in seeking to accelerate continued revitalization of its downtown, openly solicited a Request-for-Proposals for private development of the Town Property in accordance with Title 31, Chapter 10 Community Development Law of the South Carolina Code of Laws 91976) *et. seq.*, as amended; and

WHEREAS, the Town received a high quality proposal from Applegate & Co. (the "Developer") for a mixed-use development that includes a hotel, residential units, and retail space (the "Project") the Town considers beneficial to the economic growth of Summerville; and

WHEREAS, the Developer has entered into a contract to purchase approximately 0.65 acres of property adjacent to the Town Property, specifically known as TMS# 137-07-4-004 and TMS# 137-07-04-003 ("Developer Property," and together with the Town Property, "Project Site");

WHEREAS, public infrastructure improvements, including a public parking garage and a conference center on the Project Site, are necessary to service the Project as well as future development in the area; and

WHEREAS, the Town established the RDC to facilitate financing and funding for various community and economic development projects within the municipal limits of Summerville, and to create a partnership to provide for the efficient and timely development of the Project; and

WHEREAS, the Developer agreed in the Public-Private Partnership Agreement, dated as of July 9, 2014 (the "PPP Agreement"), to construct Public Improvements (as defined in the PPP Agreement), including the Parking Garage (the "Parking Garage") and the Conference Center (the "Conference Center"), as part of the Project, and further to manage and operate, or cause the management and operation by means of a special purpose entity formed by the Developer of, the public Parking Garage and Conference Center upon completion of the Project as detailed in the PPP Agreement and in this Agreement; and

WHEREAS, in accordance with the terms of the PPP Agreement, the RDC has agreed to enter into this Agreement with the Manager upon completion of the Project to maintain and operate the Parking Garage and Conference Center;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained the RDC and the Manager agree as follows:

Section 1. Appointment and Acceptance. The RDC hereby appoints the Manager as its exclusive independent contractor for the management of the Conference Center and the Parking Garage; and the Manager accepts such appointment, subject to the terms and conditions set forth herein.

Section 2. Description of the Managed Public Improvements. The Public Improvements to be maintained and operated by the Manager under this Agreement consist of a Conference Center with no less than 10,000 square feet of conference/event space and parking facilities and parking garage with no less than a combined total of 179 spaces located on the Project Site (22 surface spaces and 157 garage spaces).

Section 3. Management and Operation of the Project.

(a) General. The Manager will provide the services described in this Section directly, through its Affiliates, or through Subcontractors. For purposes of this Agreement, the term "Affiliate" means any corporation, limited liability company, partnership, limited partnership, sole proprietor, or other business organization owned by or under common ownership with the Manager. For purposes of this Agreement, the term "Subcontractor" means any person or entity with whom the Manager enters into a contractual relationship in order to provide some or all of the services required to be provided hereunder by the Manager. As provided throughout this Agreement, the Manager will provide services pursuant to this Agreement in its capacity as an independent contractor. The Manager shall operate the Conference Center and the Parking Garage as facilities available for use by any member of the public upon paying the published rates for use and in accordance with the Manager's regulations as agreed upon by the RDC with respect to use of the Conference Center and the Parking Garage.

(b) Operating Standards. The Manager shall employ an adequate staff to manage, operate, maintain, and collect revenue from the Conference Center and the Parking Garage and shall have full authority and complete supervision over the employment, discharge, and performance of duties of all personnel used in the maintenance, operation, and renting of the Conference Center and the Parking Garage including, without limitation, oversight of services performed under third-party service contracts. The Manager shall use its best efforts in the management of the Conference Center and the Parking Garage and the collection of the rents and other income due and to become due therefrom. Management of the Project shall include practices that are customary and usual in the operation and management of comparable conference and parking facilities and in the Conference Center and the Parking Garage having such services as are customarily provided by operators of such conference and parking facilities of comparable class and standing as the Conference Center and the Parking Garage whenever possible.

(c) Marketing. The Manager shall prepare a marketing program for the Conference Center and the Parking Garage and shall supervise the marketing activities for the Conference Center and the Parking Garage including all advertising layouts, brochures, and campaigns. Advertising expenses shall be paid as operating expenses of the Conference Center and the Parking Garage.

(d) Setting and Collection of Fees and Charges. (i) The Manager shall supervise the staff in the renting of the Conference Center and the collection of parking fees for the Parking Garage. Incident thereto, the following provisions shall apply:

- (A) The Manager shall supervise the taking and processing of reservations for the Conference Center.
- (B) The Manager shall prepare all reservation forms for the Conference Center.
- (C) The Manager shall supervise the collection, deposit, and disbursement of advance reservation fees or deposits, if any.

(ii) On behalf of the RDC, the Manager shall establish, on at least an annual basis, the rates and rentals for the use of the Conference Center and for spaces in the Parking Garage. In establishing such rates and rentals, the Manager agrees that it has a fiduciary duty to the RDC to use its best efforts to establish such rates and rentals as will, in its judgment, optimize revenues to be derived from the operation of the Conference Center and the Parking Garage. The RDC understands that the Manager may offer discounts of up to 50% off of the published rates and charges to patrons of the hotel located on the Project Site for use of the Conference Center or spaces in the Parking Garage.

(e) Collection of Charges and Other Receipts. The Manager shall supervise the collection of all charges, and other amounts receivable in connection with the management and operation of the Conference Center and the Parking Garage.

(f) Enforcement of Leases. The Manager shall use its best efforts to secure full compliance by each user of the Conference Center and the Parking Garage with the terms of his or her agreement.

(g) Maintenance and Repair. Manager shall use its best efforts to cause the Conference Center and the Parking Garage to be maintained in good repair, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. Incident thereto, the following provisions shall apply:

- (i) Special attention shall be given to preventive maintenance, and, to the extent more cost effective, the services of the maintenance employees of the Manager shall be used.
- (ii) The Manager shall contract on behalf of the RDC with qualified independent contractors for the maintenance and repair of heating

and air conditioning systems and for other extraordinary repairs beyond the capability of regular maintenance employees after consultation with the RDC with respect to the cost of such extraordinary repairs. In the event that repairs of an emergency nature are required at a time when it is impracticable to consult with the RDC as to cost, the Manager is hereby authorized to contract on behalf of the RDC to undertake such repairs and shall promptly notify the RDC of such action. The Manager shall review and approve all invoices for maintenance and repair expenses subject to reimbursement or payment by the Conference Center and the Parking Garage. The Manager shall process these invoices in a timely manner to benefit from discounts offered by the appropriate vendor. The Manager shall allow to the RDC any rebate or discount which the Manager shall obtain.

- (iii) The Manager shall receive and promptly investigate all service requests from users of the Conference Center or the Parking Garage and take such action thereon as may be justified and keep records of the same for a reasonable period of time. Incidents requiring repairs of a serious nature shall be reported to the RDC promptly.
- (iv) The Manager is hereby authorized to purchase all materials, equipment, tools, appliances, supplies, and services reasonably necessary for proper maintenance and repair of the Conference Center or the Parking Garage.

(h) Capital Improvements.

- (i) The Manager shall prepare for the RDC's review and approval a Capital Budget Plan (the "Capital Budget Plan") relating to proposed capital expenditures for building, grounds, and furniture ("Capital Improvements") and periodically advise the RDC of the status of the Capital Budget Plan. The Manager is hereby authorized at the reasonable expense of the Conference Center or the Parking Garage, as applicable, to make contracts for all necessary renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan. All Capital Improvements shall be subject to the prior approval of the RDC.
- (ii) All Capital Improvements and the construction, repair and maintenance thereof shall be constructed and made in a good and workmanlike manner, free from all liens and encumbrances, in accordance with the policies and procedures of the Manager and the RDC for capital improvements.

(i) Utilities and Services. The Manager shall make arrangements and execute any necessary agreements for water, electricity, gas, telephone, data, CATV, internet, sewage

and trash disposal, vermin extermination, snow removal, landscape care and related utilities and services for the Conference Center and the Parking Garage. The Manager is hereby authorized to make such contracts on behalf of the RDC as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services, if any, shall be paid as operating expenses of the Conference Center and the Parking Garage.

(j) Employees. All staffing required pursuant to Section 3(a) shall be employees of the Manager, its Affiliates, or Subcontractors. The Manager shall hire, pay, supervise, and discharge such personnel, subject to the following conditions:

- (i) The compensation, including fringe benefits, of the employees performing on-site functions shall be within the Manager's sole discretion. Compensation of bookkeeping, clerical, and other managerial personnel shall be within the Manager's sole discretion.
- (ii) Subject to the limitations set forth in Section 9(b) below, the Manager shall be reimbursed for reasonable compensation, including fringe benefits, payable to all employees performing on-site functions, and for all local, State, and federal taxes, assessments (including but not limited to Social Security taxes, unemployment insurance, and workers' compensation insurance), and other reasonable expenses incident to the employment of such personnel. Such reimbursements shall be paid as operating expenses of the Conference Center and the Parking Garage.

(k) Records and Reports. The Manager shall be responsible for all reports related to the operations of the Conference Center and the Parking Garage that the RDC is obligated to prepare, if any, for any governmental agency, at the expense of the Conference Center or the Parking Garage, as applicable, which shall include, without limitation, the following responsibilities with respect to the records and reports:

- (i) The Manager shall establish and maintain a comprehensive system for records, books, and accounts including, but not limited to, records tracking all inventory purchased and used in connection with the Conference Center or the Parking Garage, and records of all maintenance and repairs performed on the Conference Center or the Parking Garage. All records, books, and accounts shall be subject to examination at reasonable hours by any authorized representative of the RDC. The RDC shall have the right to inspect and audit the Manager's books and records with respect to the Conference Center and the Parking Garage.

(l) Customer Service. It is the expectation of the RDC that the Manager shall, in the course of its duties hereunder, provide a high level of customer service to the users of the Conference Center and the Parking Garage.



Section 4. Funds and Accounts. The Manager shall establish and maintain certain accounts for the Project as set forth herein. The Manager assumes responsibility for handling all funds in accordance with the terms of this Agreement. The Manager shall bear all damage, loss, cost or expense from the theft or misapplication of funds.

(a) Operating Expenses. The Manager shall pay all sums payable by the RDC as expenses of the Conference Center and the Parking Garage authorized to be incurred by the Manager under the terms of this Agreement.

Section 5. Administrative and Supervisory Expenses. All administrative and supervisory salaries and expenses and other management overhead expenses (other than expenses for on-site employees) shall be borne by the Manager out of its own funds and shall not be treated as expenses of the Conference Center and the Parking Garage. However, when it is to the financial benefit of the Conference Center or the Parking Garage, normal on-site duties and reasonable expenses (including but not limited to staff, bookkeeping, accounting services, clerical, office supplies and equipment, telephone, and postage) may be performed off-site and paid for and treated as expenses of the Conference Center and the Parking Garage. In addition, when feasible and to the financial benefit of the Conference Center or the Parking Garage, certain functions and services shall be shared with the Private Improvements, and the reasonable cost shall be prorated on an equitable basis and charged to the Conference Center or the Parking Garage. All payments to the Manager shall be subject to the limitations set forth in Section 9(b) below.

Section 6. Management Overhead Expenses. Management overhead expenses, which shall be borne by the Manager out of its own funds and which shall not be treated as operating expenses of the Conference Center or the Parking Garage and shall not be reimbursable to the Manager, shall include: (a) compensation of central office or off-site personnel employed or contracted by the Manager, (b) rent for off-site offices utilized by the Manager; telephone and utility charges incurred at such offices; office supplies; rent for and repair and maintenance of office machines used at such offices; postage used at such offices; any rental for or allocation of depreciation or amortization of any properties owned by or leased by the Manager and used in the performance of its duties hereunder, (c) premiums for fidelity bonds on the Manager's employees not associated with the Conference Center or the Parking Garage, and (d) premiums for general liability, workers' compensation, or other such insurance carried by the Manager not associated with the Conference Center or the Parking Garage.

Section 7 Residential Parking. RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Attachment A.

Section 8. Insurance. The Manager shall arrange periodic conferences with the RDC and an insurance consultant regarding the insurance coverage required for the Conference Center and the Parking Garage.

Section 9. Manager's Compensation.

(a) During the initial one (1) year term of this Agreement, the Manager shall be compensated for its services hereunder by the RDC by payment of a management fee in the amount of \$3,000.00 per month, payable quarterly.

(b) Notwithstanding any other provisions of this Agreement, the total amount payable to the Manager as compensation under any provision of this Agreement, including without limitation Section 3(j) and Section 5 above, shall not exceed in any year the fixed fee compensation set forth in Section 9(a). Reimbursement of the Manager for actual and direct expenses paid by the Manager to unrelated third parties is not treated as compensation to the Manager for purposes of this paragraph.

#### Section 10. Damage or Destruction.

Damage or Destruction. If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete the Restoration in accordance with Section 10(b).

Restoration. Upon receipt of notice from the Manager of an event of damage or destruction of either the Conference Center or the Parking Garage, the RDC will promptly commence and expeditiously complete any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. If not completed as provided in the previous sentence, the Manager may terminate this Agreement in accordance with the provisions of Section 13 hereof. In the event that the RDC fails promptly to commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay, upon written demand, to the Manager. The Manager may offset any revenues derived from the operation of the Conference Center and the Parking Garage to satisfy the obligation of the RDC to pay the Manager for the costs of restoration.

Fees. During the period from the date of the damage or destruction, through the: (i) completion of the restoration; or (ii) termination of this Agreement, the RDC will continue to pay the management fee provided in Section 9 hereof.

Section 11. Compliance with Laws. The Manager and its employees and subcontractors, shall perform all of the services under this Agreement in compliance with all applicable rules, regulations, orders, determinations, ordinances, or laws of any federal, State, or local authority. If the Manager shall fail or refuse to comply with or abide by any rule, order, determination, ordinance, or law of any federal, State, or local authority, the RDC may terminate this Agreement in accordance with the provisions of Section 13 hereof.

Section 12. Assignment. The Manager shall not transfer, assign, pledge, or hypothecate in whole all of its rights, duties, or obligations under this Agreement without

the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager.

Section 13. Term of Agreement; Renewal of Term. (a) This Agreement shall be in effect for an initial term of one (1) year, beginning on the date of execution and delivery hereof and ending one year later. The Manager and the RDC may extend the term of this Agreement for an additional one year period up to fifteen (15) years by their mutual agreement on the Manager's compensation under Section 9 for such renewal term.

(b) This Agreement may be terminated prior to the end of the current term in accordance with the following conditions:

(i) This Agreement may be terminated by the mutual consent of the RDC and the Manager at any time.

(ii) Except as hereinafter provided, in the event a petition in bankruptcy is filed by or against either the RDC or the Manager, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other.

(iii) Either the RDC or the Manager may terminate this Agreement by written notice to the other party in the event that the other party shall breach its obligations, duties, or covenants under the terms of this Agreement. Such notice shall specify the nature and scope of the claimed breach of this Agreement and shall provide the breaching party with the right to cure the claimed breach within 30 days of the receipt thereof. If the claimed breach is not cured to the satisfaction of the non-breaching party within the 30-day cure period, this Agreement shall terminate; provided, that so long as a course of action adequate to remedy such failure shall have been commenced by the breaching party within such 30-day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby within 90 days of such occurrence, this Agreement may not be terminated for such breach. The non-breaching party shall also have the right to seek damages and exercise such other remedies as may be provided by law or in equity against the breaching party.

(c) Upon termination of this Agreement, the Manager shall submit to the RDC financial statements and information with respect to the Conference Center and Parking Garage reasonably requested by the RDC. The termination of this Agreement shall not affect the rights and obligations of the parties hereto as set forth herein as to matters, events, obligations, and duties that pertained or accrued prior to the date of termination.

(d) Upon termination of this Agreement, the Manager shall promptly turn over to the RDC all of the records with respect to the Conference Center and Parking Garage and any other property of the RDC within the Manager's possession. Notwithstanding the termination of this Agreement, any payments due to the Manager under this Agreement will be paid as provided herein.

(e) Upon termination of this Agreement, the Manager agrees to recognize and accept any successor manager of the Conference Center and Parking Garage selected by the RDC as the manager for the Conference Center and Parking Garage.

Section 14. Manager's Licenses. The Manager represents and warrants that it has obtained and covenants to maintain all licenses necessary for the performance of its obligations under this Agreement.

Section 15. Interpretative Provisions. (a) This written Agreement and attachments hereto (if any) constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the Company and the Manager with respect to the management of the Conference Center and Parking Garage. It is expressly agreed that there are no verbal understandings or agreements that in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the Company and the Manager.

(b) This Agreement has been executed in several counterparts, each of which constitute a complete original Agreement and which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

(c) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.

(d) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.

(e) The paragraph headings or captions appearing in this Agreement are for convenience only, and are not to be considered in interpreting this Agreement.

Section 16. Notices. (a) All notices, certificates, demands, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, return receipt requested, or given when dispatched by facsimile transmission, or by personal delivery addressed as follows:

If to the RDC:

Town of Summerville Redevelopment Corporation

Attention: Chairman  
Summerville, South Carolina 29483  
Telephone: (843) 871.6000  
Facsimile: (843) 871.6954

If to the Manager:

The Dorchester, LLC  
Attention: Arthur H. Applegate  
2130 Faber Place Dr., Suite 111  
N. Charleston, South Carolina 29405  
Telephone: (843) 577.3900  
Facsimile: (843) 577.3903

(b) Either party hereto may, by notice given to each of the other, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent.

Section 17. Applicable Law. This Agreement and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of South Carolina.

Section 18. Successors and Assigns; Changes. This Agreement shall be binding upon the parties hereto and their successors and assigns.

Section 19. Mediation / Arbitration. Any dispute, controversy, difference or claim arising out of, relating to or in connection with this Agreement (a "**Claim**"), shall be negotiated by the parties within twenty (20) days of written notice of a Claim ("**Dispute Notice**"). Such Dispute Notice shall indicate in bold or capital letters that it is a Dispute Notice being filed under the Agreement. If no agreement is reached within such 20-day period, the parties agree to submit the claim to arbitration, as provided in the South Carolina Uniform Arbitration Act, Title 15, Chapter 48 of the Code of Laws of South Carolina ("**Arbitration**"). In the event the parties submit a dispute to Arbitration, it shall be undertaken in Charleston, South Carolina. Either party may submit the Claim to Arbitration. The party requesting Arbitration shall give a written demand for Arbitration to the other party by registered or certified mail. The demand shall set forth a statement of the nature of the dispute, the amount involved and the remedies sought. No later than thirty (30) calendar days after the demand for Arbitration is served, the parties shall jointly select and appoint an arbitrator. If the parties do not agree on the selection of an arbitrator, each party shall select one arbitrator by written notice to the other party no later than thirty-five (35) calendar days after the demand for Arbitration is served and the two so selected shall select a third arbitrator no later than forty-five (45) calendar days after the demand for Arbitration is served. Such arbitrator shall be knowledgeable in the areas of law governing this Agreement. The failure of a party to select an arbitrator, or the failure of an arbitrator to provide a selection of a third arbitrator, within the times provided herein, shall eliminate the selection of an arbitrator by such party, and the arbitrator shall be the arbitrator selected by the other party in a timely manner. The arbiter's award shall include (i) a provision that the prevailing party in such Arbitration shall recover its costs of the Arbitration and reasonable attorneys' fees from the other party, and (ii) the amount of such costs and fees.

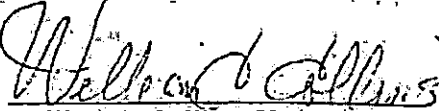
Section 20. Attorney's Fees. In the event of a dispute hereunder, the prevailing party shall be entitled to receive reimbursement of its reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, the RDC and the Manager by their duly authorized representatives have executed this Agreement on the date first above written.

RDC:

TOWN OF SUMMERSVILLE  
REDEVELOPMENT CORPORATION

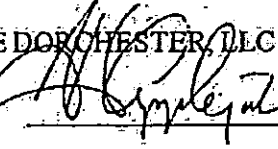
By:

  
William C. Collins, Chairman

MANAGER:

THE DORCHESTER, LLC

By:



**ATTACHMENT A**

**THIS PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION** (this "Lease") is made and entered into as of this 9 day of July, 2014, by and between **TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION**, a 501(c)(4) organization, as landlord ("RDC") and **THE DORCHESTER, LLC**, a South Carolina limited liability company ("Tenant").

**WITNESSETH:**

**WHEREAS**, the Town of Summerville, South Carolina established the RDC to facilitate financing and funding for various community and economic development projects within the municipal limits of Summerville, and to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space (the "Project") the Town considers beneficial to the economic growth of Summerville; and

**WHEREAS**, Applegate & Co. (the "Developer") agreed in the Public-Private Partnership Agreement, dated as of July \_\_, 2014 (the "PPP Agreement"), to construct Private Improvements (as defined in the PPP Agreement), including approximately 34 residential condominium units and associated shared common space (the "Residential Units") and to construct Public Improvements (as defined in the PPP Agreement), including the Parking Garage (the "Parking Garage"), as part of the Project, and further to manage and operate, or cause the management and operation the public Parking Garage upon completion of the Project as detailed in the PPP Agreement by means of the Tenant pursuant to the terms of the Parking Garage/Conference Center Operation Agreement, dated as of July \_\_, 201\_\_ (the "Operation Agreement"); and

**WHEREAS**, the RDC has agreed in the Operation Agreement to lease 55 spaces in the Parking Garage to the Tenant for a twenty (20) year term to support the Residential Units per the terms of this Lease; and

**WHEREAS**, the RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage in accordance with the terms hereof;

**NOW, THEREFORE**, for and in consideration of the mutual promises and benefits herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RDC and the Tenant hereby agree as follows:

- 1. PREMISES.** The RDC leases to Tenant and Tenant hereby leases from the RDC, in accordance with the terms hereof, those fifty-five (55) parking spaces (the "Premises") located within the Parking Garage which is located along West Richardson Avenue and S. Cedar Street ("Tenant's Property"), said Premises being shown as the highlighted area on Exhibit A attached hereto and by this reference made a part hereof.
- 2. TERM.** The initial term ("Term") of this Lease shall be for a period of twenty (20) years commencing on \_\_\_\_\_ (the "Commencement Date"). The Term shall end on midnight of the day twenty (20) years subsequent to the Commencement Date.



### **3. RENT DURING TERM; PURCHASE OF PREMISES.**

(a) During the Term hereof, Tenant shall pay to the RDC a fixed rent according to the following schedule:

Years 1 to 5: Twenty (\$20.00) Dollars per month per space;

Years 6 to 10: Twenty-five (\$25.00) Dollars per month;

Years 11 to 15: Thirty (\$30.00) Dollars per month; and

Years 16 to 20: Thirty-five (\$35.00) Dollars per month.

(b) Should the Term begin or end on a date that is not the first day of the month, the rent shall be prorated to reflect the actual number of days.

(c) The rent is due and payable on the first day of each month at the RDC's address set forth in Paragraph 17 of this Lease, or at such other place as the RDC may from time to time designate in a writing actually received by Tenant.

(d) During the Term hereof, the RDC hereby agrees to sell to the Tenant, and the Tenant hereby agrees to purchase from the RDC, all or any portion of the Premises upon mutually agreed upon terms and price. Such purchase shall be subject to customary and standard provisions regarding the sale and purchase of real estate such as the Premises.

(e) In the event that the Tenant does not purchase the entire Premises during the Term hereof as provided in paragraph (d) of this Section, the Tenant hereby agrees to purchase all of the Premises (to the extent not previously purchased by the Tenant) no later than the day on which this Lease terminates. The purchase price to be paid by the Tenant for the Premises or portion thereof so purchased shall be Fifteen Thousand Dollars (\$15,000.00) per parking space. Such purchase shall be subject to customary and standard provisions regarding the sale and purchase of real estate such as the Premises.

4. **HOLDING OVER.** If Tenant holds over after the expiration or other termination of this Lease, Tenant shall become a tenant from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy, and such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay rent on a monthly basis upon terms and conditions as existed as of the last month of the then applicable lease term.

5. **CONDITION OF THE PREMISES.** At the commencement of the Initial Term of this Lease, Tenant shall accept the Premises "as is". No representation, statement, or warranty, express or implied, has been made by or on behalf of the RDC as to the condition or as to the use that may be made of the Premises. Notwithstanding the foregoing, the RDC warrants that it knows of no non-compliance with any law, statute, regulation, ordinance, code or ruling by any governmental body with respect to the condition or operation of the Premises. Should the Premises be deemed to be unsuitable for parking at any time during the Term of this Lease by any governmental or regulatory authority through no fault of Tenant, Tenant may immediately terminate this Lease without penalty.

6. **USE OF THE PREMISES.** During the Term hereof, Tenant shall have the exclusive use of the Premises for the operation and maintenance by Tenant of automobile parking spaces

to be sublet to owners of the Residential Units and for any other associated lawful purpose. All references to "Tenant" herein regarding the use of the Premises shall include the Tenant's subtenants with respect to the particular parking space that such subtenant subleases from the Tenant. In no event shall Tenant use the Premises for any use which violates any ordinance, statute, law or regulation of any governmental body having jurisdictional authority over the Premises. Tenant shall have the use of and access to the Premises twenty-four hours a day, seven days a week.

7. **ACCESS TO THE PREMISES.** The RDC grants to Tenant, its employees, agents, and independent contractors, and to Tenant's sublessees and invitees, a nonexclusive right for the duration of the Term of this Lease of ingress and egress over all property owned by the RDC where the Premises are located ("RDC's Property") to and from the Premises to the extent necessary for the use, operation, and maintenance of the parking spaces. The RDC shall be responsible for the maintenance and repair of the areas covered by this right of ingress and egress.
8. **QUIET ENJOYMENT.** The RDC covenants that if Tenant shall perform all of the covenants and agreements of this Lease to be performed by Tenant, Tenant shall, subject to the terms and conditions of this Lease, at all times during the Term have peaceful possession and occupancy and quiet enjoyment of the Premises, without molestation, hindrance, or disturbance by the RDC or any party. The RDC covenants and warrants that, as of the Effective Date of this Lease, the RDC is the true and lawful owner of and has sole legal title and interest to the Premises, and has the good right and full power to lease the Premises to Tenant. The RDC further represents that there are no liens, judgments, restrictions, covenants, easements, rights of way, leases, or other agreements, written or unwritten, recorded or unrecorded, known to the RDC which would prohibit or in any way restrict Tenant's intended use of the Premises. If Tenant's peaceful and quiet enjoyment of the Premises is interrupted by any person after notice by Tenant to the RDC of such interruption or expected interruptions and ten (10) days elapse during which the RDC has been unwilling or unable to cure such interruption, then Tenant, in addition to its other remedies at law and in equity, may, at its sole option, terminate this Lease, and in such event Tenant will not be required to pay any further rent. Failure to exercise the option to terminate shall not waive subsequent rights Tenant has to terminate.
9. **CONDEMNATION.** In the event a portion or all of the Premises shall be taken by condemnation, eminent domain, or other similar action for public use or purpose, or be purchased by the condemning authority in lieu of condemnation, then, in either case, Tenant may, at its option, cancel and terminate this Lease in its entirety effective at any time after notice of such impending order of condemnation or offer to purchase by giving written notice to the RDC of its intention to do so. Upon the giving of said written notice by Tenant, this Lease shall terminate, any rent paid in advance shall be apportioned and refunded to Tenant and any rent due shall be accounted for as between the RDC and Tenant as of such Lease termination date. Each party shall be free to make claim against the condemning party for the amount of damages incurred by each by such proceeding.
10. **CASUALTY.** If the Premises are totally destroyed (or so substantially damaged as to be unusable for its intended purpose) by storm, fire, earthquake, or other casualty, then this Lease shall terminate as of the date of such destruction or damage, and rent shall be accounted for as between the RDC and Tenant as of that date. If either (a) all or any part of the RDC's Property or (b) all or any part of Tenant's Property is totally destroyed (or

so substantially damaged as to be unusable for its intended purpose) by storm, fire, earthquake, or other casualty, then this Lease shall terminate, at the option of Tenant, as of the date of such destruction or damage, and rent shall be accounted for as between the RDC and Tenant as of that date.

## **11. INSURANCE.**

**11.1 Property Insurance.** During the Term, the RDC shall maintain, or cause to be maintained, Commercial Property insurance ("CP Insurance") that insures the Premises and the RDC's personal property at the Premises on a replacement cost basis, and Tenant shall maintain CP Insurance that covers the Tenant's personal property in and about the Premises on a replacement cost basis. Each CP Insurance policy shall, at a minimum, insure against the perils included in the ISO special causes of loss form CP 10 30 and any amendments or "all-risk" coverage, including but not limited to loss or damage due to fire and the risks normally included in extended coverage (e.g., flood, windstorm, earthquake, and terrorism).

**11.2 Casualty Insurance.** During the Term, the RDC and Tenant shall maintain: (i) Commercial General Liability insurance ("CGL Insurance") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from each party's operations at the Development or Premises, as applicable, independent contractors, product-completed operations, personal injury, and advertising injury, and contractual liability that includes this Lease as an insured contract; (ii) Business Auto Liability insurance ("BAL Insurance") with limits of liability not less than \$1,000,000 per occurrence covering bodily injury, including death, and property damage for liability arising from use of each party's owned, non-owned, and hired vehicles; (iii) Workers' Compensation insurance ("WC Insurance") in accordance with all federal and state statutory requirements and Employers' Liability insurance ("EL Insurance") in an amount of not less than \$1,000,000 per accident for bodily injury and \$1,000,000 per employee/aggregate for disease; and (iv) Umbrella Liability insurance ("Umbrella Liability Insurance") with limits of liability of not less than \$5,000,000 per occurrence that applies on a "following form" basis and is in excess of the underlying CGL Insurance, BAL Insurance, and EL Insurance limits of liability with the Umbrella Liability Insurance policy listing the CGL Insurance, BAL Insurance, and EL Insurance policies on its schedule of underlying Insurance (collectively, "Casualty Insurance").

**11.3 Additional Insureds.** With respect to CGL Insurance and Umbrella Liability Insurance, Tenant shall name the RDC as an additional insured with respect to Tenant's negligence for any claims arising out of Tenant's operations in or upon the Premises, and the RDC shall name Tenant, its employees, officers, directors, subsidiaries, affiliates, partners, or sublessees, as additional insureds with respect to the RDC's negligence for any claims arising out of operations of the RDC or the RDC's agents or contractors in or upon the Development, Premises, or Common Areas. In addition, the CGL Insurance and the Umbrella Liability Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to each party's additional insured status; (ii) endorsed to provide cross-liability coverage if they do not contain a standard ISO separation of insureds provision; and (iii) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

**11.4 Rating Requirements.** All insurance policies required by this Section 11 (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and umbrella policies. The insurance provisions set forth in this Section 11 set forth the minimum amounts and scopes of coverage to be maintained by the RDC and Tenant and are not to be construed in any way as a limitation on each party's liability under this Lease.

**11.5 Certificates of Insurance.** Each party shall furnish Certificates of Insurance to the other party evidencing all of the above-described insurance policies prior to or upon execution of this Lease and annually thereafter, but not later than ten (10) business days after the expiration of each policy. All policies shall provide that not less than thirty (30) days' prior written notice of cancellation or non-renewal shall be given to the other party.

**12. WAIVER OF SUBROGATION.**

**12.1 Waiver of Subrogation (Property).** Tenant and the RDC hereby waive and release each other of and from any and all rights of recovery, claims, actions, or causes of action against each other, including their respective employees, officers, directors, subsidiaries, affiliates, agents, representatives, and assigns, for any loss or damage that may occur to the Development, the RDC's personal property, the Improvements (including any alterations or additions thereto), and Tenant's personal property by reason of fire or other casualty, regardless of cause or origin. The RDC and Tenant shall obtain a waiver of subrogation from their respective insurers and shall endorse their CP Insurance policy to reflect the waiver of subrogation. The above waiver of subrogation applies whether or not there are any deductibles or self-insured retentions and in the absence of any CP Insurance.

**12.2 Waiver of Subrogation (Casualty Insurance).** Tenant and the RDC hereby waive and release each other of and from any and all rights of recovery, claims, actions, or causes of action against each other, including their respective employees, officers, directors, subsidiaries, affiliates, agents, or representatives to the extent covered by Casualty Insurance. Each Casualty Insurance policy must be endorsed to reflect the insurer's acceptance of this waiver of subrogation. The waiver of subrogation applies whether or not there are any deductibles or self-insured retentions and in the absence of any Casualty Insurance.

**13. INDEMNIFICATION.** The RDC shall indemnify and save harmless Tenant from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of the negligence or wilful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease, provided that Tenant gives the RDC timely notice of any claim coming under the scope of this indemnity, allows the RDC to completely control the settlement and defense of any such claim and cooperates fully with the RDC in the investigation and defense of such claim.

Tenant shall indemnify and save harmless the RDC from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of the negligence or wilful misconduct of Tenant, its officers, agents, employees, independent contractors, sublessees, or invitees, or the failure by Tenant to perform its obligations under this Lease, provided that the RDC gives Tenant timely notice of any claim coming under the scope of this indemnity, allows Tenant to

completely control the settlement and defense of any such claim and cooperates fully with Tenant in the investigation and defense of such claim.

14. **ENVIRONMENTAL MATTERS.** The RDC warrants and represents that, to the best of its actual knowledge, (i) the RDC is not subject to any existing investigation by any governmental authority under any Environmental Requirements related to the Property, (ii) any handling, transportation, storage, treatment, or use of Hazardous Materials that has occurred on the Property to date by or behalf of the RDC has been in compliance with all Environmental Requirements, and (iii) no leak, spill, release, discharge, emission or disposal of Hazardous Materials has occurred on the Property since the date of the RDC's acquisition of its fee title interest therein. The term "**Environmental Requirements**" means all applicable past, present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; and Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos, and petroleum, including crude oil or any fraction thereof, natural gas, natural liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of such natural gas and synthetic gas).

Tenant shall have no liability of any kind to the RDC as to Hazardous Materials on, under or about the Premises and/or on any other property of the RDC (collectively, the "Property") caused or permitted by: (i) the RDC, its agents, employees, contractors or invitees (if any); or (ii) any person or entity (other than Tenant and Tenant's employees, agents, invitees or contractors) located outside of the Property (including, without limitation, the migration or leaching of Hazardous Materials from outside the Property on or onto the Property).

The RDC shall and hereby does indemnify Tenant and hold Tenant harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by Tenant in connection therewith) suffered by Tenant by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors, and which does not arise directly from or out of the presence of Hazardous Materials on, at or from the Premises solely as the result of Tenant's use of the Premises or any act or omission of Tenant, its agents, employees, or contractors; provided that, however, the RDC shall not be liable to Tenant for any consequential or punitive damages suffered by Tenant as a result of any breach of the RDC's obligations hereunder. Tenant shall and hereby does indemnify the RDC and hold the RDC harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by the RDC in connection therewith) suffered by the RDC (except to the extent that such expenses, losses, and liabilities arise

out of the negligence or willful act of the RDC or the RDC's employees, agents, invitees or contractors), by reason of the storage, generation, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by Tenant or Tenant's employees, agents, invitees or contractors, provided that, however, Tenant shall not be liable to the RDC for any consequential or punitive damages suffered by the RDC as a result of any breach of Tenant's obligations hereunder. Notwithstanding anything to the contrary in this Paragraph 14, Tenant shall have no liability to the RDC of any kind as to any Hazardous Materials unless the RDC provides a Phase I environmental investigation which conclusively determines that (a) such Hazardous Materials were not present on the Property on the Effective Date of this Lease, and (b) the release of such Hazardous Materials was caused solely by Tenant, its agents, employees or contractors.

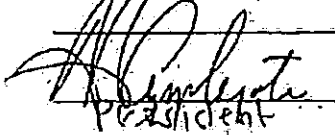
15. **COSTS AND EXPENSES.** The RDC shall pay the following costs and expenses associated with the Premises: real estate taxes (the RDC shall provide Tenant with evidence of the payment of thereof upon Tenant's request), general and special assessments assessed on the property interest of the RDC in the Premises, property insurance protecting the RDC's interest in the Premises, debt service on any loans on which the RDC or an affiliate of the RDC is the borrower and which are secured by or related to the Premises, any and all repair, maintenance and operation expenses related to the Premises, and any other costs that may be related to the ownership of the Premises and the remainder of RDC's Property.

Tenant's costs and expenses related hereto shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to Section 11 hereof.

16. **REPAIRS AND MAINTENANCE.** The RDC shall provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises.
17. **NOTICES.** Whenever, in this Lease, it shall be required or permitted that notice or demand be given or served by either party on the other, such notice or demand shall be given or served in writing (i) by certified mail, return receipt requested, (ii) by courier or hand delivery, or (iii) by reputable overnight courier, at the address specified below for each party or at such other address as the parties may designate:

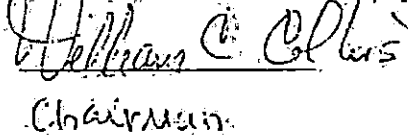
Tenant:

The Dorchester, LLC

  
President

RDC:

Town of Summerville Redevelopment Corporation

  
Chairman

Notices sent in accordance with the provisions of this Paragraph 17 shall be deemed given upon receipt, upon the refusal to accept such notice or upon the inability to deliver such notice due to an address change for which notice was not given in accordance herewith.

**18. DEFAULT.**

(a) Tenant Default. In the event that Tenant (i) shall, after ten (10) days written notice from the RDC, fail to perform, keep, and observe any of the terms, covenants, and conditions of this Lease or (ii) shall be placed into bankruptcy, either voluntarily or by the courts, or become financially insolvent and unable to perform its obligations under this Lease, then the RDC may, at its option and in addition to and not in limitation of any other right or remedy permitted to the RDC at law, in equity or under this Lease, terminate this Lease, in which event Tenant shall surrender the Premises to the RDC within ninety (90) days of such Lease termination.

(b) The RDC Default. In the event that the RDC (i) shall, after ten (10) days written notice from Tenant, fail to perform, keep, and observe any of the terms, covenants, and conditions of this Lease or (ii) shall be placed into bankruptcy, either voluntarily or by the courts, or become financially insolvent and unable to perform its obligations under this Lease, then Tenant may, at its option and in addition to and not in limitation of any other right or remedy permitted to Tenant at law, in equity or under this Lease, terminate this Lease, in which event Tenant shall surrender the Premises to the RDC within ninety (90) days of such Lease termination.

**19. LIMITATION OF DAMAGES AND LIABILITY.** Except for gross negligence or wilful misconduct resulting in personal injury or property damage to third parties, in no event shall Tenant's or the RDC's liability under this Lease include any liability for incidental, indirect, special, or consequential damages.

**20. TERMINATION.** The RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default pursuant to Section 18 hereof and upon ninety (90) days written notice to the Tenant. Tenant may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this Lease upon payment to the RDC of one month's rent as an early termination fee.

**21. SURRENDER OF PREMISES.** Tenant shall, at the end of the Term, or any extension thereof, promptly surrender the Premises in good order and condition and in conformity with the applicable provisions of this Lease, excepting only reasonable wear and tear and any condemnation or casualty.

**22. POSTPONEMENT OF ACTION.** Whenever the time for the performance or discharge of any obligation or the exercise of any right provided hereunder shall fall on any Saturday, Sunday, or other legal or public holiday, then the time for the performance or discharge of such obligation or the exercise of such right shall be extended to 5:00 p.m. on the next secular or business day.

**23. SUCCESSORS AND ASSIGNS.** This Lease shall be binding on the parties hereto and their respective successors and assigns.

**24. EFFECTIVE DATE.** This Lease and its terms shall be in effect as of the date first set forth above (the "Effective Date").

25. **APPLICABLE LAW.** Notwithstanding the location of the entities executing this Lease, this Lease shall be governed by and interpreted in accordance with the laws of the State where the Premises are located.
26. **WAIVER.** The parties may waive any provision of this Lease only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Lease, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.
27. **TIME IS OF THE ESSENCE.** Time is of the essence regarding all performance under this Lease.
28. **BROKERS.** Each party represents and warrants that it has dealt with no broker, agent, or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, and each party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease.
29. **ATTORNEYS' FEES.** In the event either party is required to retain counsel to enforce any rights under this Lease, such party if successful as determined by a court issuing a final adjudication and having proper jurisdiction over the parties from which no appeal can be or is taken, shall be entitled to recover from the other party, its reasonable attorneys' fees and expenses.
30. **ENTIRE AGREEMENT.** This Lease, including all exhibits hereto, each of which is incorporated into this Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter of this Lease and no other representations, warranties, or agreements, whether written or oral, shall be binding on either of the parties. This Lease may not be amended, modified, or supplemented unless and except by an instrument in writing signed by both parties.
31. **CAPTIONS.** The captions of this Lease are inserted for the purpose of convenient reference and in no way define, limit, or describe the scope or intent of this Lease or any part hereof.
32. **SEVERABILITY.** Should any term(s), covenant(s), condition(s), provision(s), sentence(s), or part(s) thereof of this Lease be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms and provisions shall, nevertheless, remain in full force and effect.



IN WITNESS WHEREOF, the undersigned parties have caused this Lease to be executed as of the day and year first above written.

TOWN OF SUMMERVILLE  
REDEVELOPMENT CORPORATION,  
as Landlord

Witnesses:

Madeleine H. Robinson

By: William C. Collins

Its: Chairman

THE DORCHESTER, LLC, as Tenant

Witnesses:

Lisa L. Williams

By: A. G. Gyphe

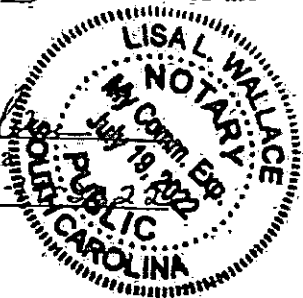
Its: Manager

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Wallace, this 9<sup>th</sup> day of July, 2014, who executed the foregoing instrument, and acknowledged that he executed the same.

Lisa L. Wallace  
Notary Public for South Carolina  
My Commission Expires: 7-19-2022



Witnesses:

Mark H. Robinson  
Huffman J. Norton

The Dorchester LLC,  
a South Carolina limited liability company

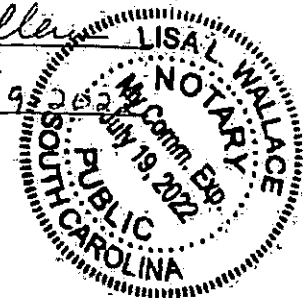
BY: [Signature]

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Wallace this 9<sup>th</sup> day of July, 2014, who executed the foregoing instrument, and acknowledged that he executed the same.

Lisa L. Wallace  
Notary Public for South Carolina  
My Commission Expires: 7-19-2022



Witnesses:

Tiffany J. Norton  
Malcolm D. Robinson

Applegate & Co.

BY: [Signature]

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Waller, this 9<sup>th</sup> day of July, 2014, who executed the foregoing instrument, and acknowledged that he executed the same. 2014

[Signature]  
Notary Public for South Carolina  
My Commission Expires: 7-

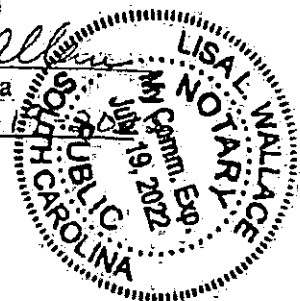


EXHIBIT "A"  
THE PREMISES



| Course | Bearing       | Distance | Acres | Bearing       | Distance | Acres |
|--------|---------------|----------|-------|---------------|----------|-------|
| 1      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 2      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 3      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 4      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 5      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 6      | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
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| 10     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 11     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 12     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 13     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 14     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 15     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
| 16     | N 57°02'56" W | 37.45    | 1.14  | N 57°02'56" W | 37.45    | 1.14  |
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7 BY C.E. ROBERT  
 8 MAY 6, 1957  
 9 SPEED CO. L. PC 103  
 10 IN NIA (LONDON)  
 11 9 NOVEMBER 57 12 30  
 12 SPEED PC. 16 PC 24  
 13 BY R.A. FARMER  
 14 2 JUL 21, 1958  
 15 SPEED PC. 16 PC 10  
 16 2 JUL 21, 1958 PC 103  
 17 1 SEP 1958 PC 70  
 18 1 OCT 1958 PC 117  
 19 12-07-54-608  
 20 12-07-54-609  
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**ZONED B-3**

SOUTH CAROLINA  
DORCHESTER COUNTY  
TOWN OF SUMMERVILLE

IT SHOWING THIS 137.07 01.000

EXHIBIT C

|                         |   |                       |
|-------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA | ) | GRANT AND PROPERTY    |
|                         | ) | CONVEYANCE AGREEMENT  |
|                         | ) | FOR TOURISM AND OTHER |
| COUNTY OF DORCHESTER    | ) | ECONOMIC DEVELOPMENT  |
|                         | ) | PROJECTS              |

THIS AGREEMENT is made and entered into as of July 9, 2014 by and between the Town of Summerville, a body corporate and a municipal corporation of the State of South Carolina (herein referred to as "TOWN"), and the Town of Summerville Redevelopment Corporation ("herein referred to as RDC"), a 501(c)(4) nonprofit organization.

WITNESSETH:

WHEREAS, the RDC was established by the Town of Summerville to facilitate financing and funding for various community and economic development projects; and

WHEREAS, the TOWN and the RDC are interested in entering into an agreement for the purposes of encouraging economic development for the benefit of the citizens of the Town of Summerville in accordance with Title 31, Chapter 10 Community Development Law of the South Carolina Code of Laws (1976) *et. seq.*, as amended; and

WHEREAS, the TOWN and the RDC determine that the development of mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage along West Richardson Avenue, South Cedar Street and West 2<sup>nd</sup> South Street (collectively herein referred to as the "PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community; and

WHEREAS, the TOWN owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue, specifically known as TMS# 137-07-4-002 and TMS# 137-07-04-005 (together, herein referred to as the "TOWN PROPERTY") that is necessary for the development of the PROJECT; and

WHEREAS, on July 9, 2014, the TOWN passed Ordinance No. \_\_\_\_\_, approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. (herein referred to as the "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT; and

WHEREAS, on July 9, 2014, the RDC approved the PPP AGREEMENT by resolution.

NOW, THEREFORE, for valuable consideration and the mutual promises hereinafter set forth between the parties hereto, the legal sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT.
2. The TOWN agrees to provide a grant to the RDC in the total amount of Five Million, Two Hundred Thousand and No/100 Dollars (\$5,200,000) for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT.
3. The TOWN agrees to provide a grant to the RDC in the total amount of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000) for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT.
4. The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this:  
9 day of July, 2014.

Witnesses:

Marilyn H. Robinson

Tiffany J. Naten

TOWN OF SUMMERVILLE  
REDEVELOPMENT CORPORATION

William C. Collins

By: William C. Collins  
Its: Chairman

Witnesses:

Marilyn H. Robinson

Tiffany J. Naten

TOWN OF SUMMERVILLE

William C. Collins

By: William C. Collins  
Its: Mayor



EXHIBIT D

PROMISSORY NOTE/LOAN AGREEMENT

BORROWER'S NAME: The Dorchester, LLC

LOAN NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

LOAN AMOUNT: \$3,750,000.00 DATE DUE: \_\_\_\_\_

For value received, the undersigned, promises to pay to the order of the Town of Summerville Redevelopment Corporation (herein called "LENDER"), at \_\_\_\_\_ Summerville, SC \_\_\_\_\_, or any other place designated at any time by the holder hereof, in lawful money of the United States of America, the principal sum of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000), together with any interest due on the unpaid balance based on the following terms. The payment obligation hereof by the undersigned (the "Borrower") is subordinate in all respects to the payment obligations of the Borrower to the Construction Lender (as defined in the PPPA [as defined below] and to the Equity Investors (as defined in the PPPA).

Terms shall be as follows:

1. Funds shall be disbursed hereunder by the LENDER up to the full amount of the loan (\$3,750,000.00) to The Dorchester, LLC (herein called "BORROWER") on a pro-rata basis with the application of funds of the Equity Investors upon receipt of written requests submitted to the RDC by the project architect.
2. No interest shall be due for 24 months from the date of funding by the LENDER. Interest on this note shall begin the day following 24 months from the funding by LENDER at the rate of 3.75% per annum. From that date, the interest payment shall be due on the 1<sup>st</sup> day of each month, and continue until this note is paid off. In any event, this Note shall be due and payable in full with all accrued interest on or before forty-eight (48) months from date of funding by the LENDER.
3. Interest shall be paid in arrears. The first interest payment on the loan shall be due on the first day of the month following the first day interest begins to accrue. This payment of interest shall be calculated at Three Hundred Ninety and 625/1000 (\$390.625) Dollars per day beginning the first day interest begins to accrue until the beginning of the following month.
4. Thereafter during the balance of the Term, a monthly interest payment of Eleven Thousand Seven Hundred Eighteen and 75/100 Dollars (\$11,718.75) shall be paid by BORROWER.
5. At the end of the Term of this Promissory Note or any extension thereof, a final payment of principal in the amount of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000), plus any accrued and unpaid interest, shall become due and payable.

6. This Note may be prepaid, in full, prior to maturity, without penalty to the undersigned.
7. Events of Default; Acceleration: The following shall constitute defaults or events of default hereunder ("Events of Default"):
  - (a) Failure by the Borrower, or any other party to keep, perform or observe any agreement, covenant, or condition contained herein or in the Public-Private Partnership Agreement between Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. (the "PPPA"); or (b) Failure by the Borrower to pay any installment required to be paid by this Note within five (5) days after the due date; or (c) A default by one or more of any guarantors under any agreement, covenant or condition contained in any guaranty agreement executed by the guarantors in connection with the loan evidenced by this Note. The remaining unpaid principal of this Note and all accrued and unpaid interest thereon shall immediately become due and payable, at the option of the holder hereof, upon the occurrence of an Event of Default. The Lender shall be entitled to recover all expenses, including reasonable attorneys' fees and expenses of legal counsel, incurred by the Lender in any way arising from or relating to the enforcement or attempted enforcement of this Note and any related guaranty, collateral document or other document and the collection or attempted collection, whether by litigation or otherwise, of this Note.
8. Application of Payments: All payments on this Note shall be applied first to accrued interest, then to fees, then to principal due and then to late charges. Any remaining funds shall be applied to the further reduction of principal. Notwithstanding the foregoing, upon the occurrence of a default hereunder, payments shall be applied as determined by Lender in its sole discretion.
9. Interest After Default: Any past due installments, whether of principal or interest, shall bear interest at the rate or rates herein set out until paid, except that after this Note shall become due, whether by acceleration or otherwise, this Note shall bear interest at the lesser of (a) the highest contract rate, if any, permitted by applicable law or (b) a rate per annum equal to fifteen percent (15%). The applicable interest rate herein shall apply whether before or after any judgment hereon.
10. Late Charge: Time is of the essence of this Note. To the extent not prohibited by law, a late charge of five percent (5%) shall be assessed on any payment remaining past due for 10 days or more unless interest on this Note is payable in advance, in which case such period shall instead be 30 days or more; provided, however, that if any applicable statute allows a shorter minimum time period for the imposition of a late charge, such shorter time period shall prevail. Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note.

in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

11. Collateral: This Note is unsecured.

12. Governing Law; Changes: The Note may not be changed orally and shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

13. Jurisdiction; Venue: The Borrower (a) submits to personal jurisdiction in the circuit court for the first judicial circuit for the State of South Carolina, for the enforcement of this Note, (b) waives any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the circuit court for the first judicial circuit for the State of South Carolina for the purpose of litigation to enforce this Note, and (c) agrees that service of process may be made upon the Borrower in any manner prescribed by applicable state rules of civil procedure or by applicable local rules or laws of civil procedure for the giving of notice to the Borrower. Nothing herein contained, however, shall prevent the Lender from bringing any action or exercising any rights against any security and against the Borrower personally, and against any assets of the Borrower, within any other state or jurisdiction.

14. Payments Not to Violate Law: Nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Borrower to pay interest at a rate greater than it is now lawful in such case to contract for under applicable law, or to make any payment or to do any act contrary to applicable law, and the Lender shall reimburse the Borrower for any interest paid in excess of the highest rate allowed by applicable law or any other payment which may inadvertently be required by the Lender to be paid contrary to applicable law; and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Note, in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Note shall remain operative and in full force and effect.

15. Miscellaneous: The Borrower and all endorsers, sureties, and guarantors, if any, hereby waive presentment for payment, demand, protest, notice of nonpayment or dishonor and of protest, and any and all other notices and demands whatsoever, and agree to remain bound under this Note until the principal and interest are paid in full, notwithstanding any extensions of time for payment which may be granted even though the period or periods of extension be indefinite and notwithstanding any inaction by, or failure to assert any legal rights available to the holder of this Note. Borrower acknowledges that Lender may reproduce (by electronic means or otherwise) any of the documents evidencing and/or securing this Note and thereafter may destroy the original documents. Borrower does hereby agree that any document so reproduced shall be the binding obligation of Borrower enforceable and admissible in evidence against it to the same extent as if the original documents had not been destroyed. This Note may be assigned by Lender with or without recourse.

16. WAIVER OF JURY TRIAL. BORROWER, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING FROM OR RELATED TO THIS PROMISSORY NOTE.

If BORROWER shall at any time default in making any payment of principal or interest on the Note, BORROWER agrees that it will, to the full extent permitted by law, pay to the holder of the Note, an amount equal to the reasonable costs and expenses of collection or enforcement incurred by such holder in such collection (including attorney's fees).

IN WITNESS WHEREOF, this Promissory Note has been executed under seal the day and year first above written.

THE DORCHESTER, LLC

a South Carolina Limited Liability Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

\*\*\*Remainder of Page Intentionally Left Blank\*\*\*  
[Additional Terms on Following Page]

## GUARANTEE OF PROMISSORY NOTE

In consideration of the sum of three million seven hundred fifty thousand and 00/100 Dollars (\$3,750,00.00) paid in hand, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the extension of credit to The Dorchester, LLC, a South Carolina Limited Liability Company, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned does hereby jointly and severally, absolutely and unconditionally, guarantee to Lender, its successors, personal representatives, legal representatives, and assigns, the due and punctual payment of the principal and interest due on the Promissory Note owed by The Dorchester, LLC, a South Carolina Limited Liability Company, of even date and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject, however, to the following limitations:

1. This guarantee shall be effective and in force and effect only for the period of time beginning with the first disbursement of funds under the Promissory Note/Loan Agreement to the Borrower thereunder, and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center (as defined in the PPPA).
2. The obligation of the guarantor hereunder is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors (as defined in the PPPA), which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder.

Further, the undersigned does hereby, jointly and severally, unconditionally guarantee payment of all expenses (including attorney's fees) incurred in the enforcement of this guarantee. The undersigned hereby waive presentment, demand, notice of dishonor, notice of default, protest and all other notices whatsoever. The undersigned hereby waive notice of acceptance and this guarantee binds the undersigned, their heirs, personal representatives, legal representatives, and assigns. This guarantee shall inure to the benefit of Lender, its successors, personal representatives, legal representatives, and assigns.

This guarantee shall be governed by, construed and controlled under the laws of the State of South Carolina, without regard to any conflict of laws.

WAIVER OF JURY TRIAL. THE UNDERSIGNED, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING FROM OR RELATED TO THIS GUARANTEE OF PROMISSORY NOTE.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Guarantee of Promissory Note on this \_\_\_\_\_ the day of \_\_\_\_\_, 2014.

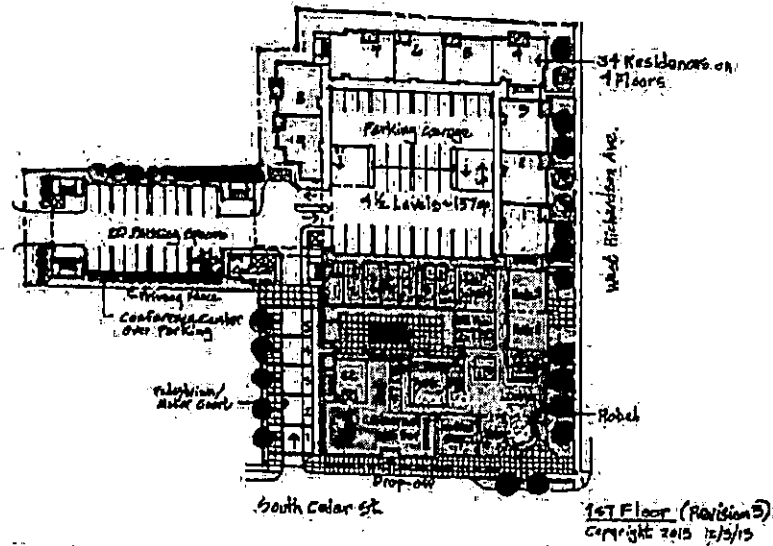
Witnesses: \_\_\_\_\_

\_\_\_\_\_  
Arthur H. Applegate

Exhibit E

**The Dorchester**  
Estimated Public Improvements Budget

|                                                      |                     |
|------------------------------------------------------|---------------------|
| Construction Cost                                    | \$ 4,391,324        |
| Soft Cost                                            | \$ 808,676          |
| <b>Total Project Cost</b>                            | <b>\$ 5,200,000</b> |
| <b>Construction Costs</b>                            |                     |
| Vertical Construction                                | \$ 3,503,266        |
| Land Improvements                                    | \$ 375,660          |
| Contractor Liability/Builders Risk                   | \$ 41,740           |
| Bond Premium                                         | \$ 41,740           |
| General Requirements                                 | \$ 166,960          |
| Builder's General Overhead                           | \$ 62,610           |
| Furniture, Fixtures, Equipment                       | \$ 199,348          |
| <b>Total Construction Cost</b>                       | <b>\$ 4,391,324</b> |
| <b>Soft Cost:</b>                                    |                     |
| Architect/Structural Engineer                        | \$ 229,043          |
| Interior Design Services                             | \$ 30,000           |
| Civil Engineering                                    | \$ 65,500           |
| Surveying (Topo, Boundary, Tree, UTL Locations, etc) | \$ 8,395            |
| Geo Tech                                             | \$ 6,600            |
| Consultants (Traffic)                                | \$ 7,500            |
| Environmental (Phase I)                              | \$ 2,200            |
| Organizational/Legal Costs                           | \$ 25,000           |
| Construction Management/Inspection Fees              | \$ 52,000           |
| Development Fee                                      | \$ 260,000          |
| Operating Deficiency Reserve                         | \$ 60,000           |
| General Contingency                                  | \$ 62,438           |
| <b>Total Soft Costs</b>                              | <b>\$ 808,676</b>   |
| <b>Total Project Cost</b>                            | <b>\$ 5,200,000</b> |



Goff•D'Antonio Associates

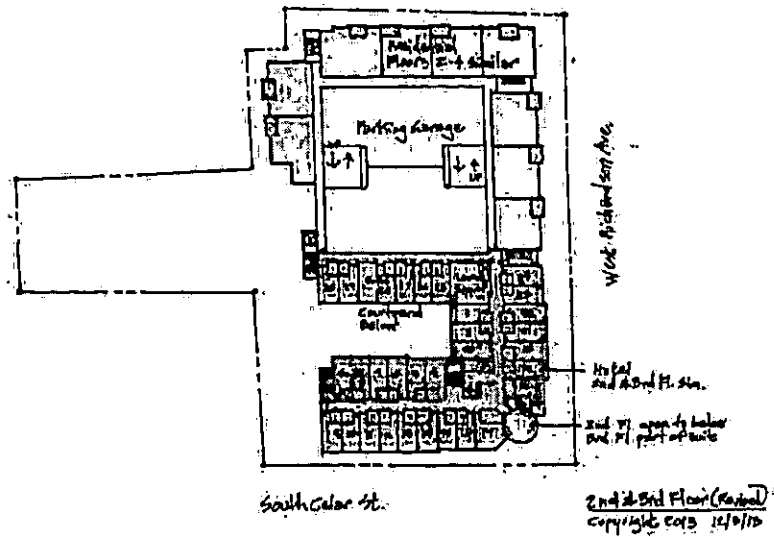
The Dorchester/ Mixed Use

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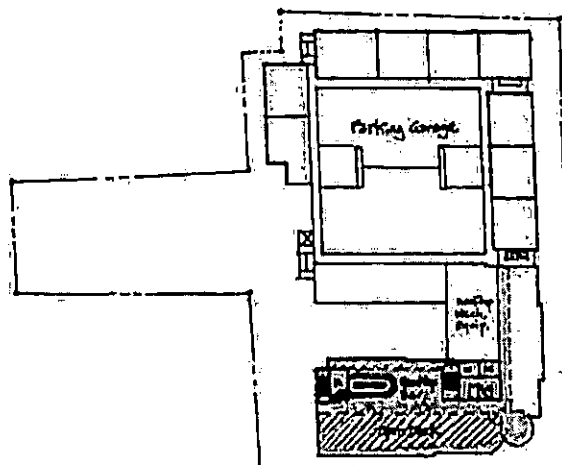
Exhibit F-2



Goff & D'Antonio Associates

The Dorchester/ Mixed Use





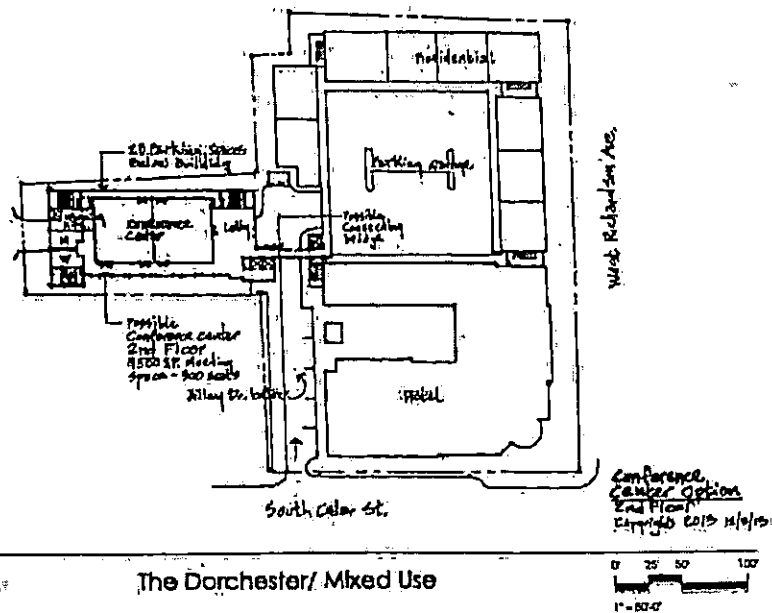
South Cedar St.

4th Floor (Revised)  
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Goff & D'Antonio Associates

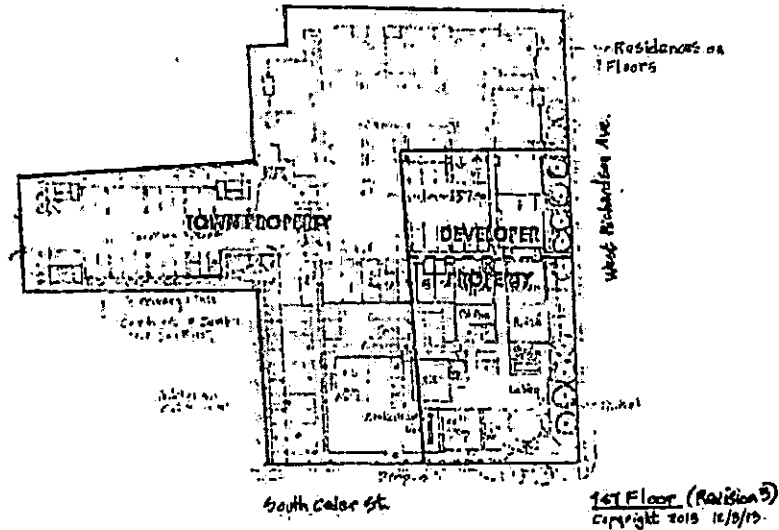
The Dorchester/ Mixed Use





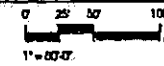
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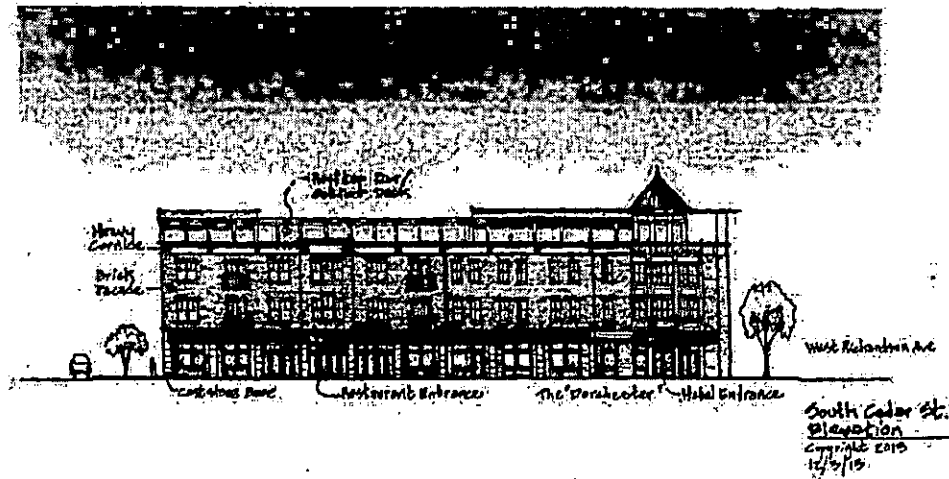
The Dorchester/ Mixed Use



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The Dorchester/ Mixed Use

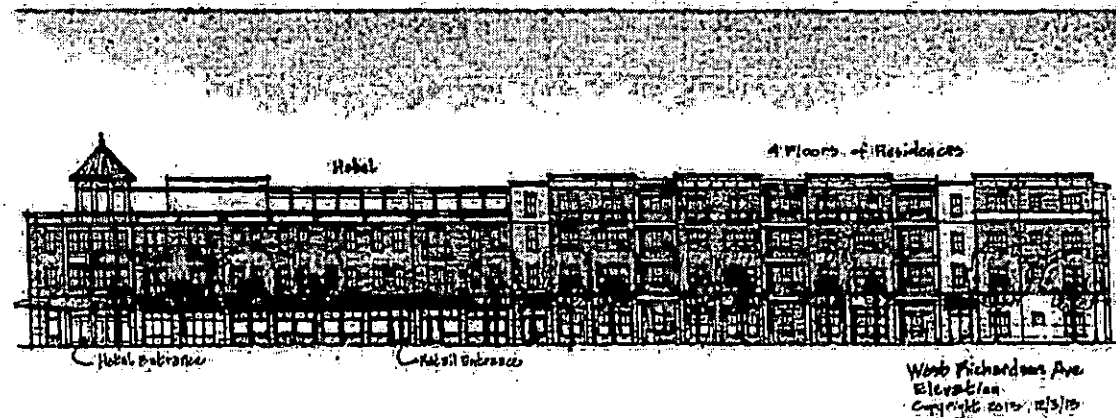




Goff-D'Antonio Associates

The Dorchester/ Mixed Use

0' 10' 20'  
1" = 20'



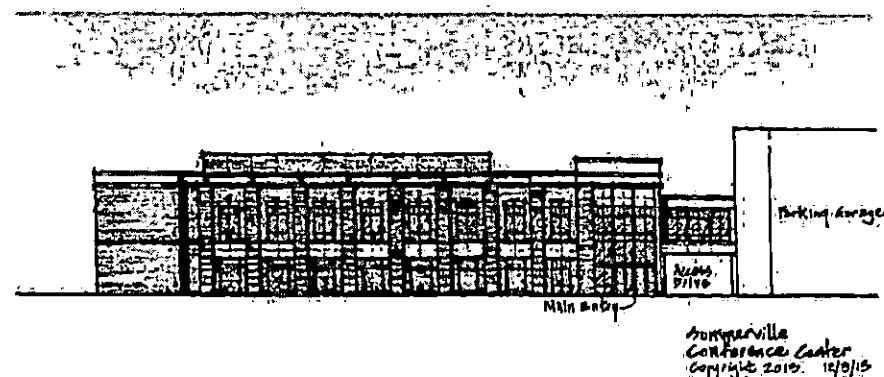
Goff-D'Antonio Associates

**The Dorchester/ Mixed Use**

0 10 20  
1" = 20'-0"



Exhibit F-8



Goff-D'Antonio Associates

The Dorchester/ Mixed Use

0 10 20'  
1" = 20' 0"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, personally and as Trustee of the  
James A. Croft Trust; James A. Croft Trust;  
William A. Harbeson; Heyward G. Hutson;  
Peter M. Gorman; James Stephen Greene, Jr.;  
Brian Peacher; Robert Klinger; Mary Becker;  
South Carolina Public Interest Foundation;  
Summerville Preservation Society; and  
Dorchester County Taxpayers Association,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in  
his capacity as Mayor; Terry Jenkins, Aaron  
Brown, Walter Bailey, William McIntosh,  
Kima Garten-Schmidt and Robert Jackson, in  
their capacities as members of Town Council;  
Town of Summerville Redevelopment  
Corporation; Town of Summerville Planning  
Commission; Town of Summerville Board of  
Architectural Review; Applegate & Co.; The  
Dorchester, LLC; and Arthur H. Applegate,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT

) Civil Action No.: 2014-CP-10-7739

**AMENDED COMPLAINT**

**JURY TRIAL DEMANDED.**

Each of the above-named Plaintiffs brings the following actions seeking declaratory, mandamus, injunctive and legal relief. For their complaint, the Plaintiffs state as follows:

**I. PRELIMINARY STATEMENT**

1. This is a civil action for declaratory, mandamus and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, inter alia, Article I, Article VIII and Article X of the South Carolina Constitution; the South Carolina Community



Development Law, S.C. Code Ann. § 31-10-10 et. seq.; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 et. seq.; the South Carolina Building Codes law, S.C. Code Ann. § 6-9-5 et. seq.; the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 et. seq.; S.C. Code Ann. § 6-1-730 (use of revenue from local hospitality tax); S.C. Code Ann. § 6-7-10 (planning by local governments); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, et. seq.; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, et. seq.; the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324; the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326; the Summerville Noise Ordinance; the United States Constitution; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members residing within the Town of Summerville, to (1) obtain a declaration from the Court that purported contracts and provisions of those purported contracts between and among some of the Defendants are ultra vires, null and void ab initio, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of all provisions of those contracts; (3) obtain a writ of mandamus to require governmental Defendants to perform non-discretionary duties required by law; and (4) otherwise remedy certain violations of various federal and state-protected regulatory, statutory and Constitutional rights afforded to each of the Plaintiffs in this action by the Constitution of the United States; by the Constitution and statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the Town of Summerville, South Carolina.

3. The allegations against the Defendants, as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all times relevant were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue are proper in this court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

## II. PARTIES

### A. The Plaintiffs

5. Faye P. Croft ("Croft" or "Faye Croft") is a taxpayer in the Town of Summerville, South Carolina ("Town" or "Summerville"), and is the Trustee and the beneficiary of the James A. Croft Trust, which owns and rents a residence on land located at 214 West

Richardson Avenue, Summerville, SC. Croft has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Croft and the James A. Croft Trust that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of their property and the ability to rent their property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of their property. Croft has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

6. The James A. Croft Trust ("Croft Trust") is a trust created under the laws of the State of South Carolina, for which Faye Croft is the trustee and the beneficiary, which owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC and is a taxpayer in and to the Town. The Croft Trust has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to the Croft Trust that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of its property and the ability to rent its property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of its property. The Croft Trust brings this action individually on its behalf and on behalf of all others similarly situated.

7. The Summerville Preservation Society ("Preservation Society") is a non-profit corporation incorporated in 1972 under the laws of the State of South Carolina; and is a 501(c)(3) federally tax exempt organization. The mission of the Preservation Society is to protect the historic fabric of Summerville by preserving Summerville's historic structures, neighborhoods and public spaces, by controlling the growth and development that affects it, and by enhancing

the quality of life in the Town. The Preservation Society is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in Summerville and/or Dorchester County, South Carolina. The Preservation Society brings this action individually on its behalf and on behalf of all others similarly situated.

8. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the Town of Summerville and/or Dorchester County, South Carolina. DCTA brings this action individually on its behalf and on behalf of all others similarly situated.

9. The South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. The SCPIF brings this action individually on its behalf and on behalf of all others similarly situated, as a representative of taxpayers and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

10. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town of Summerville, and owns land located in Summerville. Harbeson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Harbeson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the reduction in value of his property increased traffic and noise, flooding, and other impairments to the use and enjoyment of his property. Harbeson has paid and will continue to

pay taxes, including hospitality taxes, which fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. Heyward G. Hutson ("Hutson") is a citizen, resident and taxpayer of the Town of Summerville, owns residences on land located in Summerville at 207 West Richardson Avenue and 200 South Pine Street, and is President of Plaintiff Summerville Preservation Society. Hutson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Hutson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the diminishment in value of his property and the ability to rent his property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of his property. Hutson has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. Peter M. Gorman ("Gorman") is a citizen, resident and taxpayer of Summerville and a representative of the East Historic District Civic Association in Summerville, and has standing as a Plaintiff in this action as a taxpayer. Gorman has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

13. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Greene being caused and that will continue to be caused by the actions of the Defendants due to increased traffic and noise, flooding, and other impairments to the use of his property. Greene has paid and will continue to pay taxes, including hospitality taxes that

fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

14. Brian Peacher ("Peacher") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Peacher has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

15. Robert Klinger ("Klinger") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Klinger has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

16. Mary Becker ("Becker") is a citizen, resident and a taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Becker has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

17. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who have contributed to the fund at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

18. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

19. Each of the above-described Plaintiffs alleging tax payer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of his fellow taxpayers regarding the proper use and allocation of tax receipts by the Town and its civic bodies, named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the Town and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and Town ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

20. Each of the organizational Plaintiffs (the SCPIF, Preservation Society and DCTA) has standing based on the individualized injuries that have been or will be suffered by its members as a result of the actions of the Defendants described in this Amended Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claim the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.

21. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to his or her real or personal property or acting on behalf of organizational members, has suffered an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

**B. The Defendants**

22. The Town of Summerville ("Town") is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

23. The Town of Summerville Finance Committee ("Finance Committee") is a committee of the Town of Summerville and has the authority and duty, pursuant to the Town's Purchasing Ordinance enacted on May 9, 2012, Sec. 2-322(c), to approve all purchases over \$25,000 by the Town. The Town is liable for all wrongful actions of the Finance Committee alleged in this Amended Complaint.

24. The Town of Summerville Redevelopment Commission ("Commission," "Corporation" or "RDC") purportedly, according to the Town, is a public body and a body corporate and politic purportedly created and organized pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10 et. seq. The Summerville Redevelopment Corporation is liable for all wrongful actions of the Summerville Redevelopment Commission alleged in this Amended Complaint.

25. The Town of Summerville Redevelopment Corporation ("Corporation," "Commission" or "RDC") is a South Carolina corporation for which the Secretary of State of the State of South Carolina issued a Certificate of Incorporation on June 13, 2014. The Summerville Redevelopment Commission is liable for all wrongful actions of the Summerville Redevelopment Corporation alleged in this Amended Complaint.

26. William C. Collins ("Collins") is the Mayor of the Town of Summerville and the Chairman of and a Commissioner of the RDC, and is being sued only in his official capacities.



27. Terry Jenkins ("Jenkins") is a member of the Town Council of Summerville and the Vice-Chairman of and a Commissioner of the RDC, and is being sued only in his official capacities.

28. Aaron Brown ("Brown") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

29. Walter Bailey ("Bailey") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

30. William McIntosh ("McIntosh") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

31. Kima Garten-Schmidt ("Garten-Schmidt") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in her official capacities.

32. Robert Jackson ("Jackson") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

33. Applegate & Co. ("Developer" or "Applegate") is a corporation incorporated under the laws of the State of South Carolina and a "Redeveloper" as defined in S.C. Code Ann. § 31-10-20(11). Upon information and belief, Developer's main office and principal place of business is 4130 Faber Place Drive # 111, North Charleston, South Carolina, in Charleston County.

34. "SPE" as used in this Complaint is a "special purpose entity" created or to be created by the Developer. Should the Developer create this entity, Plaintiffs reserve the right under the South Carolina Rules of Civil Procedure to amend to add that to-be-formed business entity as a Defendant.

35. The Dorchester, LLC, is a limited liability company incorporated under the laws of the State of South Carolina.

36. Arthur H. Applegate (together with Applegate & Co. referred to as the "Developer" or "Applegate") is President of Applegate & Co.; a Manager of The Dorchester, LLC; and the promised personal guarantor of a \$3.75 million loan sought to be made by the RDC to the Dorchester, LLC. Upon information and belief, Applegate is a resident of Charleston County.

37. The Town of Summerville Planning Commission ("Planning Commission") is an organization created by the Town of Summerville by Ord. No. 1997-1003, 11-12-1997 and Ord. No. 08-0902, 10-8-2008, as provided in S.C. Code 1976, § 6-29-310 et seq.

38. The Town of Summerville Board of Architectural Review ("BAR") is an organization created by the Town of Summerville by Ord. No. 2000-0901, § 13-5, 10-11-2000 and Ord. No. 06-0701, 8-9-2006, as provided in S.C. Code 1976, § 6-29-870 et seq. See Sec. 32-175 of the Summerville Town Ordinances. The members of the BAR are appointed and removed by the Mayor of Summerville with the approval of the Summerville Town Council; serve on the BAR as fiduciaries of the Town of Summerville and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the BAR.

39. Phil Dixon ("Dixon") is the Chairman and a member of the BAR.

40. David Price ("Price") is a member of the BAR. Price has conflicts of interest regarding the Hotel project and therefore should and is required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

41. Beth Huggins ("Huggins") is a member of the BAR. Huggins has conflicts of interest regarding the Hotel project and therefore should and is required to recuse herself from any actions as a member of the BAR regarding the Hotel project.

42. Madelyn Robinson ("Robinson") is the Town's Director of Planning & Economic Development.

43. Lucy Dreyer ("Dreyer") is a Town Staff Planner and the Secretary of the BAR.

44. Lisa Wallace ("Wallace") is the Town's Director of Administrative Services, Clerk and Treasurer; the Secretary of the RDC; and the Town's Purchasing Agent pursuant to Town Ordinance Sec.2-321.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

45. The creation, regulation, financing and implementation of development by a municipality of the State of South Carolina, including but not limited to the Defendant Town of Summerville, is governed by the requirements of the United States and the South Carolina Constitutions; State of South Carolina statutes; and the rules, regulations and customs of the Town of Summerville.

#### **A. SOUTH CAROLINA CONSTITUTION**

46. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent only for public purposes.

47. Article X, Section 11 of the South Carolina Constitution states, in relevant part, as follows:

"Credit of State and political subdivisions.

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution . . . . Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation." (Emphasis added.)

48. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

49. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967)

50. Article X, Section 14 of the South Carolina Constitution states, in relevant part, as follows:

"Bonded indebtedness of political subdivisions.

(1) "[P]olitical subdivisions' shall mean the . . . incorporated municipalities of the State . . . .

(2) The political subdivisions of the State shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe . . . in the following categories and in no others:

(a) General obligation debt; and

(b) Indebtedness payable only from a revenue producing project or from a special source as provided in subsection (10) of this section.

(3) 'General obligation debt' shall mean any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.

(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision." (Emphasis added.)

(10) Indebtedness payable solely from a revenue producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the General Assembly may prescribe by general law; provided, that the General Assembly may authorize by general law that indebtedness for the

purpose of redevelopment within incorporated municipalities and counties may be incurred, and that the debt service of such indebtedness be provided from the added increments of tax revenues to result from any such project. Any and all indebtedness incurred pursuant to the provisions of this subsection shall contain a statement on the face thereof specifying the sources from which payment is to be made and shall state that the full faith, credit, and taxing powers are not pledged therefor." (Emphasis added.)

## B. SOUTH CAROLINA STATUTES

### (1) COMMUNITY DEVELOPMENT LAW

51. S.C. Code Ann. § 31-10-20 states in part as follows:

"Definitions:

(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(8) "Municipality" means any incorporated city or town or any county.

(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, including the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project." (Emphasis added.)

52. S.C. Code Ann. § 31-10-30 (a) states in part as follows:

"Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function within the territorial limits of the municipality or portion of the municipality . . ." (Emphasis added.)

53. S.C. Code Ann. § 31-10-60 states in part that a "commission may delegate to one or more of its members, agents, or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the whole commission." (Emphasis added.)

54. S.C. Code Ann. § 31-10-70 states in part as follows:

"No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project . . . ."

55. S.C. Code Ann. § 31-10-90 states in part as follows:

"A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers . . . including . . .

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and with the approval of the governing body of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several redevelopers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property . . . in accordance with the redevelopment plan . . . ; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to

terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;

(Emphasis added.)

56. S.C. Code Ann. § 31-10-100 states in part as follows:

"Contents of redevelopment plan; public hearing prior to adoption of plan; approval by governing body or parent municipality; modification.

(a) A redevelopment plan must be sufficiently complete to indicate its relationship to definite local objectives such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area

(b) A commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

(3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;

(4) a preliminary site plan of the redevelopment area;

(5) a statement of the proposed changes, if any, in zoning ordinances or maps;

(6) a statement of any proposed changes in street layouts or street levels;

(7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;



(8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and

(9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the

redevelopment plan as previously approved by the governing body, the modification must similarly be approved by the governing body as provided above." (Emphasis added.)

57. S.C. Code Ann. § 31-10-110 states in part as follows:

"Contracting by commission for certain services; advertisement for bids from persons interested in purchasing or redeveloping property; commission's real estate transactions under redevelopment plan.

(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan, set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. . . . All conveyances made under the authority of this subsection shall contain

restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;

(2) a statement of the use intended for each part of the proposed redevelopment;

(3) the amount, if known, of the consideration to be paid;

(4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and

(5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter." (Emphasis added.)

58. S.C. Code Ann. § 31-10-120 states in part as follows:

"Power of commission to issue and sell bonds . . .

(a) The commission may issue bonds on which the principal and interest are payable:

(1) exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds;

(2) exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

. . . The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality or the State and neither the municipality nor the State is liable on them, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this chapter. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional

or statutory debt limitation or restriction. . . . Bonds may be issued by a commission under this chapter notwithstanding any debt or other limitation prescribed in any statute. This chapter without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance is not subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) . . . Prior to the public sale of bonds hereunder, the commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds in a newspaper of general circulation in the commission's area of operation . . ." (Emphasis added.)

59. S.C. Code Ann. § 31-10-150 states in part as follows:

"Notice of intent to issue bonds

Prior to issuing any bonds under this chapter, a commission shall publish notice in a newspaper of general circulation in the municipality of its intent to issue such bonds . . . Any interested person may within twenty days after the publication of such notice, but not thereafter, challenge the proposal of the commission to issue such bonds by action initiated in the circuit court for the circuit in which the commission is located. . . ." (Emphasis added.)

60. S.C. Code Ann. § 31-10-160 states in part as follows:

"Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The books and records of a commission are at all times open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required by the municipality shall be made." (Emphasis added.)

**(2) SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE  
PLANNING ENABLING ACT OF 1994**

(a) Local Planning Commission

61. S.C. Code Ann. § 6-29-310 states in part that a "local planning commission" means a municipal planning commission . . . ."

62. S.C. Code Ann. § 6-29-340(B) states in part as follows:

"Functions, powers, and duties of local planning commissions.

. . . [T]he local planning commission has the . . . duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements." (Emphasis added.)

63. S.C. Code Ann. § 6-29-360(B) states in part that "[t]he commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and

determinations, which record must be a public record. “ (Emphasis added.) The Summerville Planning Commission violates this statutory public record requirement by not having adopted rules of organizational procedure; by not keeping a copy of its records on the Town website, even though it keeps records of other Town meetings on its website; by not creating and making its records available to the public timely; by not allowing public inspections of records timely; and by requiring written requests pursuant to the Freedom of Information Act accompanied by delays of fifteen days or more in order to inspect or obtain a copy of its records.

64. S.C. Code Ann. § 6-29-340 states in part that “[t]he governing authority may provide for the reference of any matters . . . to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.” (Emphasis added.)

65. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element . . .;
- (2) an economic development element . . .;
- (3) a natural resources element . . .;
- (4) a cultural resources element . . .;
- (5) a community facilities element . . .;
- (6) a housing element . . .;
- (7) a land use element . . .;
- (8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;
- (9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . . .

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years." (Emphasis added.)

66. S.C. Code Ann. § 6-29-520 states in part as follows:

"... [N]otice of meetings; recommendations by resolution; transmittal of recommended plan.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The

resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan." (Emphasis added.)

67. S.C. Code Ann. § 6-29-530 states in part as follows:

"Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction." (Emphasis added.)

68. S.C. Code Ann. § 6-29-540 states in part as follows:

"Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to



proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. . . ." (Emphasis added.)

69. S.C. Code Ann. § 6-29-720 states in part as follows:

"(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts . . . . Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter." (Emphasis added.)

70. S.C. Code Ann. § 6-29-760 states in part as follows:

"Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the

planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." (Emphasis added.)

#### **(b) Board of Architectural Review**

71. S.C. Code Ann. § 6-29-870 states in part as follows:

"Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . . .

(B) The board shall consist of not more than ten members . . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

. . . .

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions,

all of which immediately must be filed in the office of the board and must be a public record.” (Emphasis added.)

72. S.C. Code Ann. § 6-29-880 states in part as follows:

“Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.”

73. S.C. Code Ann. § 6-29-880 states in part as follows:

“Definitions.

(2) ‘Land development’ means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) ‘Market based incentives’ mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable

and waive up to one hundred percent of sewer/water tap in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays; and

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings.” (Emphasis added.)

74. S.C. Code Ann. § 6-29-1120 states in part as follows:

“The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.” (Emphasis added.)

75. S.C. Code Ann. § 6-29-1130 states in part as follows:

“Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map

streets; . . . . In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county." (Emphasis added.)

76. S.C. Code Ann. § 6-29-1150 states in part as follows:

"Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. . . ." (Emphasis added.)

### (3) South Carolina Freedom of Information Act

77. S.C. Code Ann. § 30-4-20 states in part as follows:

"Definitions. (a) "Public body" means any . . . organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . ." (Emphasis added.)

78. S.C. Code Ann. § 30-4-20 states in part as follows: "Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public. . . ." (Emphasis added.)

79. S.C. Code Ann. § 30-4-55 states in part as follows:

"Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. . . ." (Emphasis added.)

80. S.C. Code Ann. § 30-4-70 states in part as follows:

"Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

. . . .

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . . .

. . . .

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

81. S.C. Code Ann. § 30-4-80 states in part as follows:

"Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

. . . .

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. (Emphasis added.)

82. S.C. Code Ann. § 30-4-90 states in part as follows:

"Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . . ."

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . . ."

83. S.C. Code Ann. § 30-4-100 states in part as follows:

"Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof."

84. S.C. Code Ann. § 30-4-100 states in part as follows:

"Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction



shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense."

### **C. State and Municipal Procurement Laws**

85. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983."

86. On May 9, 2012, the Town of Summerville repealed its Code of Ordinances Article V, Division 2, entitled "Purchasing" in its entirety and replaced it with a new Ordinance (Ord. 12-0301) which, although it has been enacted, has not yet been codified ("Purchasing Ordinance").

87. Regarding bids over \$25,000 in public funds, the Town's Purchasing Ordinance requires competitive bids, meaning there must be more than one bid to award a bid. Sec. 2-323 (c)(8) states "The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids."

88. Summerville's Purchasing Ordinance requires in Section 2-321(e) that the designated purchasing agent "[o]btain the most competitive prices on all purchases, contracts and services."

89. The Purchasing Ordinance states in Section 2-322, that "[t]o maximize the purchasing value of public funds, all procurements should be competitive, where practicable and serve the best interest of the town." Further, in subsection (c) thereof, pertaining to purchases of \$25,000 and over, that "purchases be made through competitive sealed bids and advertised through local press . . . . Purchases over \$25,000 must be approved by the finance committee of town council."

90. Section 2-322(d) provides that “[n]othing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined by the purchaser that the town’s best interest would be better served.” There are no further references, examples, procedures or explanations of this section in the Purchasing Ordinance.

91. Section 2-323(c)(1) requires that “[p]urchases and/or contracts valued at \$25,000 or greater shall be awarded by competitive, sealed bidding, except as may be provided elsewhere in this chapter.”

92. Section 2-323(c)(12) provides that “[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interest of the town.” (Emphasis added.)

93. Section 2-323(c)(17) provides that “[p]rocurements costing more than \$25,000 shall be accomplished by purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter, or more specifically, considered as a sole source procurement, sensitive procurement, emergency procurement, procurement through the State of South Carolina or one of its agencies or procurement through an existing town contract. Supporting bid award documents should include bid tabulation and a concise statement as to the reasons for the bid award recommendation. Purchase orders more than \$25,000 must be approved by the finance committee of town council.” (Emphasis added.)

94. Section 2-324, entitled “Competitive bidding; exceptions,” provides that “[c]ompetitive bidding is required on all purchases exceeding \$2,500 with the following

exceptions: [list of five exceptions that correspond to those described in Section 2-323(c)(17) quoted above].”

95. S.C. Code Ann. Sec. 11-35-1520(13), entitled “Minor Informalities and Irregularities in Bids,” states that immaterial variation from the exact requirements of an invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, delivery or performance may be waived by a procurement officer.

96. S.C. Regulation 19-445.2070(A) provides: “Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.” (Emphasis added.)

97. S.C. Code Ann. Sec. 11-35-1530(1) provides that the provisions of S.C. Code Ann. Sec. 11-35-1520(13) and S.C. Regulation 19-445.2070(A), both quoted above, apply to Requests for Proposals as well as to Invitations for Bids.

#### **IV. GENERAL FACTUAL ALLEGATIONS**

##### **A. AGREEMENTS**

98. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio, including but not limited to each of the following:

##### **(1) “PUBLIC-PRIVATE PARTNERSHIP AGREEMENT”**

99. On July 9, 2014, the Town of Summerville, the RDC and the Developer signed a purported agreement and contract entitled a “PARTICIPATION AGREEMENT” and a “PUBLIC-PRIVATE PARTNERSHIP AGREEMENT [“Partnership Agreement”] BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE & CO.” (the “PARTIES”), a copy of which is attached

hereto as Exhibit "A" and incorporated herein by reference. This Partnership Agreement causes the Town of Summerville and the RDC to be "partners" with the Developer, which is a private entity owned and controlled and that may become owned and controlled by persons unknown to the Town and the RDC and who may be or become undesirable as partners to the Town and the RDC. This Partnership Agreement is a "Redevelopment Contract" as defined by SC Code Section 31-10-20(14), and causes the Town and the RDC to contribute property, including real property and millions of dollars of loans, interest free and unsecured, to the Developer in a joint venture for the purpose and with the intended effect of making profits for the Developer, a private for-profit entity, the Town and the RDC. In this Partnership Agreement, Applegate & Co. is a "Redeveloper" within the meaning of Section 31-10-20(11).

100. The Partnership Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY;
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space;"
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY;
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and desires to create a partnership to provide for the efficient and timely development of the proposed project" (emphasis added);
- E. The Developer will "construct a new mixed-use project" ("Project") . . . that will include both private and public improvements . . . expected [to cost] approximately \$20,000,000 . . ."
- F. The Developer entered into a contract to purchase .65 acres or property adjacent to the TOWN PROPERTY and that .65 acres will be combined with the TOWN PROPERTY to constitute the "PROJECT SITE" where the Project will be built and operated; and

- G. The Developer will "construct public improvements" and "manage and operate, or cause the management and operation by means of the SPE of, [sic] the public parking garage and conference center . . ." Partnership Agreement, at 1-2.

The "Project" reference above is a "Redevelopment Project" as defined by S.C. Code Section 31-10-20(14),

101. The Partnership Agreement defines the "PRIVATE IMPROVEMENTS" portion of the Project as "privately-owned improvements" consisting of the following: (a) a "hotel of approximately 74,000 square feet, containing no less than 65 rooms . . . retail and restaurant space . . . and a rooftop bar" and (b) "approximately 34 residential condominium units and shared common space." Partnership Agreement, at 2. The Request for Proposal ("RFP") by the Town did not include a request for condominium or residential housing units ("condominiums" or "residential units").

102. The Partnership Agreement defines the "PUBLIC IMPROVEMENTS" portion of the Project as "publicly-owned improvements," with the PROJECT SITE consisting of the following: (a) "Conference Center," with at least 10,000 square feet of conference/event space; (b) "Parking facilities and parking garage," with at least 179 spaces. Partnership Agreement, at 2-3.

103. The Partnership Agreement requires that the Town of Summerville do the following: "[s]ubject to approval of its Bond Counsel and closing on bond financing": (a) convey to the RDC the TOWN PROPERTY by deed for use for the PROJECT; and (b) gift to the RDC a grant of \$8,950,000 "for purposes of participation in the PROJECT . . ." Partnership Agreement at 3.

104. The Partnership Agreement requires that the RDC do the following:

A. "Subject to approval of the TOWN's Bond Counsel and closing on bond financing" provide "GAP FINANCING" consisting of "an unsecured loan to the Developer or the SPE with a limited, subordinate personal guarantee of Arthur H. Applegate . . . ending upon completion of construction of the Hotel, Parking Garage, and Conference Center" in the amount of \$3,750,000 to be repaid by the Developer as follows:

(1) "[A]t no interest for a period of 24 months to assist in financing the PRIVATE IMPROVEMENTS."

(2) Making interest payments of 3.75% to the RDC at the end of 24 months "until the DEVELOPER or the SPE obtains permanent financing for the PROJECT;" and

(3) "[B]ased on the terms of the construction loan for the PROJECT, with final payoff of the GAP LOAN no later than final maturity of the Developer's construction loan . . . ." (emphasis added);

B. Make a "PUBLIC IMPROVEMENTS INVESTMENT" in the PROJECT by:

(1) Conveying a portion of the TOWN PROPERTY to the Developer or the SPE;

(2) Funding up to \$5,200,000 to pay costs of the PUBLIC IMPROVEMENTS; and

C. Lease up to 55 parking spaces to the Developer or the SPE for twenty years "to support the residential portion of the project," with the Developer or the SPE purchasing those parking spaces within twenty years. Partnership Agreement, at 3-4.

105. The Partnership Agreement states that regarding the repayment of the \$3,750,000 loaned by the RDC to the Developer or the SPE, with required interest, the "RDC agrees to maintain a subordinate position to the Construction Lender and the Equity Investors with respect to the" PRIVATE IMPROVEMENTS; and that "this [Partnership] Agreement and its exhibits may be collaterally assigned to the construction lender." Partnership Agreement, at 7 (emphasis added).

106. The Agreement requires a "PROPERTY SWAP" by the Town, the RDC and the Developer, as follows: ". . . the PARTIES shall [exchange] title to certain property within the

PROJECT SITE. . . . The DEVELOPER will form a special purpose entity ("SPE") to acquire and transfer title and own and operate the PROJECT SITE . . . resulting in the RDC owning the parcel that will contain the parking garage and the parcel that will contain the conference center, and the SPE owning the remaining parcel(s)." Partnership Agreement, at 5.

107. The Partnership Agreement states in part the following regarding "site and architectural design":

"The project site and architectural design will be based on the conceptual [sic] provided in Exhibit F . . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.

DEVELOPER agrees that all development, construction, operation and leasing of the PROJECT will be done in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental or quasi-governmental entities, agencies or instrumentalities relating to the development, use or condition of the PROJECT . . . ."  
Partnership Agreement, at 5-6 (emphasis added).

108. The Partnership Agreement requires that "should the PROJECT not proceed to construction as a result of default of this [Partnership] Agreement by the TOWN or RDC, the RDC agrees to pay the DEVELOPER for those preconstruction costs incurred for the PUBLIC IMPROVEMENTS and for PRIVATE IMPROVEMENTS by the DEVELOPER or the SPE . . . up to . . . \$400,000) . . . ." Partnership Agreement, at 7 (emphasis added).

109. Paragraph 11 of the Partnership Agreement states in part as follows:

"ISSUANCE OF LIMITED OBLIGATION BONDS. . . . "[T]he PARTIES acknowledge that the obligations of the Town and the RDC hereinafter are contingent upon the TOWN's ability to issue, upon reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount sufficient, together with other funds (if any) of the TOWN identified by the TOWN for such purpose, to fund the GAP LOAN and the costs of the PUBLIC IMPROVEMENTS, all

of which shall be of a nature which satisfies the criteria set forth in Section 6-1-730 of the Code of Laws of South Carolina 1976, as amended.” (Emphasis added.)

110. Paragraph 15b of the Partnership Agreement states in part that the “RDC represents to the TOWN and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this [Partnership] Agreement and shall . . . continue to have such power and authority throughout the term of this [Partnership] Agreement.” Partnership Agreement, at 8-9 (emphasis added).

111. Paragraph 15h of the Partnership Agreement states that the “DEVELOPER may not assign its rights in this [Partnership] Agreement without the prior written consent of the TOWN and the RDC.” Partnership Agreement, at 9. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or the SPE to sell ownership or control of itself to any third party without the consent of the Town or the RDC. The Partnership Agreement exposes the Town of Summerville and the RDC to liability, potentially unlimited, for wrongful acts by the Developer and/or the SPE, and does not require the Developer or the SPE to indemnify the Town or the RDC for damages caused them by the wrongful acts of the Developer.

112. The Partnership Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Partnership Agreement, at 10.

113. Exhibit “A” to the Partnership Agreement consists of a “Project Site Illustration,” which defines the land area of the PROJECT SITE referenced above.

**(2) “PARKING GARAGE/CONFERENCE CENTER  
OPERATION AGREEMENT”**



114. Exhibit "B" to the Partnership Agreement consists of a "PARKING GARAGE/ CONFERENCE CENTER OPERATION AGREEMENT" ("Operation Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

115. At the time The Dorchester, LLC signed the Operation Agreement, the Dorchester, LLC did not exist. It was incorporated on October 16, 2014.

116. The Operation Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a "Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY";
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space";
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY; and
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and to create a partnership to provide for the efficient and timely development of the project" (emphasis added). Operation Agreement, at 1-2.

117. Section 1 of the Operation Agreement states that the "RDC hereby appoints the Manager as its exclusive independent contractor for the management of the Conference Center and the Parking Garage, and the Manager accepts such appointment . . . ." Operation Agreement, at 2.

118. The Operation Agreement states in part that:

- A. "The Manager shall prepare a marketing program for the Conference Center and the Parking Garage and shall supervise the marketing activities for the Conference Center and the Parking Garage including all advertising layouts, brochures, and campaigns. Advertising expenses shall be paid as operating expenses of the Conference Center and the Parking Garage." (Emphasis added.) Section 3(c), at 3.

B. "... The RDC understands that the Manager may offer discounts of up to 50% off of the published rates and charges to patrons of the hotel located on the Project Site for use of the Conference Center or spaces in the Parking Garage." (Emphasis added.) Section 3(d)(ii), at 3.

C. "The Manager shall contract on behalf of the RDC . . . for the maintenance and repair of heating and air conditioning systems and for other extraordinary repairs . . . . In the event that repairs of an emergency nature are required at a time when it is impractical to consult with the RDC as to cost, the Manager is hereby authorized to contract on behalf of the RDC to undertake such repairs and shall promptly notify the RDC of such action." Section 3(g)(ii), at 4-5 (emphasis added).

D. "The Manager is hereby authorized to purchase all materials, equipment, tools, appliances, supplies, and services reasonably necessary for proper maintenance and repair of the Conference Center or the Parking Garage." Section 3(g)(iv), at 4 (emphasis added).

E. "... The Manager is hereby authorized at the reasonable expense of the Conference Center or the Parking Garage, as applicable, to make contracts for all necessary renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan." Section 3(h)(i), at 4 (emphasis added).

F. "The Manager shall make arrangements and execute any necessary agreements for water, electricity, gas, telephone, data, CATV, internet, sewage and trash disposal, vermin extermination, snow removal, landscape care and related utilities and services for the Conference Center and the Parking Garage. The Manager is hereby authorized to make such contracts on behalf of the RDC as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services, if any, shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(i), at 4-5 (emphasis added).

G. All staffing to manage and operate the Conference Center and Parking Garage "shall be employees of the Manager, its Affiliates, or Subcontractors. "The compensation, including fringe benefits, of the employees performing on-site functions shall be within the Manager's sole discretion. . . . The Manager shall be reimbursed for reasonable compensation, including fringe benefits, payable to all employees performing on-site functions," and for all taxes and other reasonable expenses regarding personnel. "Such reimbursements shall be paid as

operating expenses of the Conference Center and the Parking Garage.”  
Section 3(j), at 5 (emphasis added).

119. The Operation Agreement states that “It is the expectation of the RDC that the Manager shall . . . provide a high level of customer service to the users of the Conference Center and the Parking Garage.” Section 3(l), at 5. This provision is illusory because it imposes no duty on and contains no covenant by the Manager.

120. The Operation Agreement provides that “certain functions and services” of the public conference center and garage shall be shared with the Private Improvements . . . .”  
Section 5, at 6.

121. Section 7 of the Operation Agreement states that “RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Exhibit A.” Operation Agreement, at 6.

122. Section 9(a) of the Operation Agreement states as follows:

“During the initial one (1) year term of this Agreement, the Manager shall be compensated for its services hereunder by the RDC by payment of a management fee in the amount of \$3,000.00 per month . . . .” Section 9(a), at 7.

This Operation Agreement went into effect on July 1, 2014, the date it was executed.

123. Section 10 of the Operation Agreement states in part as follows:

“If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete . . . any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. . . . In the event that the RDC fails promptly to commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and

character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay, upon written demand, to the Manager. . . ." Section 10, at 7 (emphasis added).

124. Section 12 of the Operation Agreement states that the "Manager may not transfer, assign, pledge, or hypothecate . . . its rights, duties, or obligations under this Agreement without the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager." Section 12, at 7-8. This Operation Agreement does not prevent, restrict or limit the ability of the Manager to sell or give ownership or control of itself to any third party and thereby transfer its duties and obligations under this Operation Agreement to whomever or whatever gains control or ownership of the Manager, without the consent of the RDC. Further, these statements in Section 12 are illusory, because there is no restriction in the Operation Agreement on the ability of any person or entity to become an Affiliate of the Manager.

125. Section 13 of the Operation Agreement states in part as follows:

"(a) This Agreement shall be in effect for an initial term of one (1) year, beginning on the date of execution and delivery hereof and ending one year later. The Manager and the RDC may extend the term of this Agreement for an additional one year period up to fifteen (15) years by their mutual agreement on the Manager's compensation under Section 9 for such renewal term." Section 13, at 8 (emphasis added).

126. The Operation Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Operation Agreement, at 12.

### **(3) "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION"**

127. Attachment "A" to the Operation Agreement consists of a "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION" ("Parking Lease Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

128. At the time The Dorchester, LLC signed the Parking Lease Agreement, The Dorchester, LLC did not exist as a corporate entity recognized by the Secretary of State of South Carolina.

129. The Parking Lease Agreement states in part that the RDC is a 501(c)(4) organization. It is not.

130. The Parking Lease Agreement states in part that:

A. "The Town of Summerville . . . created the RDC . . . to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space . . . ;"

B. "Applegate & Co. . . . agreed in the Public-Private Partnership Agreement . . . to construct Private Improvements . . . including approximately 34 residential condominium units . . . and to construct Public Improvements . . . including the Parking Garage . . . and further to manage and operate, or cause the management and operation [*sic*] the public Parking Garage . . . as detailed in the PPP Agreement by means of [The Dorchester, LLC] pursuant to the terms of the Parking Garage/Conference Center Operation Agreement . . . ;"

C. The "RDC has agreed . . . to lease 55 spaces in the Parking Garage to the [The Dorchester, LLC] for a twenty (20) year term to support the Residential Units per the terms of this Lease;" and

D. The "RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage . . . ;" Parking Lease Agreement, at 1.

131. The Parking Lease Agreement states in part that:

A. The "RDC leases to [The Dorchester, LLC] and [The Dorchester, LLC] hereby leases from the RDC . . . fifty-five (55) parking spaces . . . for a period of twenty (20) years commencing on [date not stated]; Parking Lease Agreement, at 1.

- B. "... [T]he RDC hereby agrees to sell to [The Dorchester, LLC], and [The Dorchester, LLC] hereby agrees to purchase from the RDC ... all or any portion of the [55 parking spaces] ... ;"
- C. "... Tenant shall have the exclusive use of the [55 parking spaces] for the operation and maintenance by Tenant of automobile parking spaces to be sublet to owners of the Residential Units and for any other associated lawful purposes;" and
- D. The RDC shall maintain Commercial Property insurance, Commercial General Liability insurance and other insurance for the benefit of the RDC and The Dorchester, LLC. (Emphasis added.) Parking Lease Agreement, at 1-4.

132. The Parking Lease Agreement requires the RDC to indemnify and save harmless The Dorchester, LLC from losses, by stating as follows:

- A. "The RDC shall indemnify and save harmless [The Dorchester, LLC] from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of negligence or willful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease ...." Paragraph 13, at 5 (emphasis added);
- B. "ENVIRONMENTAL MATTERS. . . . The RDC shall and hereby does indemnify [The Dorchester, LLC] and hold [The Dorchester, LLC] harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by [The Dorchester, LLC] in connection therewith) suffered by [The Dorchester, LLC] by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors . . . ." Paragraph 15, at 6-7 (emphasis added); and
- C. "... [E]ach party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease." Paragraph 28, at 9 (emphasis added).

133. The Parking Lease Agreement requires the RDC to pay costs and expenses associated with the parking garage, including for taxes; insurance; debt service; repair, maintenance and operation expenses related to the Premises; and "any other costs . . . ." paragraphs 15-16, at 7; and that the RDC "provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises." In contrast, The Dorchester, LLC's "costs and expenses . . . shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to" the Parking Lease Agreement. Paragraph 15, at 7.

134. The Parking Lease Agreement provides that The Dorchester, LLC "may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this lease upon payment to the RDC or one month's rent as an early termination fee." Paragraph 20, at 8 (emphasis added). In contrast, the "RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default [after a ten day opportunity to cure any Tenant default] . . . and upon ninety (90) days written notice to the Tenant." Paragraphs 18, 20, at 8.

135. The Parking Lease Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC.

#### **(4) "GRANT AND PROPERTY CONVEYANCE AGREEMENT"**

136. Exhibit "C" to the Partnership Agreement consists of a "GRANT AND PROPERTY CONVEYANCE AGREEMENT FOR TOURISM AND OTHER ECONOMIC DEVELOPMENT PROJECTS" ("Property Conveyance Agreement"), dated July 9, 2014, between the Town of Summerville and the RDC.

137. This Property Conveyance Agreement states in part as follows:

A. The "TOWN and the RDC determined that the development of [sic] mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage . . . ("PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community;"

B. The "TOWN owns approximately 1.58 acres of property . . . that is necessary for the development of the PROJECT;"

C. On July 9, 2014, the "TOWN passed Ordinance No. \_\_\_\_\_ [sic], approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. ( . . . "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT;"

D. "The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT;"

E. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$5,200,000 for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT;"

F. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$3,750,000 for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT; and

G. "The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT."

138. The Property Conveyance Agreement was signed on behalf of the RDC by its Chairman but not by any other person or entity on behalf of the RDC.

##### (5) "PROMISSORY NOTE/LOAN AGREEMENT"



139. Exhibit "D" to the Partnership Agreement consists of a "PROMISSORY NOTE/LOAN AGREEMENT" ("Promissory Note Loan Agreement"), undated and unsigned, to be signed by The Dorchester, LLC for the benefit of the RDC.

140. This Promissory Note Loan Agreement states in part as follows:

A. The Dorchester, LLC promises to pay the RDC \$3,750,000, "together with any interest due on the unpaid balance on the following terms";

B. "The payment obligation hereof by [The Dorchester, LLC] is subordinate in all respects to the payment obligations of [The Dorchester, LLC] to the Construction Lender . . . and to the Equity Investors . . .;"

C. "No interest shall be due for 24 months from the date of the funding by [the RDC]. Interest on this note shall begin the day following 24 months from the funding by [the RDC] at the rate of 3.75% per annum. . . . [T]he Note shall be due and payable in full with all accrued interest on or before forty-eight (48) months from the date of funding by the [RDC];" and

D. "Collateral: The Note is unsecured." (Emphasis added.)

141. One of the "Equity Investors" referenced in the paragraph above will be the Defendant Developer and/or Defendant Arthur H. Applegate personally.

**(6) "GUARANTEE OF PROMISSORY NOTE"**

142. Attached to the "Promissory Note Loan Agreement" is a "GUARANTEE OF PROMISSORY NOTE" ("Promissory Note Guarantee"), undated and unsigned, to be signed by Arthur H. Applegate personally for the benefit of the RDC.

143. The Promissory Note Guarantee states in part as follows:

A. "In consideration of . . . \$3,750,000 . . . and in consideration of the extension of credit to The Dorchester, LLC . . . [Arthur H. Applegate] does hereby . . . guarantee to [the RDC] . . . payment of the principal and interest due on the" Promissory Note Loan

Agreement " and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject . . . to the following limitations:

1. This guarantee shall be effective . . . only for the period of time beginning with the first disbursement of funds . . . and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center . . . ;" [and]
2. The obligation of the guarantor . . . is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors . . . which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder. (Emphasis added.)

**(7) "The Dorchester Estimated Public Improvements Budget"**

144. Exhibit "E" to the Partnership Agreement consists of an "Estimated Public Improvements Budget" showing, inter alia, that the RDC would pay \$260,000 to a private entity as a "Development Fee."

**(8) "Conceptual Site and Architectural Illustrations"**

145. Exhibit "F" to the Partnership Agreement consists of eight "Conceptual Site and Architectural Illustrations."

**B. CHRONOLOGICAL HISTORY OF EVENTS**

146. While a candidate for Mayor of Summerville in 2011, Defendant Collins announced that as Mayor he would build a boutique hotel in downtown Summerville (the "boutique hotel project" or "Hotel project"). Since his election in 2011, Defendant Collins has orchestrated and contrived actions, some unlawful and some shams, to accomplish that campaign pledge, in conspiracy with other Defendants, and for the special benefit of private parties, including real estate developers and others. These actions include, but are not limited to,

unlawfully diverting, using and expending public funds for private purposes; pledging the Town's full faith and credit for private purposes; conducting private, secret meetings that by law were required to be public; holding meetings confidentially and without proper notice; obscuring and withholding information from the public; misleading, defaming, intimidating and bullying citizens to prevent or impede their ability to exercise their rights, influence public opinion and oppose Defendants' actions; purporting to cause the Town of Summerville to enter into a "partnership" with private parties; executing invalid contracts on behalf of governmental entities; making unlawful pledges of public assets and indemnification by government entities to private interests in purported contracts; unlawfully delegating authority; exerting and attempting to exert improper influence on governmental decision makers; failing to follow required substantive and procedural laws; engaging in dual office holding; and exposing taxpayers to excessive, unnecessary, unlawful and unjustified risks.

147. During 2012 and through the present, members of the Summerville Town Council and its governmental subdivisions frequently and excessively have excused themselves from public meetings to confer "behind closed doors" in "executive sessions," to discuss and reach consensus on issues pertaining to the boutique hotel project. The only information provided to the Plaintiffs and the rest of the public regarding these executive session discussions was that they pertained to an "economic development or redevelopment project," the leasing of properties, the sale of real estate or a proposed master plan. Despite statements made for the record upon returning from executive sessions that no actions had been taken, ordinances, motions and resolutions pertaining to an "economic development or redevelopment plan" invariably followed. For example, on December 18, 2013, the Town Council held a Special Meeting during which members excused themselves into executive session. Upon re-

adjournment of the public special meeting from the executive session, Town Council authorized the Mayor "to enter into non-binding negotiations with the company that recently submitted an economic development proposal." The minutes of the meeting state that "Council returned to public session . . . and announced that no action was taken" during the executive session. Plaintiffs now know that the words "economic development proposal" meant the boutique hotel project proposed by Defendant Applegate in response to the Town's Request for Proposal published on November 10, 2013, and the "company" meant Defendant Applegate & Co.

148. On information and belief, during 2012 through November 10, 2013, Defendant Collins asked three or more experienced hotel developers, including Defendant Applegate, who has participated in many real estate development projects in the Town of Summerville, to build a privately financed boutique hotel on 1.58 acres of land owned by the Town of Summerville near the intersection of West Richardson Avenue and Cedar Street in Summerville. Each developer consulted declined to build a boutique hotel at that location because it was not economically feasible to do so.

149. Unable to get a private developer to finance the boutique hotel at that location, on October 7, 2013, Defendant Town of Summerville contracted with the Lawrence Group, headquartered in Charlotte, North Carolina, "for the development of a master plan for the Town of Summerville." On information and belief, the Lawrence Group is a "redevelopment specialist" and was hired to develop a "master plan" for the following purposes, in whole or in part: (a) instructing the Town with respect to the steps necessary to create a "redevelopment commission," as defined in the South Carolina Community Development Law, that would take advantage of state laws granting extraordinary powers to these organizations with respect to areas the Town desires to designate as "blighted" or "conservation areas;" (b) instructing the

Town with respect to creating a "Vision Plan," that contains all of the development projects desired to be undertaken by the Town Council without public hearings in areas that the Town desires to designate as "blighted" or as "conservation areas;" (c) instructing the Town how to take the steps necessary to enable the Town to participate in financing the boutique hotel project and other projects with a private developer on lands the Town desires to designate as "blighted" or as "conservation areas;" and (d) enabling the Town to rezone areas it desires to designate as "blighted" or as "conservation areas" from mixed-residential to commercial, all with little or no prior public awareness, input or scrutiny.

150. The Town's only authorized procurement method relevant to the Hotel project is the "Invitation for Bid" method. The "Request for Proposal" ("RFP") method of procurement, commonly used by governments for capital improvements, is not mentioned or authorized in the Town's Purchasing Ordinance. Nevertheless, and despite the Town's lack of authority to do so, on November 10, 2013, the Town of Summerville published in the Charleston *Post and Courier* newspaper a Request for Proposal, in Ad # 1065489, stating as follows:

**"REQUEST FOR PROPOSAL** The Town of Summerville owns a 1.58 acre tract of land in the downtown historic district. We are seeking developers with hotel experience interested in building a boutique hotel on this property as a private-public partnership with the town. Interested developers should outline the size and design of the hotel they would build, number of rooms, on-site restaurant/lounge, and number of parking spaces they could provide. Proposal should also consider the possibility of a conference center on that site that could accommodate 300 people for a seated dinner. Interested parties should outline their plan for financing the venture." Interested parties were instructed to submit their qualifications, references and proposals to Lisa Wallace, Director of Administrative Services no later than 5:00 p.m. on Friday, December 6, 2013."

151. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." The Purchasing Ordinance adopted by the Town did not authorize the Request for Proposal method of procurement. Therefore, any procurement by the RFP method, including the publication of the RFP quoted above and the award of the development contract to Applegate, is unlawful and ultra vires. Moreover, the Partnership Agreement and all other contracts and agreements emanating from the unauthorized award are illegal, invalid and void *ab initio*. See *Sloan v. Greenville Hospital System, et al.*, Case No. 03-CP-23-3785 (May 12, 2008) (unpublished opinion).

152. The RFP was published only once, in violation of S.C. Code Ann. § 31-10-110(c), and did not mention or request a proposal for any condominiums or any other residential units. The Request for Proposal was published on Sunday, November 10, 2013, which was 18 days before the Thanksgiving holiday on November 28, 2013. Interested developers were given only 26 calendar days (18 business days), until December 6, 2013, to respond to the RFP, with Veterans' Day, Thanksgiving and Hanukkah holidays intervening.

153. The Town of Summerville received only one proposal pursuant to the RFP, from Applegate & Co. That response was a comprehensive 18-page document that included references to discussions with two prospective construction lenders, a named general contractor, a "development team," "equity partners," 11 pages of pro forma projected costs and revenues for each component of the complex (hotel, parking garage, etc.) as well as drawings and renderings of the proposed development, and that states in part as follows:

"Enclosed . . . is a proposal . . . to develop a mixed use project on a 1.58 acre tract of land owned by the Town and an adjacent .658 acre tract of land that Applegate & Co. has under contract in the downtown historic

district. The project consists of a 66 room boutique hotel, a restaurant, a roof top bar, a roof top terrace, retail space, a conference center with seating capacity for a three hundred person seated dinner, thirty-four high end residential units, a one hundred and fifty-seven space parking deck and twenty-nine surface spaces." (Emphasis added.)

154. The 1.58-acre tract of land owned by the Town and the .658-acre tract of land purchased or to be purchased by Defendant Applegate & Co. are adjacent properties in the official historical district of Summerville.

155. Applegate's proposal, dated December 6, 2013, included, in addition to all of the requirements of the RFP, "thirty-four high end residential units" (i.e., condominiums). Residential units were not included in the RFP. The proposal also stated that Applegate & Co. "has under contract" an "adjacent .658 acre tract of land in the downtown historic district." That tract of land is Applegate's proposed site for the condominiums.

156. The inclusion in Applegate's response to the RFP of 34 high-end residential units rendered Applegate's proposal non-responsive, according to, inter alia, S.C. Code Ann. Sec. 11-35-1520 (13) (Competitive Sealed Bidding — Minor Informalities and Irregularities in Bids) and S.C. Regulation 19-445.2070(A) thereunder, which provides as follows: "Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." (Emphasis added.) The addition of 34 condominium units in Applegate's proposal caused it to fail to conform to the essential elements of the Town's RFP.

157. The award to Applegate also violated Section 2-323(c)(12) of the Town's Purchasing Ordinance, which provides that "[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the

requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interests of the town.” (Emphasis added).

158. If “residential units” (i.e., condominiums) were desired by the Town or necessary to make the boutique hotel project viable and to procure competing bids, the Town should have issued a new RFP that included residential units. By failing to do so, the Town deprived itself, the Plaintiffs, other citizens and taxpayers and other bidders, including qualified minority bidders, of the benefits of free and open competition.

159. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c) and 2-323(c)(17) of its own Purchasing Ordinance which require competitive procurement.

160. Because the Town’s acceptance of Applegate’s non-responsive proposal violated Summerville’s Purchasing Ordinance, the PPPA and all other contracts and agreements emanating from the unlawful award are illegal, invalid, *ultra vires* and void *ab initio*.

161. On information and belief and based in part on the following factors, Defendant Applegate received information about the RFP and/or assurances from one or more of the other Defendants, that Applegate would win the bid, in advance of the submission of its proposal: (a) the Town limited the time for submission of bids when there was no need to do so, thereby creating a situation where only those with advance information had adequate time to prepare bids or proposals; (b) the Town failed to assure that a sufficient number of potential competitors was aware of the solicitation by publishing the RFP on a Sunday and during a holiday season which included Veterans’ Day, Thanksgiving and Hanukkah; (c) the Town received only one proposal pursuant to its RFP, and that proposal was non-responsive; (d) the Town accepted the non-



responsive proposal, in violation of its own Purchasing Ordinance which requires competitive bidding; (e) the extensive work evident in the comprehensive proposal submitted by Applegate could not have been completed in the time allowed without advance information about the RFP; and (f) Applegate's purchase, in advance of submission of its proposal, of a contract to buy the tract of land on which the condominiums are to be built shows advance knowledge that the Town would accept a non-responsive proposal that included condominiums.

162. On information and belief, based on the foregoing factors, the award of the development contract to Applegate for the Hotel project resulted from anti-competitive collusion, bid rigging and/or fraud between the Developer and one or more other Defendants.

163. Anti-competitive collusion, bid rigging and/or fraud in the procurement process violate Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c)(17), which require competitive procurement, and inure to the detriment of taxpayers, for whose benefit the competitive bidding requirements of the Purchasing Ordinance were enacted.

164. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the Partnership Agreement and all other contracts and agreements emanating from that conduct are illegal, invalid, *ultra vires* and void *ab initio*.

165. The only proposal Summerville ended up with was materially non-responsive and non-competitive, and, as described below, was followed by a contract and other agreements that were negotiated in secret, decidedly adverse to the Town's best interests, based on an illegal RFP and otherwise in violation of law. None of the goals of the Purchasing Ordinance were achieved,

and other bidders were not given an opportunity to bid on the project, due to the Defendants' unlawful conduct.

166. On July 9, 2014, the Summerville Town Council authorized Defendant Collins to sign the Partnership Agreement with Defendant Applegate and the Town of Summerville Redevelopment Corporation, providing for a \$30 million hotel/condominium complex, financed in part with \$10 million in Town revenue bonds. This Partnership Agreement and its exhibits were based on and emanated from the Town's illegal RFP and acceptance of Defendant Applegate's non-responsive proposal submitted pursuant to the RFP.

167. There were no public hearings regarding the Hotel project or the Partnership Agreement.

168. The response to the RFP by Applegate & Co. included in part the following "financing and transactional structure" proposal:

" . . . Without limited guarantees from the Town of Summerville and firm lease commitments, the ability to finance the project would be extremely remote. Because what is being proposed for the site has no precedent, there are no available comps to be used to appraise the project. While the development team is extremely bullish on the probability of success, the bullish stance is based upon intuitive intangibles that come from many years of development experience and numerous successful projects. Unfortunately, commercial banks do not make loans based upon a developer's intuition and past success. The project is ideally suited to be a model private-public partnership.

Applegate & Co. is attempting to structure the deal in such a way that the base case would, at worst, result in a revenue neutral outcome for the Town . . . and, at best, would result in substantial economic benefits to the Town. . . . All net revenue produced from the garage and the conference center would be paid to the Town on a monthly basis. . . . The Pro forma rebate to the town is currently projected to be \$12,917 per month from the garage and \$18,750 per month from the conference center. The Town's

portion of the property taxes is projected to be \$9,672 annually for the garage and \$11,160 annually for the conference center. . . . The sponsor/ developer would look to the Town to contribute the 1.58 acre tract owned by the Town in exchange for an ownership interest in the Hotel. . . .

. . . Based upon hard costs the total annual tax on the Hotel would be \$368,628. It should be noted that a significantly lower property tax has been used for the Hotel operating Pro forma. It was based upon a lower assessed value and some type of tax relief. If the Hotel, in fact, had to pay taxes of \$368,628, it would significantly reduce the viability of the project. It would further be proposed that the Town would provide a limited guaranty for that portion of the construction loan pertaining to the Hotel. . . .

It is anticipated that the bank providing the construction financing will do so based upon equity in the amount of 20% of the total project cost (\$6,056,725) and the bank making a loan for 80% of the total project cost (\$24,226,901). Applegate & Co., the Town's land, and local partners will provide the required equity." (Emphasis added.)

169. Upon information and belief, Defendant Applegate & Co. contracted to acquire the .658-acre tract adjacent to the location of the proposed boutique hotel project prior to its submission to the Town of a response to the RFP on December 6, 2013, because Defendant Applegate had received assurances from one or more of the Defendants in advance of the RFP or submission of Defendant Applegate's response to the RFP that Defendant Applegate & Co. would win the bid. In addition, Defendant Collins stated in August, 2014, that he had named the boutique hotel "The Dorchester," which is the name Defendant Applegate & Co. had used for the boutique hotel project in its bid submission in response to the Town's RFP on December 6, 2013. In addition, upon information and belief, the submission included a picture of a complex boutique hotel project design at the corner of South Cedar Street and Richardson Avenue in Summerville that was enabled by Defendant Applegate's having been informed about the content, location and timing of the RFP before the RFP was advertised, thereby causing Defendant Applegate to have started creating that design before the publication of the RFP.

Therefore, the award of the bid to Defendant Applegate & Co. resulted from anticompetitive collusion, bid rigging and/or fraud between the Developer and the Town.

170. On May 14, 2014, the Town of Summerville did the following to advance the boutique hotel project:

- A. Introduced as a first reading an ordinance to create a "redevelopment commission" called the "Town of Summerville Redevelopment Commission," pursuant to SC Code Section 31-10-30;
- B. Discussed a "proposed economic development project," which was "code" for the boutique hotel project, in an executive session that lasted 51 minutes; those discussions are unknown to the public; and
- C. Passed a second and final reading of an ordinance to change the zoning of property on West Richardson Avenue in Summerville owned by the Town, from B2 "Neighborhood Business Center" to B3 "General Business."

These actions were taken without the public being aware that their purpose was to arrange, advance and finance the boutique hotel project and other projects Town Council may decide to implement in the future through the mechanism of a redevelopment corporation. . Upon information and belief, this first reading of the ordinance to create the RDC was taken without the Town having published notice as required by law.

171. On May 28, 2014, the Town held a Special Council Meeting, at which it passed the "second and final reading of an ordinance to create the" RDC. In Ordinance #14-0502, the Town Council also made the following findings, which are required by Section 31-10-30 of the SC Community Development Law to be made before a redevelopment commission can be created. The Town Council found: "(1) that one or more blighted areas or conservation areas exists in whole or in part in the town and [the Town Council] has begun to identify additional blighted areas and/or conservation areas, and (2) that the redevelopment of such areas is necessary in the interest of the public health, safety or general welfare of the residents of the

Town.” Section 31-10-20 of the Community Development Law contains precise definitions of the terms “blighted area” and “conservation area.” “Blighted areas,” if improved, must be found to be detrimental to the public safety, health, morals, or welfare, and if vacant, must be found to suffer from specified factors that impair sound growth. “Conservation areas” in general refer to areas that are about to become blighted and are detrimental to the public safety, health, morals, or welfare. The Town Council did not advise the public that these findings had been made. Although there may be areas within the Town limits that could be defined as blighted or about to become blighted, Council’s findings with respect to the area selected for construction of the boutique hotel project are not supported by the facts. The area is a highly desirable mixed residential and commercial site in the heart of Summerville’s Historic District which is not blighted or about to become blighted. Moreover, one small parcel of the area is owned by the Town and deliberately was allowed by the Town to become overgrown to try to justify the selection of that area as the hotel development site.

172. Immediately after the Council meeting on May 28, 2014, creating the RDC, the RDC held its first meeting, at which the RDC adopted its by-laws; elected its officers, including Mayor Collins as Chairman and Lisa Wallace as Secretary, and elected each member of the Town Council as a member of the RDC. This meeting of the RDC was held illegally, and its actions therefore are invalid, because notice of the meeting had not been provided as required by law, after the RDC had come into existence, and the RDC had not been lawfully created. When these actions by the Town and the RDC were taken on May 28, 2014, Summerville residents, including all the Plaintiffs, were unaware, and reasonably could not have been aware, of the nature, purpose, function and existence of a “redevelopment commission”, and that it would in any way finance or otherwise promote or facilitate the transfer of public funds to a private

developer for the purpose of building a privately owned boutique hotel project in Summerville and other projects the Town Council may decide to implement in the future.

173. On June 4, 2014, Town Council held a Special Meeting at which the Lawrence Group presented only a partially completed version of its proposed "Vision Plan" for the Town of Summerville to a combined meeting of the Summerville Town Council, the Summerville Planning Commission and the Master/Vision Plan Advisory Committee. This meeting was not properly held or noticed. At this Special Council Meeting, the Lawrence Group "advised that the revised documents [Vision Plan] will be provided to the town next week and the town will make them available to the public via the town website."

174. On June 9, 2014, the Summerville Planning Commission published a notice of a public hearing purporting to advise the public of a Public Hearing to be held on June 16, 2014, using the following language: "Request to amend the Town's [sic] current Comprehensive Plan 2009-2011 with the prepared Vision Plan as an update and exhibit that further details the potential implementation strategies for the Comprehensive Plan." This notice was confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing, and it should be declared inadequate as a matter of law. The meeting held on June 16, 2014, was effectively held without notice, and therefore all actions taken by the Planning Commission at the meeting are invalid. There was no mention of a boutique hotel project in the notice.

175. At this meeting held on June 16, 2014, several members of the public spoke about the need for more time to study the Vision Plan and felt that it was being rushed, among other concerns. During discussion by the members, Planning Commission member Marc Hehn suggested that any decision be postponed until the July meeting so that staff could address some

of the public comments and concerns and errors in the Vision Plan that Mr. Hehn had noted. Planning Commission member Charles Cuzzell assured those in attendance that no changes to zoning would occur because of the Vision Plan. Planning Commission member Travis Williams stated that there was no reason to wait, that concerns could be addressed but it was important to get started on the Vision Plan. Planning Commission member Jim Reaves agreed with Mr. Williams and said that the Vision Plan needs to move forward and that the Vision Plan can be amended as the Town goes along, so there was no reason to wait. Other commissioners expressed concern that the Vision Plan would "wither on the vine," if action were not taken immediately. This was a key public meeting at which the Planning Commission members were to decide whether to recommend that Town Council amend the Town's 60-page Comprehensive Plan with the 300-plus page Vision Plan, essentially replacing the existing Comprehensive Plan with the new Vision Plan. The reasons given for ignoring the public's comments were either erroneous or superficial. First, the statement that no zoning changes would be made because of the Vision Plan was erroneous; zoning decisions most certainly can be made and are recommended in the Vision Plan, and in fact had already been made by Town Council on the land designated for the Hotel project. A motion to rezone the Hotel block from B2 "Neighborhood Business Center" to B3 "General Business" passed unanimously at meetings held on April 9, 2014 and May 14, 2014. As for amendments to the Plan, they cannot easily be made once the Vision Plan is adopted as the Town's Comprehensive Plan. In fact, changes to the Vision Plan then become extremely difficult and require public hearings. The many comments about moving this matter forward reflect a tension about causing a delay in the process of getting the Vision Plan elevated to a quasi-legal status as the Town's Comprehensive Plan. The minutes of the public hearing before the Planning Commission also reflect a panel of

commissioners who were uninformed about the Vision Plan and the consequences of the action they were about to take.

176. On June 9, 2014, at approximately 5 p.m., a “draft” of the Lawrence Group’s “Vision Plan,” consisting of approximately 375 pages, first appeared on the Town’s website. This was the first publication of the Vision Plan and the first opportunity for Summerville citizens to read the Vision Plan. The publication of the Vision Plan afforded no effective opportunity for Summerville residents who do not use the internet to review the Vision Plan. Among the Vision Plan’s recommendations was one to create a Redevelopment Commission and a Redevelopment Fund to “organize a public/private partnership” to act as an agent for the Town in getting development contracts financed with public and private funds. Vision Plan, Code and Policy Report, Sec. 6.1 and Sec. 6.5, at 38. The Vision Plan also mentions a boutique hotel at the corner of South Cedar Street and West Richardson Avenue as a “development opportunity,” see Vision Plan, Infrastructure and Development Plan, at 72, but not as a top ten priority, see Vision Plan, Infrastructure and Development Plan, at 109 and Vision Plan, Reconnaissance Report, at 36. The Vision Plan posted on the Town’s website is still referred to as a “draft” of June 9, 2014.

177. The Vision Plan is extremely long and difficult to read and navigate as there are no hyperlinks that enable readers to access remote sections referred to in the text. The document is written in three separate parts that must be read separately. Each part depends on the other two parts to be comprehensible, and it is necessary to read all three parts in order to understand the goals and how to implement the goals.



178. At a meeting of the Summerville Town Council on June 11, 2014 (two days after the draft Vision Plan was posted on the Town's website), the Summerville Town Council passed the "[I]ntroduction and first reading of an ordinance (by title only) to amend the Town of Summerville Comprehensive Plan as amended by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan." (Emphasis added.) This notice is confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing and it should be declared inadequate as a matter of law. This meeting was, therefore, held without notice, and all actions taken by the Town Council at the meeting should be declared invalid. There was no mention of a boutique hotel project in the notice of the meeting or at the meeting.

179. Prior to June 11, 2014, there was inadequate notice and no public hearing as required by law regarding Council's intention to update, amend and essentially replace the Town's Comprehensive Plan (60 pages) with the new Vision Plan (375 pages). Prior to the first reading on June 11, 2014, the public had inadequate opportunity to review and understand the Lawrence Group's Vision Plan and to be aware of and understand that the Town would amend or update the Town's Comprehensive Plan with the Vision Plan. Moreover, there was no disclosure of the consequences of amending the Town's Comprehensive Plan with the Vision Plan, which included enabling Town Council to implement future projects through the RDC, enter into partnerships with and pay money to private developers, issue bonds and take other actions materially affecting the citizens of Summerville without the necessity of holding public hearings.

180. On June 13, 2014, the Secretary of State of the State of South Carolina issued a Certificate of Incorporation for the "Summerville Redevelopment Corporation." The Summerville Redevelopment Corporation was not validly created, and its purported meetings

and activities were not validly noticed and held, in part because notices were not timely made and pertained to a "Summerville Redevelopment Commission" rather than to the "Summerville Redevelopment Corporation." (Emphasis added.)

181. On June 16, 2014, the Town published notice of a meeting of the "Summerville Redevelopment Corporation" to be held on June 25, 2014, having in part the following agenda:

“II. . . . Public hearing on the Summerville Redevelopment Commission’s Proposed Redevelopment Plan (Town’s Vision Plan)” and

III. . . . Adoption of Summerville Redevelopment Plan (Town’s Vision Plan) and recommendation for approval by Summerville Town Council.”

This notice was insufficient and unlawful, in part because: (1) the notice was not timely published; (2) the notice was published by the Town but was not published by the RDC, which did not yet validly exist; (3) the notice was inadequate and confusing as it was published regarding a "Proposed Redevelopment Plan" of the Summerville Redevelopment Commission when the meeting was to be held by the Summerville Redevelopment Corporation; (4) the notice was for a meeting of the Summerville Redevelopment Corporation, but S.C. Code Section 31-10-100(d) requires that the "commission [not the corporation] shall hold a public hearing prior to adoption of a redevelopment plan;" and (5) the public did not know and could not reasonably have known timely the final content of the Town’s Vision Plan or the meaning of the phrase "Adoption of Summerville Redevelopment Plan." Thus, the notice of this meeting is inadequate as a matter of law. The meeting was therefore held without notice, and all actions taken by the Redevelopment Corporation at the meeting are invalid.

182. Section 31-10-100(d) of the Community Development Law requires that a redevelopment commission must hold a public hearing prior to its final adoption of a redevelopment plan, and that notice of such hearing must be published 15 days prior thereto in a newspaper of general circulation. On June 25, 2014, a public meeting was held on the adoption of the Vision Plan as the Redevelopment Corporation's redevelopment plan, and thereafter a resolution to that effect was unanimously adopted. However, the hearing was conducted and the resolution was adopted by the Summerville Redevelopment Corporation, not the Summerville Redevelopment Commission, as required by law. Therefore, the adoption of the Vision Plan as a redevelopment plan was invalid. Further, the notice of this meeting was not published by the Summerville Redevelopment Commission, as required by law. Therefore, the notice is also invalid.

183. On July 9, 2014, the Town Council passed a resolution approving the Vision Plan as the Town's Redevelopment Plan. The resolution recited that it was based on the recommendation of the Redevelopment Corporation at a public hearing. However, Section 31-10-100(e) of the Community Development Law requires that the recommendation to the Town Council to approve a redevelopment plan must come from the Redevelopment Commission, not the Redevelopment Corporation. The Town's Redevelopment Commission did not give notice of a meeting, did not conduct a public hearing and did not recommend to the Town Council adoption of the Vision Plan as the Town's Redevelopment Plan.

184. Thus, the requirements of the Community Development Law were not satisfied, and Council's adoption of the Vision Plan as the Town's redevelopment plan was invalid. Further, Council's authorization to Mayor Collins to sign the Partnership Agreement, which implements the redevelopment plan, was invalid because the Town has no redevelopment plan.

185. The Summerville Redevelopment Commission and the Summerville Redevelopment Corporation could adopt a redevelopment plan only by following the requirements of the South Carolina Community Development Law, which were circumvented and not followed when the Town adopted its Vision Plan; when the Town, rather than the RDC, published a Request for Proposal; and when the RDC adopted as its Redevelopment Plan the Town's Vision Plan, rather than going through the procedure specified in the statute for creation and adoption of a Redevelopment Plan, which requires, inter alia, public hearings and public input. Therefore, any purported adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Commission or the Summerville Redevelopment Corporation was and is void and unlawful.

186. On Wednesday, June 25, 2014, beginning at 5:30 p.m., the Summerville Redevelopment Corporation purported to hold a meeting and a public hearing regarding its proposed adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Corporation. The public meeting and hearing were unlawful because, inter alia, notice of the meeting was insufficient; the RDC had not been lawfully created; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan. It is likely that there was no participation by the public at this public meeting, because the public was not adequately notified of the meaning and significance of the actions to be discussed at the public hearing, due to the failure of the Town and the RDC to follow the Community Development Act, the open meetings law under FOIA and the rapidity of Defendants' actions and Defendants' repeated use of confusing, misleading and undefined terminology interchangeably and inconsistently in their public notices, including "Vision Plan,"

"Master Plan," "Comprehensive Plan," "economic development plan," "Redevelopment Plan," "Summerville Redevelopment Commission" and "Summerville Redevelopment Corporation."

187. According to the minutes of the June 25, 2014, meeting referenced above, after approving prior meeting minutes, the Chairman "announced the next item was a public hearing on the Redevelopment Corporation's proposed Redevelopment Plan and called for any comments from the public. There being no comments offered, Chairman Collins declared the public meeting closed." There was no mention at this meeting of a boutique hotel. Immediately after closing the public hearing portion of the meeting, the RDC passed a resolution adopting the Town's Vision Plan as the RDC's Redevelopment Plan. This resolution was unlawful because, inter alia, notice of the meeting was insufficient and unlawful; the RDC had not been lawfully created; the RDC had not created a Redevelopment Plan as required by the Community Development Law; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan.

188. On June 30, 2014, the RDC applied to the United States Internal Revenue Service ("IRS") for an Employer Identification Number ("EIN"). The RDC has applied to the IRS for a 501(c)(4) tax-exempt status, which is inconsistent with the RDC's contractual obligations it has assumed to make interest-free loans to private developers and to be a partner with a private developer in a for-profit venture. The 501(c)(4) tax exempt status is inconsistent with the RDC being in a profit-making partnership with the for-profit Developer and other private for-profit party Defendants.

189. On July 7, 2014, the Town's Finance Committee held a meeting at which Defendant Collins announced that he had removed language about 880 residential homes from

the Town's Vision Plan. This statement was made after the purported adoption of the Town's Vision Plan as the RDC's Redevelopment Plan, on June 25, 2014. Moreover, the reference to the 880 residential units has not been removed from the Vision Plan appearing on the Town's website.

190. At a date unknown to the Plaintiffs, the RDC may have published notice of a meeting to be held on July 9, 2014, having in part the following new business on the meeting's agenda: "Authorize Chairman [Collins] to finalize negotiations and execute a Public/Private Partnership Agreement between the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co." This notice, if published, was untimely, unclear, confusing, insufficient, unlawful and invalid. Neither the notice, the minutes, nor any other communication published by the Defendants informed the public that the purpose of the "Public/Private Partnership" would be the construction of a boutique hotel project and its financing, including interest-free, unsecured and subordinate loans to the Developer, the issuance of bonds and the use of other Town funds from unspecified sources. Moreover, the RDC's authorization of Chairman Collins to negotiate and execute the Partnership Agreement on behalf of the RDC containing provisions unknown to the RDC is ultra vires and constitutes an unlawful delegation of authority by the RDC.

191. On July 9, 2014, the Town held a meeting (not a public hearing) at which (a) a second reading of an ordinance was given by Town Council to update and amend the Town's Comprehensive Plan with the Town's Vision Plan; (b) the Town Council passed a resolution approving the adoption by the RDC on June 25, 2014, of the Vision Plan as the RDC's Redevelopment Plan; and (c) Town Council passed a motion to allow Defendant Collins to

finalize negotiations and execute a Public-Private Partnership Agreement between the Town, the RDC and Defendant Applegate & Co. At this meeting, Town Council also voted "to amend the Town's Comprehensive Plan by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan," according to minutes of the meeting. The motion allowing Defendant Collins to sign a contract on behalf of the Town containing provisions to be negotiated by him constituted an unlawful delegation of authority by the Town.

192. As a result of the above, Defendants believed that the Vision Plan officially had become the Town's Comprehensive Plan; that the RDC was in place, through which the Town could funnel money and property to Defendant Applegate and to other developers who are engaged in the future to develop other projects for the Town; and that Council therefore could proceed to inform the public, for the first time, that the "economic development project" or redevelopment the Town repeatedly had been discussing in executive sessions was the boutique hotel project; that it would consist of a hotel, parking garage, events facility, fitness center, swimming pool, restaurants, rooftop bar and condominiums; that it would involve a Public-Private Partnership between the Town, the RDC and a private real estate developer as well as a bond offering, forgiveness of real estate taxes, interest-free, unsecured and subordinate loans and other financial concessions to Defendant Applegate & Co.

193. The Mayor, Applegate & Co., Applegate and other Defendants had been negotiating in secret at least since December 18, 2013, when, at a Special Council Meeting, after an Executive Session, the Mayor was authorized to enter into non-binding negotiations with "the company that recently submitted an economic development proposal." The Defendants did everything they could to avoid public awareness and scrutiny of, and to keep secret, as long as possible, the plans for the boutique hotel project and the Public-Private Partnership Agreement,

in part by discussing those matters without public knowledge and obscuring them in the fine print and hundreds of pages of the Vision Plan. As late as July 4, 2014, Defendant Collins was quoted in the Summerville Journal Scene newspaper saying that "no Vision Plan project in particular is at 'the top of the list' for the town. If the costs of all the proposed ideas were to be added up the total would accumulate to billions of dollars. We have to do what we can pay for." Five days later, on July 9, 2014, Defendant Collins signed the Partnership Agreement with Defendant Applegate to develop the hotel project, after the Council finally had spent eight months developing the Vision Plan, attempting to form the RDC and causing the Town and the RDC to adopt the Vision Plan as an amendment and update to the Town's Comprehensive Plan, the Defendants finally disclosed to the public their plans for a boutique hotel project.

194. Despite it being pursued as a Redevelopment Project under the Community Development Law, the boutique hotel project has never been the subject of a public hearing before the Summerville Town Council, the Town Finance Committee, the Town Planning Commission, the Redevelopment Commission or the Redevelopment Corporation.

195. The Vision Plan contains over 300 pages, does not recommend that a boutique hotel project be built in Summerville and does not list the boutique hotel project as one of the 10 priority recommendations of the Vision Plan to be implemented during the next five years. The Vision Plan is not a Redevelopment Plan created and adopted according to South Carolina law, and the boutique hotel project was neither created nor adopted as a Redevelopment Plan under state law.

196. Two public hearings were held concerning the Vision Plan, one by the Town's Planning Commission on June 16, 2014, and one by the Town's Redevelopment Commission on June 25, 2014. The boutique hotel project was not discussed during these hearings.



197. On October 6, 2014, the Town's Board of Architectural Review held a meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At this meeting BAR Chairman Phillip Dixon intimidated and denied the First Amendment free speech rights of citizens attending the meeting by limiting the content of comments and questions by members of the public and the amount of time for those comments and questions to three minutes. Dixon repeatedly stated that the public could address only the appearance of the Developer's drawings but make no other comment, and warned that, if any member of the public spoke in opposition to the project, he or she would be gavelled out of order and escorted from the room by the two policemen standing at the back of the meeting room. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project violated the First Amendment rights of Plaintiffs and others, and the due process and equal protection rights of Plaintiffs and others, under the United States and the South Carolina Constitutions; and the Developer's plans were reviewed without, as required by law, the Developer previously having submitted to the BAR a completed application available for review by the public and without those plans previously having been approved by the RDC and the Town as required by Section 8a of the Partnership Agreement.

198. On October 27, 2014, the Town sent Defendant Faye Croft a written "courtesy notice" of a meeting of the Defendant BAR to be held on November 3, 2014, regarding the boutique hotel project. Characterizing this notice as a "courtesy" was misleading because that notice was required by law.

199. On November 3, 2014, the BAR held a second meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At this meeting BAR Chairman Phillip Dixon again limited public input, in

violation of the First Amendment, due process and equal protection of the laws, as described above regarding the previous BAR meeting held on October 6, 2014. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project were illegal because they violated the First Amendment, due process and equal protection rights of Plaintiffs and others; because the Developer's plans were reviewed without, as required by law, the Developer having previously submitted to the BAR a completed application available for review by the public; and because the developer's plans had not previously been approved by the RDC and the Town. Plaintiff Hutson read to the BAR the following statements in Paragraph 8a of the Partnership Agreement to demonstrate to the BAR that its review of Defendant Applegate's plans was unlawful:

"The project site and architectural design will be based on the conceptual provided in Exhibit F . . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.  
(Emphasis added.)

Notwithstanding the foregoing, the BAR did consider Defendant Applegate's plans for the boutique hotel project and advised him to return with revised drawings for further consideration by the BAR.

200. Because Defendant Mayor Collins and Defendant Town Council members failed and refused to hold public hearings regarding the boutique hotel project, on November 6, 2014, the Summerville Preservation Society held a public meeting at Dorchester County Council Chambers at which citizens discussed and expressed their concerns about, and opposition to, the boutique hotel project. Mayor Collins and all Defendant Town Council members were invited to attend this meeting. Only Council members Walter Bailey and Robert Jackson attended part of

the meeting. On information and belief, Defendants failed and refused to hold public hearings to avoid a public demonstration and airing of opposition to the boutique hotel project and its attendant financial risks.

201. In response to learning that the Summerville Preservation Society would sponsor and hold a public hearing about the Hotel project on November 6, 2014, Defendant Collins and the Town scheduled and held in response an "informational meeting" (not a public hearing) on November 12, 2014. That meeting was tightly controlled by the Mayor and was allowed to last only one hour, most of which time was used by proponents of the project selected by Mayor Collins, who controlled who would speak and when. Mayor Collins began the meeting by allowing Defendant Applegate about thirty minutes to promote and explain his latest design of the project, followed by a succession of several proponents of the project being allowed by the Mayor to speak, often about sports history and other irrelevancies, to orchestrate and control the information provided at the meeting to avoid or minimize negative comments against the project.

202. On November 12, 2014, immediately after the Town's "informational meeting," the RDC held a meeting "to review for approval conceptual plans for The Dorchester Project," which is the name given to the boutique hotel project.

203. On November 12, 2014, Plaintiffs Hutson and Gorman were allowed by Lisa Wallace to inspect, and photograph certain records of the RDC. However, Lisa Wallace had removed from the file, withheld and refused to allow Plaintiffs Hutson and Gorman to inspect certain other RDC records described by Wallace as records pertaining to insurance and banking matters. Wallace thereby violated S.C. Code Section 31-10-160(a), which states in part that "[t]he books and records of a [redevelopment] commission are at all times open and subject to inspection by the public." SC Code Section 31-10-160(a) (emphasis added).

204. On November 19, 2014, one or more of the Defendants placed, and authorized the placement of, a full-page advertisement on page 8B of the *Summerville Journal Scene* newspaper stating that the "Residences at the Dorchester," which are the condominiums of the boutique to be built as part of the Hotel project, are "Now Available For Sale!" and soliciting buyers to "reserve your Condominium Home" now. That advertisement also states in part:

"The Residences at the Dorchester are part of Summerville's new Boutique Hotel Complex and offer residents all of the Hotel Amenities including a fine dining Restaurant, Roof-top Bar, Pool, Fitness Center, Garage Parking, Conference Rooms, and Business Center.

Sales Office Hours are Tuesday-Saturday from 10-6 . . .  
ResidencesatDorchester.com"

This advertisement contains false and misleading representations and information because the Hotel project has not been approved, and may never be approved, by the BAR and other required authorities; the Partnership Agreement and other actions by the Defendants are unlawful; and the condominium units displayed and offered for sale in the advertisement have not been approved by the BAR after two previous BAR meetings and have not been approved by other required authorities.

205. On January 5, 2015, the BAR held a public meeting to consider preliminary approval of the design of the Hotel project. The BAR deliberately and unnecessarily held that meeting in a room was much smaller than the Town Council chambers where previous BAR meetings addressing the Hotel project had been held because of large citizen attendance. Chairman Dixon's purpose was to limit the number of citizens who could attend, view, hear and participate in the meeting; he refused all entreaties to move the meeting to the Council chambers which had much more space for attendees at a meeting and were not in use. As a result, there was insufficient room for most citizens desiring to attend the meeting to attend the meeting; and

many citizens, including many who were elderly, were forced to stand or sit on the floor in the hallway outside of the room where the BAR meeting was held, and were unable to hear or see what occurred at the meeting or to participate in the meeting. Further, at that BAR meeting Mayor Collins and Town Councilman Jenkins positioned themselves sitting directly in front of the members of the BAR, for the purpose and with the effect of intimidating the BAR members and members of the public at the meeting and of taking up limited space thereby depriving other citizens of the opportunity to attend the meeting. In contrast, Town Councilman McIntosh refused to attend BAR meetings to avoid, as stated by him, intimidation of BAR members and conflicts of interest, or the appearance thereof. As a result of the conduct of Chairman Dixon and the other members of the BAR, the BAR meeting on January 5, 2015 was not "open to the public" as required by Section 30-4-60 of the South Carolina Freedom of Information Act, and all actions taken at the meeting should be declared invalid.

206. Before this BAR meeting on January 5, 2015, the BAR stated and advertised that at that meeting citizens would be able to speak about the Hotel project. In addition, at the beginning of this BAR meeting Chairman Dixon announced that citizens would be allowed to speak about the Hotel project at this BAR meeting. Anticipating this opportunity, numerous citizens attended that BAR meeting prepared to speak and for the purpose of speaking against the Hotel project. Despite these representations by the BAR and Chairman Dixon, no citizen was allowed to speak at the meeting, although Defendant Applegate was allowed as much time as he desired to discuss and promote the Hotel project.

207. Plaintiff Gorman was prepared to speak against the Hotel project, but after public testimony was prohibited by Chairman Dixon, Plaintiff Gorman submitted a written copy of his planned oral testimony to BAR Secretary Lucy Dreyer after adjournment of the meeting, and two

days later mailed a letter to Chairman Dixon stating that the BAR had no authority to rule on the Applegate application prior to final approval of that application by the RDC.

208. Notwithstanding Plaintiff Gorman's letter, and Plaintiff Hutson's statements before the BAR on November 3, 2014, regarding the requirement that the RDC approve Applegate's application before the BAR had authority to do so, the BAR proceeded at its next meeting on January 12, 2015, to approve the Applegate proposal, moving it to the next stage of approval from "conceptual" to "preliminary."

209. Citizens desiring to express their opinions about the Hotel project and hoping to have some influence on the BAR's decision at the meeting on January 5, 2015, were unaware that most BAR members had already discussed the Hotel project with Defendant Applegate and among themselves, and had decided how they would vote, as the result of private meetings with Defendant Applegate in mid-December. On December 15, 2014, several BAR members attended secret "workshop" meetings, arranged by Defendants Dreyer and/or Robinson, with Defendant Applegate to discuss the Hotel project. This first secret "workshop" meeting was attended by BAR members Phil Dixon, Rachel Burton and Cecile Cothran; developer and Defendant Arthur Applegate; and Town staff member Madelyn Robinson. This second secret "workshop" meeting was attended by BAR members David Price, Beth Huggins and John Kwist; developer and Defendant Arthur Applegate; and Town staff member Madelyn Robinson. The BAR and the Town deliberately arranged the attendance at the meetings so that there would not be a quorum of BAR members present at either of these meetings in an effort to circumvent the public notice and public meeting requirements of the Freedom of Information Act. The public deliberately was not noticed, informed about or allowed to attend, observe, hear or participate in either of these secret "workshop" meetings, at which BAR members and Defendant Applegate privately

discussed, negotiated and considered Defendant Applegate's Hotel project, a matter of great controversy, public interest and public importance. By holding these private "workshop" meetings the BAR, Robinson, Dreyer and the Town willfully, knowingly and deliberately circumvented and thereby violated the Freedom of Information Act, in numerous respects, including, inter alia, S.C. Code Ann. § 30-4-70( c), which states:

"No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

210. At these secret "workshop" meetings BAR member David Price boasted that the Hotel project personally would benefit him and his bed and breakfast and Beth Huggins boasted that the Hotel project personally would benefit her and her events planning business, personally and uniquely. Thus, Price and Huggins have direct or indirect conflicts of interest that render their decisions and actions regarding the Hotel project as members of the BAR inappropriate, breaches of their fiduciary duties and of the public trust, unlawful and tainted by conflicts of interest. These Defendants and other BAR members similarly situated should have recused themselves from voting on or participating in discussions about the Applegate Hotel design proposals and any votes cast at meetings attended by these members should be voided and recounted.

211. On information and belief, the BAR has not promulgated, created or published any rules, regulations, policies, procedures or guidelines regarding the conduct of its meetings and its process of decision making. As a result, the BAR follows no consistent and fair procedure or process in its deliberations and conducts its meetings on an *ad hoc* and arbitrary basis, leaving its members exposed to political pressure.

212. Certain Defendants have harassed and attempted to intimidate certain Plaintiffs in retaliation for having brought this lawsuit and in an attempt to discourage the Plaintiffs from continuing this lawsuit. For example, recently Defendant Aaron Brown warned that Plaintiffs should be aware that when they sue the Town, those Plaintiffs can be sued in return by the Town. Further, on February 3, 2015 Lucy Dreyer sent, as Secretary to the BAR, an intimidating demand letter to Plaintiff Hutson claiming that "[i]t has come to the Planning Department's attention that the paint color of [Plaintiff Hutson's] house at 200 S. Pine Street has been changed." That letter informed Plaintiff Hutson that "[s]ince this house is part of the Historic District all paint color changes must be approved by the" BAR; cited Section 32-175 as containing requirements regarding the color of his house with which he must comply; sent Plaintiff Hutson an "application" to submit to the BAR seeking BAR approval for the changes to the color of Plaintiff Hutson's house; and demanded that Plaintiff Hutson submit that "application along with color samples for the Board's review" to the BAR by February 20, 2015; and appear before the BAR on March 2, 2015 where the BAR would consider these allegations against him.

213. On February 12, 2015, Plaintiff Hutson notified Dreyer in writing that there had been no change in the color of paint on his house. Plaintiff Hutson also asked in writing that the BAR provide him "[a]ll evidence the BAR has indicating that the color of the paint on my house was changed, including the name and contact information for anyone who told you the color of the paint on my house was changed" and "[a]ll guidelines developed by the BAR as required by Section 32-175." Dreyer replied to these requests by informing Plaintiff Hutson that the only information the BAR had supporting the allegation against him was from an anonymous telephone caller in December, 2014; that neither the BAR nor Dreyer knew who made the call or had a record thereof; and that the BAR and Dreyer sent the demand letter to Plaintiff Hutson.



based on nothing more than the accusation made in the call. In addition, Dreyer informed Plaintiff Hutson that the BAR had not developed any guidelines as required by Section 32-175, referenced above. Thus, Dreyer and the BAR purported to require Plaintiff Hutson to submit color samples to and to appear before the BAR based on false and unfounded representations that Plaintiff Hutson had violated color guidelines established by the BAR in accordance with Section 32-175, when in fact those guidelines did not exist.

214. In addition, a Summerville building code inspector ("code inspector") repeatedly drove his official Town vehicle in front of the homes of Plaintiffs Greene and Harbeson on Laurel Street. The code inspector unexpectedly knocked on the front door of the home of Gary and Carol Lee Brewer located on Laurel Street next door to the home of Plaintiff Greene and across the street from the home of Plaintiff Harbeson. After Carol Lee Brewer opened her door, the code inspector falsely accused Mrs. Brewer of doing electrical and plumbing work on her house without a required Town permit, and demanded that she immediately allow the code inspector to enter her house to inspect whether electrical and plumbing work was being illegally performed. After the code inspector asked in an intimidating tone of voice if Mrs. Brewer was refusing to grant him access, Mrs. Brewer allowed the code inspector to enter her home. The code inspector saw that Mr. and Mrs. Brewer were remodeling their ceilings and cabinets, which required no Town approval, and were not doing any electrical or plumbing work. When the code inspector went into the bathroom of the house and to the electrical box for the house, Mrs. Brewer told the code inspector "I don't know why you are doing this; you do not need to do that" and demanded that he leave, whereupon the code inspector left the house. Upon returning home and learning that the code inspector had falsely accused the Brewers of doing illegal plumbing and electrical work and gained entry to the interior of their home by means of accusations and

intimidation, Gary Brewer called Town officials and told them they should not harass the Brewers as they were not parties to the lawsuit. Upon information and belief, this harassment by the code inspector was directed to the Brewers because the code inspector mistakenly believed the Brewers' house belonged either to Plaintiff Greene or to Plaintiff Harbeson, as an attempt to intimidate and with the intention of intimidating the Plaintiffs into not prosecuting this lawsuit.

215. On February 11, 2015, Town Council gave second reading to a new Town noise ordinance that repealed the Town's previous, more stringent noise ordinances and replaced them with a less stringent noise ordinance offering less public protection, for the purpose and with the effect of facilitating the building and operation of the Hotel project. Sec. 12-31(f) of this new noise ordinance states in part:

"[I]t shall be unlawful for any person or entity to conduct any construction operations between the hours of 11:00 p.m. and 7:00 a.m. The Mayor or his designee may grant a written variation to allow construction between the hours of 11:00p.m and 7:00a.m. on a public or private project on a case by case basis." (Emphasis added.)

This provision is unconstitutional and violates the liberty and property rights of the Plaintiffs, especially Plaintiffs Croft, Croft Trust, Harbeson, Greene, Klinger, Beck and Hutson, by depriving them of due process of law and the equal protection of the laws, in part because this provision enables the Mayor to arbitrarily allow excessive noise creating a nuisance and damaging the Defendants without reasonable and fair criteria, standards or procedures. In addition, this ordinance is unconstitutionally vague and enables the Town to confiscate property without due process of law and without just compensation.

216. This 66-room hotel/rooftop bar/restaurant/garage/34 condo/convention center/swimming pool project complex on two acres of land in the heart of the Historic District at one of the town's busiest intersections appears to be the highest priority of Mayor Collins and the Town Council. Construction will take two years and require the destruction of several

historic houses and the oldest pine in the "Flowertown in the Pines." (The town motto is "The Pine is Sacred.") The anticipated and highly touted 60 new jobs created by the project will be mostly low-paid room cleaners and garage attendants.

217. Previous "boutique" hotels in Summerville have failed because, unlike Charleston, Summerville is not an overnight destination for tourists or business travelers necessary to sustain an expensive hotel and convention center. Moreover, the Summerville market has become more competitive with two new hotels, Courtyard by Marriott and Residence Inn, in Summerville near Interstate-26. If the boutique hotel project fails, the town-owned convention center and garage will also fail, leaving taxpayers with a staggering \$12 million debt and a two-acre "white elephant" in the heart of downtown Summerville.

218. Most of the traffic from developments in newly annexed areas is channeled through the Historic District, where the main railroad crossings leading to I-26 are located. Traffic is the No. 1 complaint of Summerville residents, and the hotel/condo complex will greatly aggravate the congestion.

219. The boutique hotel project is too massive for the selected location.

220. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to subsidize a private development that may not be and probably is not feasible.

221. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to compete with other Summerville businesses that collect the taxes that will be used to finance the boutique hotel project.

222. The Town has been failing, and will continue to fail, in violation of its Comprehensive Plan, to fix dangerous sidewalks; add or replace antiquated street lights; put electrical lines and wires underground; prevent continued flooding of water and flooding of

homes; fix dangerous and decaying roads; and create and maintain other necessities for public health and safety, opting instead to finance and promote the commercialization of the Town of Summerville and the boutique hotel project. Many of these infrastructure repairs not being implemented by the Town are recommended in the Town's Comprehensive Plan and in the Vision Plan.

223. Plaintiffs' and other Summerville residents' requests to Defendants to review feasibility, market assessment and traffic studies have been ignored or thwarted. Defendant Mayor Collins replies to requests for information and review of the project by claiming and exclaiming, "It is a done deal!"

224. Defendants that are governmental entities have responded to Plaintiffs' requests for documents pertaining to the boutique hotel project pursuant to FOIA either by not responding at all or with prohibitive fees and unreasonable delays, instead of producing the public documents requested and doing so free-of-charge due to the public importance of the documents requested.

225. Defendant Collins and other Defendants have promoted the boutique hotel project using, under the color of state law, deceptive, intimidating, bullying and other unlawful actions and tactics that violate Plaintiffs' rights under the United States and South Carolina Constitutions to free speech and association, due process and equal protection of the laws, and other laws and customs, causing injury to their protected property and liberty interests, including but not limited to each of the following:

- A. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call;

- B. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- C. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town;
- D. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- E. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- F. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- G. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to FOIA requests and conducting business in secret and non-transparently;
- H. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- I. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- J. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating

the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;

- K. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- L. Violating numerous State and Town laws, ordinances and customs, as stated herein; and
- M. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.

226. Defendants have violated, and have conspired to violate, the Constitution of the United States, the Constitution of the State of South Carolina, due process of law, the equal protection of the laws, the prohibition against taking property without just compensation and various State and Town statutes, ordinances, regulations and customs, in numerous respects, including but not limited to the following:

A. The Partnership Agreement violates Article I, Article VIII and Article X, §§ 5, 11, 13 and 14 of the South Carolina Constitution in numerous respects, including but not limited to the following:

- 1. The Town of Summerville and the RDC purport to be in a "partnership" with private persons and entities and to indemnify or pledge to indemnify private persons and entities;
- 2. The Partnership Agreement purports to make the Town and the RDC "partners" with a private Developer, thereby making the Town, the RDC and the Developer fiduciaries with each other in conflict with the Town's and the RDC's fiduciary obligations to the taxpayers; thereby making a private Developer an agent of the Town and the RDC with the actual, implied and apparent authority to act for and bind in contract the Town and the RDC; and

potentially exposing the Town and the RDC to unlimited liability for unlawful acts of private parties;

3. The Partnership Agreement requires the Town and the RDC to indemnify private parties for losses that may be suffered by the Developer, thereby potentially exposing the Town and the RDC to great and unlimited liability and which require the RDC to compensate private parties for any environmental damage, which could be astronomical, given that the project will be located on or near where one or more gas stations existed for decades and from which petroleum may have leaked and may leak causing contamination;
4. The Partnership Agreement does not require the private Developer to indemnify the Town or the RDC for damages caused them by the wrongful acts of the private Developer;
5. The Partnership Agreement purports to require the Town and the RDC to pay attorney's fees and costs to the private Developer;
6. The Partnership Agreement purports to require the Town and the RDC to be a "partner" with a private Developer owned and controlled, and which may become owned and controlled, in whole or in part, by parties unknown and unacceptable to the Town or RDC and who may be irresponsible and undesirable as partners of the Town and RDC;
7. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or of the special purpose entity ("SPE") formed or to be formed by the Developer to acquire and transfer title and own and operate property to sell ownership or control of themselves to any third party without the consent of the Town or the RDC;
8. The Partnership Agreement requires the RDC and the Town to pledge or loan its credit for the benefit of the private Developer, which is an individual, company, association or corporation;
9. The Partnership Agreement requires that the Town and the RDC become joint owners in an association or joint venture among the Town, the RDC and the private Developer;
10. The Partnership Agreement provides that \$3,750,000 be loaned to the private Developer by the RDC using proceeds which may be obtained by bond indebtedness of the Town, and which will or may be general obligation debt;

11. The Partnership Agreement provides that the \$3,750,000 loaned to the private Developer by the RDC, interest free, subordinated and unsecured, will be used for development of private facilities, including the hotel;
12. The Partnership Agreement provides that \$5,200,000 will be granted to the private Developer by the RDC using proceeds obtained by bonded indebtedness of the Town, which will or may be general obligation debt "together with other funds (if any) of the Town identified by the Town for such purpose;" Partnership Agreement, Para 11, at 7;
13. The Partnership Agreement provides that the \$5,200,000 granted to the private developer will be used to develop public buildings, including a conference center and a garage, which will benefit substantially the private developer, give little or no benefit to the public as they are not needed by the Town or recommended by or listed as a priority in the Town's Comprehensive Plan or Vision Plan;
14. The existence of a partnership including the Town and the RDC with a private Developer creates impermissible conflicts of interest between the partnership and the Town, obligated by law to regulate the boutique hotel project that is the subject of the partnership;
15. The Partnership Agreement requires the Town and the RDC to spend monies and to incur potential liabilities that could or would drain and prevent tax monies from being spent on infrastructure improvements and other greater priorities, including those stated as greater priorities in the Town's Comprehensive Plan and Vision Plan;
16. The Partnership Agreement requires the Town and the RDC to use tax-dollars collected from certain businesses to finance the creation and operation of businesses that will compete directly with the businesses from which those tax dollars were collected;
17. The Partnership Agreement provides that the Manager who would operate the private hotel and condominiums is the same as the Manager who would operate the public convention center and garage, and that the public convention center and garage would be operated in certain respects for the benefit of the private hotel and condominiums, thereby creating conflicts of interest and comingling of functions, property, costs and profits among private and public parties; and



18. There is no effective remedy for the RDC and the Town if the Developer does not repay the \$3,750,000 loan.

B. The Partnership Agreement and all agreements attached thereto are unlawful, invalid and void ab initio for many reasons, including but not limited to the following:

1. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a Redevelopment Plan and the Redevelopment Project that are the subjects of the Partnership Agreement;
2. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
3. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540, in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
4. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
5. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist as a legal entity;
6. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has not approved the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
7. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;

8. The RDC did not validly have officers at the time the Partnership Agreement was signed by the Chairman of the RDC;
9. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
10. Upon information and belief, Defendant Town of Summerville (not the RDC) selected Defendant Applegate & Co. as the Redeveloper through a seemingly competitive bid process for the boutique hotel project but as a result of anti-competitive collusion;
11. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
12. The Town's Purchasing Ordinance did not authorize the use of an RFP method of procurement; therefore, the award of the development contract to Defendant Applegate and all contracts and agreements that emanated from the unauthorized RFP and award were and are ultra vires, illegal, invalid and void ab initio;
13. The Town accepted a non-responsive bid from Defendant Applegate and failed to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate, thereby depriving the Town, the Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition;
14. The Town failed to promulgate an ordinance authorizing and regarding Requests for Proposals and, despite that failure, issued a Request for Proposal regarding the Hotel project;
15. The Town violated its procurement laws;
16. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases continue to be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract; and
17. The RDC has refused and failed to allow inspection and copies of records of the RDC.

C. The Defendants have violated the Community Development Law in numerous respects, including but not limited to the following:

1. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
2. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
3. The RDC has not prepared or caused to be prepared, and has not recommended, Redevelopment Plans for a Redevelopment Project to the Town of Summerville; instead, the Town has prepared Redevelopment Plans, and the RDC has purported to adopt and implement the Town's Redevelopment Plans and Project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
4. The RDC has not entered into contracts "in accordance with the Redevelopment Plan" created by the RDC as required by S.C. Code Section 31-10-90(6) and other provisions of the Community Development Act;
5. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project not to be maintained to contrive a false claim that the area was "blighted" or a "conservation area," in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;
6. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;

7. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by the Secretary or the Assistant Secretary of the RDC;
8. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment Commission, as required by SC Code Section 31-10-30(a);
9. Required public notice was not published by the RDC before the RDC met and conducted business;
10. The RDC did not follow the proper procedures for creating a Redevelopment Plan, as defined by S.C. Code Section 31-10-20(15);
11. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;
12. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
13. Upon information and belief, the RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
14. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the Redevelopment Plan as hereinafter prescribed," as required by S.C. Code Section 31-10-100( b), because the RDC has not created a Redevelopment Plan as required by the Community Development Law that could be approved by the Town;
15. The RDC has not created a Redevelopment Plan as required by the Community Development Law that contains any of the requirements in S.C. Code Section 31-10-100( c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;

16. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100( d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
17. The RDC violated all of the provisions of SC Code Section 31-10-100( e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
18. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a Redevelopment Plan to the Town;
19. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a Redevelopment Plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);
20. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the Redevelopment Plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the Redevelopment Plan by the Town and after public notice and award as specified in subsection ( c) of this section"; the RDC has not created a Redevelopment Plan, has not obtained the Town's approval of a Redevelopment Plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and ( c);
21. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;

22. The Commission and the Corporation have not adopted rules of organizational procedure; kept a record of its resolutions, findings and determinations; and treated those resolutions, findings and determinations as a public record; and
23. The RDC wrongfully declared the site of the proposed hotel project to be a "blighted area" or a "conservation area," as defined in section 31-10-20 of the Community Development Law.

D. The Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 in numerous respects, including but not limited to the following:

1. Plaintiff Faye Croft was not provided adequate or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
2. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
3. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project; and
4. The Town violated S.C. Code Sec. 6-29-530 by failing to notice and hold a public hearing on the amendment and update of the Comprehensive Plan.

E. The Defendants have violated the Town's ordinances in numerous respects, including but not limited to the following:

1. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article." (Emphasis added.)

2. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed form, required as a prerequisite to the BAR's considering the boutique hotel project; and
3. The Town has issued an RFP and awarded a contract based on that RFP, in violation of state and Town procurement laws, including but not limited to the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326.

F. Defendants BAR and Planning Commission have exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR and the Planning Commission not performing their fiduciary duties to safeguard the public interests, in numerous respects, including but not limited to, the following:

1. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
2. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; discussion of environmental, feasibility and traffic comments was delivered in the second BAR meeting about the boutique hotel project despite the Chairman's admonitions; comments about architectural context (e.g., the project is totally unrelated to the

surrounding buildings), an important consideration in the conceptual-state, were dismissed by the BAR Chairman;

3. The BAR threatened opponents of the project with removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
4. BAR members wine and dine with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;
5. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
6. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
7. The BAR failed to have and to publish clear and adequate procedures;
8. The public has not been allowed an opportunity to examine BAR minutes and to listen to BAR recordings to verify their scope and content;
9. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
10. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
11. The BAR has not informed the public of its right to appeal BAR decisions;
12. The BAR misled the public;
13. The BAR prevented the public from speaking at its meetings;



14. The BAR held secret, unlawful meetings with developer Applegate at which BAR business was discussed and decided;
15. Members of the BAR have direct and indirect conflicts of interest;
16. Members of the Planning Commission have direct and indirect conflicts of interest;
17. The Planning Commission refused and failed to consider errors in the Vision Plan before making recommendations about the Vision Plan and amending the Comprehensive Plan;;
18. Members of the Planning Commission made false statements and misled the public before making recommendations about the Vision Plan and amending the Comprehensive Plan;
19. Members of the BAR and of the Planning Commission have failed to do research, to avoid conflicts of interest and the appearance of impropriety and to maintain independence necessary to make sound and reasonable decisions in the public interest;
20. The Town and members of the Planning Commission and the BAR have pressured and retaliated against members of the Planning Commission and the BAR; and
21. Meetings of the Planning Commission and BAR are shams.

G. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so deficient as to be meaningless, invalid and unlawful;

H. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest; and

I. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings.

## **V. CAUSES OF ACTION**

### **FOR A FIRST CAUSE OF ACTION**

### **VIOLATIONS OF SOUTH CAROLINA CONSTITUTION**

227. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

228. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, violate and will continue to violate provisions of the South Carolina Constitution, including but not limited to Article I §§ 2, 3, 8, 13, 22, and 23, Article VIII and Article X §§ 5, 11, 13, and 14 in numerous respects, including but not limited to the following:

- A. They allow and require the spending of public funds for private purposes and for the primary benefit of private parties;
- B. They allow and require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation;
- C. They allow and require that the Town of Summerville become a joint owner in a company, association, or corporation;
- D. Plaintiffs have been deprived of liberty and property without due process of law;
- E. Plaintiffs have been deprived of liberty and property without the equal protection of the laws;
- F. Plaintiffs have been deprived of private liberty and property rights without due notice and an opportunity to be heard; contrary to statutes, ordinances and regulations; and not by a mode of procedure prescribed by the General Assembly;
- G. Plaintiffs' private property has been taken and will be taken for private uses without the consent of the owner and without just compensation;
- H. Plaintiffs' rights to freedom of speech and assembly have been violated;
- I. Plaintiffs' rights to petition the government or any department thereof for a redress of grievances have been violated;
- J. The Town's new noise ordinance is unconstitutional;
- K. The state law limiting the ability to contest rezoning is unconstitutional;

- L. The Town sent Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call;
- M. The Town falsely accused a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- N. A Town Councilman warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- O. The actions of the governmental Defendants described in Paragraphs 224-225 above are unconstitutional.

229. The Community Development Law, and all other statutes, ordinances, regulations, rules and customs in South Carolina, violate the South Carolina Constitution to the extent that they:

- A. Allow or require the spending of public funds for private purposes or for the primary benefit of private parties;
- B. Allow or require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation; and/or
- C. Allow or require that the Town of Summerville become a joint owner in a company, association, or corporation.

230. As a direct and proximate result of the Defendants' actions and entering into and implementing the above-referenced agreements, the Plaintiffs have been damaged and will continue to be damaged in numerous respects, including, but not limited to, by being deprived of the rights stated above; having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; and suffering increased traffic, noise, flooding, obstructions of views, and other

impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

## **FOR A SECOND CAUSE OF ACTION**

### **ULTRA VIRES; VOID AB INITIO**

231. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

232. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, are ultra vires, invalid and void ab initio.

233. As a direct and proximate result of the Defendants entering into and implementing the above-referenced invalid agreements, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

## **FOR A THIRD CAUSE OF ACTION**

### **VIOLATIONS OF SOUTH CAROLINA COMMUNITY DEVELOPMENT LAW**

234. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

235. Actions by the Defendants referenced herein violate provisions of the South Carolina Community Development Law.

236. As a direct and proximate result of the Defendants violating the South Carolina Community Development Law, the Plaintiffs have been damaged and will continue to be

damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR A FOURTH CAUSE OF ACTION**

**VIOLATIONS OF SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE  
PLANNING ENABLING ACT OF 1994**

237. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

238. Actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

239. As a direct and proximate result of the Defendants violating the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR A FIFTH CAUSE OF ACTION**

**VIOLATIONS OF SOUTH CAROLINA FREEDOM OF INFORMATION ACT**

240. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

241. By their actions referenced herein the Defendants have violated, and continue to violate, sometimes willfully and knowingly, provisions of S.C. Code Ann. § 30-4-10 et seq., in numerous respects, including but not limited to the following:

- A. Failing and refusing to disclose and produce the fiscal impact and the cost-benefit analysis of the Hotel project required by S.C. Code Ann. § 30-4-55;
- B. Giving no notice or inadequate notice of meetings of public bodies;
- C. Excessive and unjustified use of executive sessions;
- D. Failing to provide minutes of meetings within a reasonable time;
- E. Failing to create and implement a FOIA research and copying cost-charging formula that is fair and not for profit;
- F. Failing without justification to produce documents for inspection and copies of documents;
- G. Holding secret "workshops" and meetings for the purpose of evading public knowledge, viewing and hearing of, and participation in, meetings required to be open to the public;
- H. Making and implementing procedures for meetings in violation of the general laws of South Carolina with regard to freedom of information, in violation of Section 5-7-520( c);
- I. Failing to adopt rules of organizational procedure for the RDC and to keep a public record of its resolutions, findings and determinations, as required by S.C. Code Ann. § 6-29-360(B);
- J. Denying public access to meetings, meeting minutes and meeting agendas;
- K. Charging excessive reproduction fees, for the purpose and with the effect of discouraging production of documents;
- L. Refusing to identify redacted information and withheld documents in response to FOIA requests denied;
- M. Failing to respond within 15 working days, or at all, to FOIA requests;
- N. Polling of Town Council members during executive sessions to determine their vote or how they would vote, resulting in quick and prearranged votes following executive sessions;
- O. Removing RDC records prior to public inspection of those records;
- P. Failure and refusal to allow inspection of public records and requiring, instead, that a written FOIA request be submitted followed by a fifteen day delay in

answering the FOIA request and the requirement that excessive and unjustified costs be charged for copies of documents that should be allowed to be inspected without charge or delay; and

- Q. Writing and approving minutes of meetings containing false and erroneous statements and that are incomplete.

242. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 30-4-10; et seq., the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR A SIXTH CAUSE OF ACTION**  
**VIOLATIONS OF S.C. CODE ANN. § 6-1-730**

243. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

244. Actions by the Defendants referenced herein violate S.C. Code Ann. § 6-1-730.

245. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 6-1-570, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above

**FOR A SEVENTH CAUSE OF ACTION**  
**VIOLATIONS OF STATE AND TOWN PROCUREMENT LAWS**

246. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

247. The Town of Summerville violated S.C. Code Sec. 11-35-5 by failing to adopt procedures embodying sound principles of appropriately competitive procurement by means of the Request for Proposal method.

248. The Town of Summerville violated its own Purchasing Ordinance by using a procurement method, the Request for Proposal method, which was not authorized in the Purchasing Ordinance.

249. Because the use of the RFP method of procurement was not authorized in the Purchasing Ordinance, the PPPA, dated as of July 9, 2014, is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

250. The Town's acceptance of a non-responsive bid from Applegate & Co. violated Section 2-323(c)(12) of its Purchasing Ordinance and Sec 2-323 (c)(8) of its Purchasing Ordinance, which states "The invitation for bids shall set for the evaluation criteria to be used. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids." (Emphasis added.)

251. The Town's failure to have rejected the proposal submitted by Applegate & Co. because it was non-responsive to the RFP violated Section 2-323(c)(8),(c)(12) of the Town's Purchasing Ordinance; S.C. Code Ann. Sec. 11-35-1520(13); and Regulation 19-445.2070(A) thereunder.

252. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c), 2323(c)(12) and (17) of Summerville's Purchasing Ordinance which require competitive procurement.



253. Because the Town's acceptance of Applegate's non-responsive proposal violated Summerville's Purchasing Ordinance, the PPPA is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

254. The anti-competitive, collusive, bid-rigging and/or fraudulent conduct described above violates Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c)(17) which require competitive procurement.

255. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the PPPA is contrary to the Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

256. As a direct and proximate result of the Defendants violations described above, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described herein.

#### **FOR AN EIGHTH CAUSE OF ACTION**

#### **VIOLATIONS OF SUMMERVILLE'S ORDINANCES, RULES, REGULATIONS AND CUSTOMS**

257. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

258. Actions by the Defendants referenced herein violate ordinances, rules, regulations and customs of the Town of Summerville, including but not limited to the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, et. seq.; the Summerville Planning Commission

Ordinance, Article II, Sec. 20-31, et. seq.; and the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324.

259. As a direct and proximate result of the Defendants violating ordinances, rules, regulations and customs of the Town of Summerville, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR AN NINTH CAUSE OF ACTION**

#### **VIOLATIONS OF FIRST AMENDMENT RIGHTS OF PLAINTIFFS CROFT, CROFT TRUST, KLINGER, BECKER, GREENE AND HARBESON ONLY**

260. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

261. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and other taxpayers and members of the public, of their rights of free association, petition for redress of grievances, speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- B. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- C. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging excessively for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;

- D. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
- E. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
- F. The BAR intimidated opponents of the project with threats of removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
- G. As described in the First Cause of Action above;
- H. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call;
- I. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- J. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- K. Committing the acts described in Paragraphs 224-225 above;

262. As a direct and proximate result of the Defendants violating the First Amendment rights of Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and others, those Plaintiffs have been damaged and will continue to be damaged by having their First Amendment

rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A TENTH CAUSE OF ACTION**

##### **VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF PLAINTIFFS CROFT, CROFT TRUST, KLINGER, BECKER, GREENE AND HARBESON ONLY**

263. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

264. Plaintiffs have liberty interests and property interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Defendants violated S.C. Code Ann. § 6-29-760(D) by rezoning the property of Defendant Croft as described above. S.C. Code Ann. § 6-29-760(D) and the new Town noise ordinance are arbitrary, unreasonable, capricious and irrational, and violates substantive due process, in violation of the United States Constitution. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and other taxpayers and members of the public, of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- B. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- C. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- D. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- E. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- F. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- G. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable rules, notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- H. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- I. Violating numerous State Constitutional provisions and statutes, and numerous Town laws, ordinances and customs, as stated herein; and

- J. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.
- K. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a redevelopment plan and the redevelopment project that are the subjects of the Partnership Agreement;
- L. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
- M. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540, in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- N. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
- O. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist;
- P. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has rejected the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
- Q. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
- R. The RDC did not validly have officers and by-laws at the time the Partnership Agreement was signed by the Chairman of the RDC;
- S. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
- T. Upon information and belief, Defendant Town of Summerville selected Defendant Applegate & Co. as the winning bid for the boutique hotel project as a result of anti-competitive collusion, bid-rigging and fraud;

- U. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
- V. The Town's failure to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate & Co. deprived the Town, Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition; and
- W. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases continue to be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract.
- X. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
- Y. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
- Z. The RDC has not prepared or caused to be prepared, and has not recommended, redevelopment plans for a redevelopment project to the Town of Summerville; instead, the Town has prepared redevelopment plans, and the RDC has purported to adopt and implement the Town's redevelopment plans and project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
- AA. The RDC has not entered into contracts "in accordance with the redevelopment plan" created by the RDC as required by SC Code Section 31-10-90(6) and other provisions of the Community Development Act;
- BB. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project to not be maintained to contrive a false claim that the area was blighted or a conservation area, in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;

- CC. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;
- DD. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by anyone as the Secretary or the Assistant Secretary of the RDC;
- EE. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment commission, as required by SC Code Section 31-10-30(a);
- FF. Required public notice was not published by the RDC before the RDC met and conducted business;
- GG. The RDC did not follow the proper procedures for creating a redevelopment plan, as defined by SC Code Section 31-10-20(15);
- HH. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;
- II. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
- JJ. The RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
- KK. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the redevelopment plan as hereinafter prescribed," as required by SC Code Section 31-10-100( b), because the RDC has not created a redevelopment plan as required by the Community Development Law that could be approved by the Town;
- LL. The RDC has not created a redevelopment plan as required by the Community Development Law that contains any of the requirements in SC Code Section 31-10-100( c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;



- MM. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100( d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
- NN. The RDC violated all of the provisions of SC Code Section 31-10-100( e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
- OO. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a redevelopment plan to the Town;
- PP. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a redevelopment plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);
- QQ. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the redevelopment plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the redevelopment plan by the Town and after public notice and award as specified in subsection ( c) of this section"; the RDC has not created a redevelopment plan, has not obtained the Town's approval of a redevelopment plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and ( c);
- RR. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;
- SS. Plaintiff Faye Croft was not provided sufficient or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;

- TT. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- UU. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project;
- VV. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article." (Emphasis added.)

- WW. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed application form, required as a prerequisite to the BAR's considering the boutique hotel project;
- XX. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:
- YY. BAR members wine and dined with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;
- ZZ. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
- AAA. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
- BBB. The BAR failed to have and to publish clear and adequate procedures;

- CCC. The public has not been allowed an opportunity to examine BAR minutes timely to verify their scope and content and to correct any errors in those minutes;
- DDD. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
- EEE. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
- FFF. The BAR has not informed the public of its right to appeal BAR decisions;
- GGG. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so insufficient and deficient as to be meaningless, invalid and unlawful;
- HHH. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest;
- III. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings;
- JJJ. As described in the First Cause of Action above; and
- KKK. As described in the allegations of this Complaint.

265. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes for an unlawful purpose; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of

views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR ELEVENTH CAUSE OF ACTION**

**VIOLATIONS OF EQUAL PROTECTION  
RIGHTS UNDER THE FOURTEENTH AMENDMENT OF PLAINTIFFS CROFT,  
CROFT TRUST, KLINGER, BECKER, GREENE AND HARBESON ONLY**

266. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

267. Plaintiffs have property and liberty interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and other taxpayers and members of the public, of their rights to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to the following:

A. Giving Defendants Applegate & Co., Arthur F. Applegate and others insider information not provided to the Plaintiffs helping Defendants Applegate & Co., Arthur F. Applegate and others to advance the boutique hotel project to the detriment of the Defendants;

B. Giving Defendants Applegate & Co., Arthur F. Applegate and others more time and latitude to speak for the boutique hotel project that Defendants Croft, Croft Trust, Greene and Harbeson, and others, were given to speak against the boutique hotel project;

C. Unreasonably discriminating against Plaintiffs Croft, Croft Trust, Greene and Harbeson by giving Defendants Applegate & Co., Arthur F. Applegate and others more

favorable treatments under the law than Defendants Croft, Croft Trust, Greene and Harbeson, and others, were given;

D. As described in the First Cause of Action above; and

E. As described in the allegations of this Complaint.

268. As a direct and proximate result of the Defendants' violations of the equal protection rights of Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A TWELFTH CAUSE OF ACTION**

##### **TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AMENDMENT AGAINST PLAINTIFFS CROFT, CROFT TRUST, GREENE AND HARBESON ONLY**

269. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

270. Plaintiffs have suffered and will suffer a taking of their private property without just compensation by, inter alia, rezoning, having the area on or near which their property is

located declared to be a blighted or a conservation area, allowing construction noise to disturb the quiet enjoyment of their property and other actions by Defendants.

271. As a direct and proximate result of the Defendants' violations of the rights of Plaintiffs Croft, Croft Trust, Klinger, Becker, Greene and Harbeson, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

## **VI. RELIEF REQUESTED**

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it authorized the spending of public funds, and spent public funds, for a privately owned hotel project;
- (2) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it entered into a contract indemnifying private interests against pecuniary losses;
- (3) The Town of Summerville expended public funds for private purposes and pledged the State's full faith and credit for private purposes in violation of the South Carolina Constitution, when it entered into and implemented the PPPA with Applegate;

- (4) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the Constitution of the State of South Carolina;
- (5) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, are and always have been ultra vires, unlawful, null and void ab initio, having no and never having had any force or effect;
- (6) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Community Development Law;
- (7) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (8) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate procurement and other ordinances, rules, regulations and customs of the Town of Summerville;
- (9) The Request for Proposal published by the Town regarding the boutique hotel project, referenced above, violates state and Town procurement and other laws and, therefore, is null, void ab initio and unenforceable;
- (10) The award by the Town and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above, is illegal, null, void and unenforceable;
- (11) Defendants have violated the South Carolina Constitution;
- (12) Defendants have violated the United States Constitution;
- (13) Defendants have violated the South Carolina Freedom of Information Act;
- (14) Defendants have violated the Community Development Law;
- (15) Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (16) Defendants have violated state and Town procurement laws; and

(17) No blight or conservation area exists at the location of the Hotel project.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Implementing in any way, including paying, directly or indirectly, any money pursuant to, the Public-Private Partnership Agreement, any provision thereof, and any agreement attached thereto or associated therewith;
- (2) Implementing in any way, directly or indirectly, the award by the Town of Summerville and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above;
- (3) Violating the South Carolina Community Development Law;
- (4) Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994;
- (5) Violating the South Carolina Freedom of Information Act;
- (6) Violating procurement and ordinances, rules, regulations and customs of the Town of Summerville applicable to development;
- (7) Violating the First Amendment rights of the Plaintiffs;
- (8) Violating the substantive and procedural due process rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution;
- (9) Violating the equal protection rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution; and
- (10) Any and all other such acts as this Court deems appropriate for injunctive relief.

C. Grant a writ of mandamus requiring:

- (1) That the RDC allow the public to inspect all books and records of the RDC, as required by Sections 31-10-160 and 30-4-55 of the Code of Laws of South Carolina; and



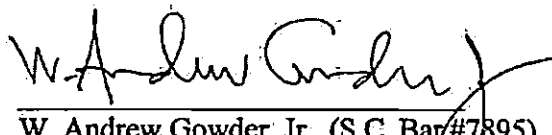
- (2) That the Town and all its subdivisions, agencies and organizations promulgate and implement rules and regulations as required by law, and otherwise to perform mandatory duties required by law;

D. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, the Freedom of Information Act and any other applicable law; and

E. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Michael T. Rose, Esquire (S.C. Bar #4910)  
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Summerville, SC 29483  
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Counsel for Plaintiffs.

**JURY TRIAL DEMANDED**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Faye P. Croft, personally and as Trustee of the  
James A. Croft Trust; James A. Croft Trust;  
William A. Harbeson; Heyward G. Hutson;  
Peter M. Gorman; James Stephen Greene, Jr.;  
Brian Peachey; Robert Klinger; Mary Becker;  
South Carolina Public Interest Foundation;  
Summerville Preservation Society; and  
Dorchester County Taxpayers Association,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in  
his capacity as Mayor; Terry Jenkins, Aaron  
Brown, Walter Bailey, William McIntosh,  
Kima Garten-Schmidt and Robert Jackson, in  
their capacities as members of Town Council;  
Town of Summerville Redevelopment  
Corporation; Town of Summerville Planning  
Commission; Town of Summerville Board of  
Architectural Review; Applegate & Co.; The  
Dorchester, LLC; and Arthur H. Applegate,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT

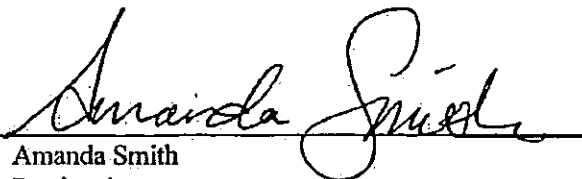
) Civil Action No.: 2014-CP-10-7739

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Amended Complaint in the above-referenced matter has been served upon counsel listed below on February 23, 2015 by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

**J. Rutledge Young, Jr.**  
96 Broad Street  
Charleston, SC 29401

**Tim Domin**  
126 Seven Farms Drive #200  
Charleston, SC 29492

  
Amanda Smith  
Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Faye P. Croft, personally and as Trustee of the  
James A. Croft Trust; James A. Croft Trust;  
William A. Harbeson; Heyward G. Hutson;  
James Stephen Greene, Jr.; Brian Peachey;  
Robert Klinger; Mary Becker; Summerville  
Preservation Society; and Dorchester County  
Taxpayers Association, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

Town of Summerville; William C. Collins, in  
his capacity as Mayor; Terry Jenkins, Aaron  
Brown, Walter Bailey, William McIntosh,  
Kima Garten-Schmidt and Robert Jackson, in  
their capacities as members of Town Council;  
Town of Summerville Redevelopment  
Corporation; Town of Summerville  
Redevelopment Commission; Town of  
Summerville Planning Commission; and Town  
of Summerville Board of Architectural  
Review,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT

) Civil Action No.: 2015-CP-18-00713

**SECOND AMENDED**  
**COMPLAINT**

**JURY TRIAL DEMANDED**

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Clerk of Court  
DORCHESTER COUNTY

Each of the above-named Plaintiffs brings the following actions seeking declaratory,  
mandamus, injunctive and legal relief. For their complaint, the Plaintiffs state as follows:

**I. PRELIMINARY STATEMENT**

1. This is a civil action for declaratory, mandamus and injunctive relief brought for  
violations and threatened violations of, and to enforce the requirements of, *inter alia*, Article I,

Article VIII and Article X of the South Carolina Constitution; the South Carolina Community Development Law, S.C. Code Ann. § 31-10-10 *et. seq.*; the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 *et. seq.*; the South Carolina Building Codes law, S.C. Code Ann. § 6-9-5 *et. seq.*; the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 *et. seq.*; S.C. Code Ann. § 6-1-730 (use of revenue from local hospitality tax); S.C. Code Ann. § 6-7-10 (planning by local governments); the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, *et. seq.*; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, *et. seq.*; the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324; the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326; the Summerville Noise Ordinance; the United States Constitution; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members residing within the Town of Summerville, to (1) obtain a declaration from the Court that purported contracts and provisions of those purported contracts between and among some of the Defendants are *ultra vires*, null and void *ab initio*, and incapable of being implemented, in whole or in part; (2) obtain from the Court injunctions preventing the continued implementation of all provisions of those contracts; (3) obtain a writ of mandamus to require governmental Defendants to perform non-discretionary duties required by law; and (4) otherwise remedy certain violations of various federal and state-protected regulatory, statutory and Constitutional rights afforded to each of the Plaintiffs in this action by the Constitution of the United States; by the Constitution and statutes of the State of South Carolina; and by the ordinances, rules, regulations and customs of the Town of Summerville, South Carolina.

3. The allegations against the Defendants, as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all times relevant were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue are proper in this court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

## II. PARTIES

### A. The Plaintiffs

5. Faye P. Croft ("Croft" or "Faye Croft") is a taxpayer in the Town of Summerville, South Carolina ("Town" or "Summerville"), and is the Trustee and the beneficiary of the James A. Croft Trust, which owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC. Croft has standing as a Plaintiff in this action both as a taxpayer and

due to direct and unique damages to Croft and the James A. Croft Trust that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of their property and the ability to rent their property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of their property. Croft has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

6. The James A. Croft Trust ("Croft Trust") is a trust created under the laws of the State of South Carolina, for which Faye Croft is the trustee and the beneficiary; owns and rents a residence on land located at 214 West Richardson Avenue, Summerville, SC; and is a taxpayer in and to the Town. The Croft Trust has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to the Croft Trust that have been caused and that will continue to be caused by the actions of the Defendants described herein, including but not limited to the reduction in value of its property and the ability to rent its property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of its property. The Croft Trust brings this action individually on its behalf and on behalf of all others similarly situated.

7. The Summerville Preservation Society ("Preservation Society") is a non-profit corporation incorporated in 1972 under the laws of the State of South Carolina; and is a 501 (c)(3) federally tax-exempt organization. The mission of the Preservation Society is to protect the historic fabric of Summerville by preserving Summerville's historic structures, neighborhoods and public spaces, by controlling the growth and development that affects it, and by enhancing the quality of life in the Town. The Preservation Society is suing as a

representative of its members who reside in and are citizens, qualified electors and taxpayers in Summerville and/or Dorchester County, South Carolina. The Preservation Society brings this action individually on its behalf and on behalf of all others similarly situated.

8. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the Town of Summerville and/or Dorchester County, South Carolina. DCTA brings this action individually on its behalf and on behalf of all others similarly situated.

9. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town of Summerville, and owns land located in Summerville. Harbeson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Harbeson that have been caused and that will continue to be caused by the actions of the Defendants, including but not limited to the reduction in value of his property increased traffic and noise, flooding, and other impairments to the use and enjoyment of his property. Harbeson has paid and will continue to pay taxes, including hospitality taxes, which fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

10. Heyward G. Hutson ("Hutson") is a citizen, resident and taxpayer of the Town of Summerville, owns residences on land located in Summerville at 207 West Richardson Avenue and 200 South Pine Street, and is President of Plaintiff Summerville Preservation Society. Hutson has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Hutson that have been caused and that will continue to be caused by the actions of



the Defendants, including but not limited to the diminishment in value of his property and the ability to rent his property due to increased traffic and noise, the obstruction of views, and other impairments to the use and enjoyment of his property. Hutson has paid and will continue to pay taxes, including hospitality taxes that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action both as a taxpayer and due to direct and unique damages to Greene being caused and that will continue to be caused by the actions of the Defendants due to increased traffic and noise, flooding, and other impairments to the use of his property. Greene has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. Brian Peacher ("Peacher") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Peacher has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

13. Robert Klinger ("Klinger") is a citizen, resident and taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Klinger has paid and will continue to pay taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on his behalf and on behalf of all others similarly situated.

14. Mary Becker ("Becker") is a citizen, resident and a taxpayer of Summerville, and has standing as a Plaintiff in this action as a taxpayer. Becker has paid and will continue to pay

taxes, including hospitality taxes, that fund the Town of Summerville, and brings this action individually on her behalf and on behalf of all others similarly situated.

15. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who have contributed to the fund at issue, and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

16. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

17. Each of the above-described Plaintiffs alleging tax payer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of his fellow taxpayers regarding the proper use and allocation of tax receipts by the Town and its civic bodies, named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the Town and its civic bodies followed the requirements and procedures set out in the state constitution, state enabling statutes and Town ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

18. Each of the organization Plaintiffs (Preservation Society and DCTA) has standing based on the individualized injuries that have been or will be suffered by its members as a result

of the actions of the Defendants described in this Second Amended Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claim the organizations assert, nor the relief they request, requires the participation of the individual members of those organizations in this action.

19. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to his or her real or personal property or acting on behalf of organizational members, has suffered an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

**B. The Defendants**

20. The Town of Summerville ("Town") is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

21. The Town of Summerville Redevelopment Commission ("Commission," "Corporation" or "RDC") purportedly, according to the Town, is a public body and a body corporate and politic purportedly created and organized pursuant to the South Carolina Community Development Act, S.C. Code Ann. § 31-10-10 et. seq. The Summerville Redevelopment Corporation is liable for all wrongful actions of the Summerville Redevelopment Commission alleged in this Amended Complaint.

22. The Town of Summerville Redevelopment Corporation ("Corporation," "Commission" or "RDC") is a South Carolina corporation for which the Secretary of State of the State of South Carolina issued a Certificate of Incorporation on June 13, 2014. The Summerville Redevelopment Commission is liable for all wrongful actions of the Summerville Redevelopment Corporation alleged in this Amended Complaint.

23. The Town of Summerville Planning Commission ("Planning Commission") is an organization created by the Town of Summerville by Ord. No. 1997-1003, 11-12-1997 and Ord. No. 08-0902, 10-8-2008, as provided in S.C. Code 1976, § 6-29-310 *et seq.*

24. The Town of Summerville Board of Architectural Review ("BAR") is an organization created by the Town of Summerville by Ord. No. 2000-0901, § 13-5, 10-11-2000 and Ord. No. 06-0701, 8-9-2006, as provided in S.C. Code 1976, § 6-29-870 *et seq.* See Sec. 32-175 of the Summerville Town Ordinances. The members of the BAR are appointed and removed by the Mayor of Summerville with the approval of the Summerville Town Council; serve on the BAR as fiduciaries of the Town of Summerville and its citizens; and are prohibited from conflicts of interest while serving and performing duties as a member of the BAR.

25. William C. Collins ("Collins") was the Mayor of the Town of Summerville and the Chairman of and a Commissioner of the RDC at all times pertinent to this Second Amended Complaint, and is being sued only in his official capacities.

26. Terry Jenkins ("Jenkins") was a member of the Town Council of Summerville and the Vice-Chairman of and a Commissioner of the RDC at all times pertinent to this Second Amended Complaint, and is being sued only in his official capacities.

27. Aaron Brown ("Brown") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

28. Walter Bailey ("Bailey") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

29. William McIntosh ("McIntosh") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

30. Kima Garten-Schmidt ("Garten-Schmidt") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in her official capacities.

31. Robert Jackson ("Jackson") is a member of the Town Council of Summerville and a Commissioner of the RDC, and is being sued only in his official capacities.

**C. Others**

32. Applegate & Co. ("Developer" or "Applegate") is a corporation incorporated under the laws of the State of South Carolina and a "Redeveloper" as defined in S.C. Code Ann. § 31-10-20(11). Upon information and belief, Developer's main office and principal place of business is 4130 Faber Place Drive # 111, North Charleston, South Carolina, in Charleston County.

33. "SPE" as used in this Complaint is a "special purpose entity" created or to be created by the Developer. Should the Developer create this entity, Plaintiffs reserve the right under the South Carolina Rules of Civil Procedure to amend to add that to-be-formed business entity as a Defendant.

34. The Dorchester, LLC, is a limited liability company incorporated under the laws of the State of South Carolina.

35. Arthur H. Applegate (together with Applegate & Co. referred to as the "Developer" or "Applegate") is President of Applegate & Co.; a Manager of The Dorchester, LLC; and the promised personal guarantor of a \$3.75 million loan sought to be made by the RDC to the Dorchester, LLC. Upon information and belief, Applegate is a resident of Charleston County.

36. The Town of Summerville Finance Committee ("Finance Committee") is a committee of the Town of Summerville and has the authority and duty, pursuant to the Town's

Purchasing Ordinance enacted on May 9, 2012, Sec. 2-322(c), to approve all purchases over \$25,000 by the Town. The Town is liable for all wrongful actions of the Finance Committee alleged in this Amended Complaint.

37. The Master Plan Advisory Committee ("MPAC") is, and at all times pertinent to the Second Amended Complaint was, an advisory committee composed of citizens appointed by the Town of Summerville that met on several occasions in Town facilities at the request of the Town. The MPAC gave advice to and performed other actions for, regarding and at the request and direction of the Town and the Town's consultants regarding the manner of, and priorities and expenditures for, development by the Town and the RDC, and did so without complying with the requirements of the South Carolina Freedom of Information Act. The recommendations, votes and other actions of the MPAC promoted, served as the basis for, and caused the creation of, the Town's Master Plan, Vision Plan and Comprehensive Plan, and the RDC's development plan.

38. Peter M. Gorman ("Gorman") is a citizen, resident and taxpayer of Summerville and a representative of the East Historic District Civic Association in Summerville.

39. Phil Dixon ("Dixon") was the Chairman and a member of the BAR at all times pertinent to the Second Amended Complaint. Dixon had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

40. David Price ("Price") was the Vice Chairman and a member of the BAR at all times pertinent to the Second Amended Complaint. Price had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

41. Beth Huggins ("Huggins") was a member of the BAR and a member of the Master Plan Advisory Committee at all times pertinent to the Second Amended Complaint. Huggins had conflicts of interest regarding the Hotel project and therefore should have recused and was required to recuse himself from any actions as a member of the BAR regarding the Hotel project.

42. Madelyn Robinson ("Robinson") is and/or was at all times pertinent to the Second Amended Complaint, the Town's Director of Planning & Economic Development.

43. Lucy Dreyer ("Dreyer") is a Town Staff Planner and the Secretary of the BAR.

44. Lisa Wallace ("Wallace") was, at all times pertinent to the Second Amended Complaint, the Town's Director of Administrative Services, Clerk and Treasurer; the Secretary of the RDC; and the Town's Purchasing Agent pursuant to Town Ordinance Sec.2-321.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

45. The creation, regulation, financing and implementation of development by a municipality of the State of South Carolina, including but not limited to the Defendant Town of Summerville, is governed by the requirements of the United States and the South Carolina Constitutions; State of South Carolina statutes; and the rules, regulations and customs of the Town of Summerville.

#### **A. SOUTH CAROLINA CONSTITUTION**

46. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent only for public purposes.

47. Article X, Section 11 of the South Carolina Constitution states, in relevant part, as follows:

“Credit of State and political subdivisions.

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution . . . Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation.” (Emphasis added.)

48. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds “for the primary benefit of private parties.” *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

49. The term “credit” has been construed as any “pecuniary liability” or “pecuniary involvement.” *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967)

50. Article X, Section 14 of the South Carolina Constitution states, in relevant part, as follows:

“Bonded indebtedness of political subdivisions.

(1) “[P]olitical subdivisions” shall mean the . . . incorporated municipalities of the State . . .

(2) The political subdivisions of the State shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe . . . in the following categories and in no others:

(a) General obligation debt; and

(b) Indebtedness payable only from a revenue producing project or from a special source as provided in subsection (10) of this section.

(3) ‘General obligation debt’ shall mean any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.

(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision.” (Emphasis added.)

(10) Indebtedness payable solely from a revenue producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the



General Assembly may prescribe by general law; provided, that the General Assembly may authorize by general law that indebtedness for the purpose of redevelopment within incorporated municipalities and counties may be incurred, and that the debt service of such indebtedness be provided from the added increments of tax revenues to result from any such project. Any and all indebtedness incurred pursuant to the provisions of this subsection shall contain a statement on the face thereof specifying the sources from which payment is to be made and shall state that the full faith, credit, and taxing powers are not pledged therefor." (Emphasis added.)

## B. SOUTH CAROLINA STATUTES

### (1) COMMUNITY DEVELOPMENT LAW

51. S.C. Code Ann. § 31-10-20 states in part as follows:

"Definitions.

(4) "Commission" means a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter.

(8) "Municipality" means any incorporated city or town or any county.

(11) "Redeveloper" means any individual, partnership, or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of all or any part of a redevelopment area under the provisions of this chapter.

(12) "Redevelopment" means the acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this chapter with respect to the area for which such program is undertaken.

(14) "Redevelopment contract" means a contract between a commission and a redeveloper for redevelopment under the provisions of this chapter.

(15) "Redevelopment plan" means a plan for the redevelopment of a redevelopment area made by a commission in accordance with the provisions of this chapter.

(16) "Redevelopment project" means any work or undertaking:

(a) to acquire blighted or conservation areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(c) to sell land in such areas for residential, recreational, commercial, industrial, or other use or for the public use to the highest bidder set out by the provisions of this chapter or to retain such land for public use, in accordance with the redevelopment plan;

(d) to carry out plans for a program of repair, rehabilitation, or reconditioning of buildings or other improvements in such areas, including the making of loans; and

(e) to engage in programs of assistance and financing, including the making of loans for rehabilitation, repair, construction, acquisition, or reconditioning of residential units in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, including the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project." (Emphasis added.)

52. S.C. Code Ann. § 31-10-30 (a) states in part as follows:

"Each municipality is authorized to create . . . a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission to function

within the territorial limits of the municipality or portion of the municipality . . .” (Emphasis added.)

53. S.C. Code Ann. § 31-10-60 states in part that a “commission may delegate to one or more of its members, agents, or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the whole commission.” (Emphasis added.)

54. S.C. Code Ann. § 31-10-70 states in part as follows:

“No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, nor shall the member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project . . .”

55. S.C. Code Ann. § 31-10-90 states in part as follows:

“A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers . . . including . . .

(4) to prepare or cause to be prepared and recommend redevelopment plans to the governing body of its parent municipality and to undertake and carry out redevelopment projects within its area of operation;

(5) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project;

(6) within its area of operation, to purchase . . . any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and with the approval of the governing body of its parent municipality sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single redeveloper or in parts to several developers; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission, with developers of property containing covenants, restrictions, and

conditions regarding the use of such property . . . in accordance with the redevelopment plan . . . ; and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for bonds; . . . and to enter into any contracts necessary to effectuate the purposes of this chapter;

(14) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary of the commission shall be held to have been properly executed for and on its behalf;"

(Emphasis added.)

56. S.C. Code Ann. § 31-10-100 states in part as follows:

"Contents of redevelopment plan; public hearing prior to adoption of plan; approval by governing body or parent municipality; modification.

(a) A redevelopment plan must be sufficiently complete to indicate its relationship to definite local objectives such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area

(b) A commission shall not acquire real property for a development project unless the governing body of its parent municipality has approved the redevelopment plan as hereinafter prescribed.

(c) The commission's redevelopment plan shall include, without being limited to, the following:

(1) the boundaries of the redevelopment area, with a map showing the existing uses of the real property therein;

(2) a land use plan of the redevelopment area showing proposed uses following redevelopment;

(3) standards of population densities, land coverage, and building intensities in the proposed redevelopment;

(4) a preliminary site plan of the redevelopment area;

(5) a statement of the proposed changes, if any, in zoning ordinances or maps;

(6) a statement of any proposed changes in street layouts or street levels;

(7) a statement of the estimated cost and method of financing redevelopment under the redevelopment plan;

(8) a statement of such continuing controls as may be deemed necessary to effectuate the purposes of this chapter; and

(9) a statement of a feasible method proposed for the relocation of the families displaced.

(d) The commission shall hold a public hearing prior to its final adoption of a redevelopment plan. Notice of such hearing shall be given fifteen days prior thereto in a newspaper of general circulation in the municipality.

(e) The commission shall submit to the governing body the redevelopment plan. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall utilize the local private planning, financing, and financial services to the greatest extent possible and shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the community and its environs, that will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational, and community facilities, and other public requirements, the promotion of sound design and arrangements, the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(f) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(g) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the redevelopment plan, in accordance with the provisions of this chapter.

(h) A redevelopment plan may be modified at any time by the commission; provided, that if modified after the sale of real property in the redevelopment area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in

interest affected by the proposed modification. Where the commission determines that the proposed modification will substantially change the redevelopment plan as previously approved by the governing body, the modification must similarly be approved by the governing body as provided above." (Emphasis added.)

57. S.C. Code Ann. § 31-10-110 states in part as follows:

"Contracting by commission for certain services; advertisement for bids from persons interested in purchasing or redeveloping property; commission's real estate transactions under redevelopment plan.

. . . . .

(b) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment area to any . . . in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this chapter; provided, that such sale, exchange, or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (c) of this section.

(c) The commission shall, by public notice, publish once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. . . . After receipt of all proposals, the sale shall be made to the developer submitting the plan for use of the property that best effectuates the purposes of the redevelopment plan set forth in subsection (e) of this section. All proposals may be rejected. All sales shall be subject to the approval of the governing body of the municipality. . . .

(d) In carrying out a redevelopment project, the commission may:

. . . . .

(4) after a public hearing advertised in accordance with the provisions of subsection (d) of Section 31-10-100 and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment

plan, is to be used for the purposes of such associations or corporations. . .  
.  
All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made;

(e) after receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure, and general character of the proposed redevelopment;

(2) a statement of the use intended for each part of the proposed redevelopment;

(3) the amount, if known, of the consideration to be paid;

(4) adequate safeguards for proper maintenance of all parts of the proposed redevelopment; and

(5) such other continuing controls as may be deemed necessary to effectuate the purposes of this chapter." (Emphasis added.)

58. S.C. Code Ann. § 31-10-120 states in part as follows:

"Power of commission to issue and sell bonds . . .

(a) The commission may issue bonds on which the principal and interest are payable:

(1) exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds;

(2) exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

. . . The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality or the State and neither the municipality nor the State is liable on them, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the commission acquired

for the purpose of this chapter. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. . . . Bonds may be issued by a commission under this chapter notwithstanding any debt or other limitation prescribed in any statute. This chapter without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance is not subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) . . . Prior to the public sale of bonds hereunder, the commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds in a newspaper of general circulation in the commission's area of operation . . ." (Emphasis added.)

59. S.C. Code Ann. § 31-10-150 states in part as follows:

"Notice of intent to issue bonds

Prior to issuing any bonds under this chapter, a commission shall publish notice in a newspaper of general circulation in the municipality of its intent to issue such bonds . . . . Any interested person may within twenty days after the publication of such notice, but not thereafter, challenge the proposal of the commission to issue such bonds by action initiated in the circuit court for the circuit in which the commission is located. . . ." (Emphasis added.)

60. S.C. Code Ann. § 31-10-160 states in part as follows:

"Availability of commission's books, records, bylaws, rules, and regulations for public inspection; annual report of commission's activities.

(a) The books and records of a commission are at all times open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, must be filed with the commission and be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required by the municipality shall be made." (Emphasis added.)



**(2) SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE  
PLANNING ENABLING ACT OF 1994**

**(a) Local Planning Commission**

61. S.C. Code Ann. § 6-29-310 states in part that a “‘local planning commission’ means a municipal planning commission . . .”

62. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Functions, powers, and duties of local planning commissions.

. . . [T]he local planning commission has the . . . duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter;

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.” (Emphasis added.)

63. S.C. Code Ann. § 6-29-360(B) states in part that “[t]he commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record.” (Emphasis added.) The Summerville Planning Commission violates this statutory public record requirement by not having adopted rules of organizational procedure; by not keeping a copy of its records on the Town website, even though it keeps records of other Town meetings on its website; by not creating and making its records available to the public timely; by not allowing public inspections of records timely; and by requiring written requests pursuant to the Freedom of Information Act accompanied by delays of fifteen days or more in order to inspect or obtain a copy of its records.

64. S.C. Code Ann. § 6-29-340 states in part that “[t]he governing authority may provide for the reference of any matters . . . to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.” (Emphasis added.)

65. S.C. Code Ann. § 6-29-340(B) states in part as follows:

“Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and

(3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element . . .;
- (2) an economic development element . . .;
- (3) a natural resources element . . .;
- (4) a cultural resources element . . .;
- (5) a community facilities element . . .;
- (6) a housing element . . .;
- (7) a land use element . . .;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. . .

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years." (Emphasis added.)

66. S.C. Code Ann. § 6-29-520 states in part as follows:

" . . . [N]otice of meetings; recommendations by resolution; transmittal of recommended plan.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.” (Emphasis added.)

67. S.C. Code Ann. § 6-29-530 states in part as follows:

“Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.” (Emphasis added.)

68. S.C. Code Ann. § 6-29-540 states in part as follows:

“Review of proposals following adoption of plan; projects in conflict with plan . . .

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.

In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings

and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. . . . (Emphasis added.)

69. S.C. Code Ann. § 6-29-720 states in part as follows:

“(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts . . . . Within each district the governing body may regulate: . . .

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. (Emphasis added.)

70. S.C. Code Ann. § 6-29-760 states in part as follows:

“Procedure for enactment or amendment of zoning regulation or map;  
notice and rights of landowners

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within

which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." (Emphasis added.)

#### **(b) Board of Architectural Review**

71. S.C. Code Ann. § 6-29-870 states in part as follows:

"Board of architectural review; . . .

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods . . . by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review . . .

(B) The board shall consist of not more than ten members . . . The governing authority . . . creating the board may remove any member of the board which it has appointed.

. . . .

(D) The board shall . . . adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. . . . The

board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record." (Emphasis added.)

72. S.C. Code Ann. § 6-29-880 states in part as follows:

"Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision."

73. S.C. Code Ann. § 6-29-880 states in part as follows:

"Definitions.

(2) 'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) 'Market based incentives' mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays; and

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings." (Emphasis added.)

74. S.C. Code Ann. § 6-29-1120 states in part as follows:

"The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties." (Emphasis added.)

75. S.C. Code Ann. § 6-29-1130 states in part as follows:

"Regulations.

(A) [T]he local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may



provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; . . . . In particular, the regulations shall prescribe that no land development plan . . . will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) . . . The governing authority of the municipality [is] given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county." (Emphasis added.)

76. S.C. Code Ann. § 6-29-1150 states in part as follows:

"Submission of plan or plat to planning commission; record . . .

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans . . . with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans . . . with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. . . ." (Emphasis added.)

### (3) South Carolina Freedom of Information Act

77. S.C. Code Ann. § 30-4-20 states in part as follows:

"Definitions. (a) "Public body" means any public or governmental body or political subdivision of the State, including . . . municipalities, townships . . . or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any

such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions . . ." (Emphasis added.)

78. S.C. Code Ann. § 30-4-20 states in part as follows: "Meetings of public bodies shall be open. Every meeting of all public bodies shall be open to the public . . ." (Emphasis added.)

79. S.C. Code Ann. § 30-4-55 states in part as follows:

"Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. . ." (Emphasis added.)

80. S.C. Code Ann. § 30-4-70 states in part as follows:

"Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

. . . .

- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . .

. . . .

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed . . . No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

81. S.C. Code Ann. § 30-4-80 states in part as follows:

"Notice of meetings of public bodies.

(a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. . . .

. . . .

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this

requirement must be noted in the minutes of the meetings. (Emphasis added.)

82. S.C. Code Ann. § 30-4-90 states in part as follows:

“Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting . . .”

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction . . .”

83. S.C. Code Ann. § 30-4-100 states in part as follows:

“Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.”

84. S.C. Code Ann. § 30-4-100 states in part as follows:

“Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense."

### **C. State and Municipal Procurement Laws**

85. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983."

86. On May 9, 2012, the Town of Summerville repealed its Code of Ordinances Article V, Division 2, entitled "Purchasing" in its entirety and replaced it with a new Ordinance (Ord 12-0301) which, although it has been enacted, has not yet been codified ("Purchasing Ordinance").

87. Regarding bids over \$25,000 in public funds, the Town's Purchasing Ordinance requires competitive bids, meaning there must be more than one bid to award a bid. Sec 2-323 (c)(8) states "The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids."

88. Summerville's Purchasing Ordinance requires in Section 2-321(e) that the designated purchasing agent "[o]btain the most competitive prices on all purchases, contracts and services."

89. The Purchasing Ordinance states in Section 2-322, that "[t]o maximize the purchasing value of public funds, all procurements should be competitive, where practicable and serve the best interest of the town." Further, in subsection (c) thereof, pertaining to purchases of \$25,000 and over, that "purchases be made through competitive sealed bids and advertised

through local press . . . Purchases over \$25,000 must be approved by the finance committee of town council."

90. Section 2-322(d) provides that "[n]othing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined by the purchaser that the town's best interest would be better served." There are no further references, examples, procedures or explanations of this section in the Purchasing Ordinance.

91. Section 2-323(c)(1) requires that "[p]urchases and/or contracts valued at \$25,000 or greater shall be awarded by competitive, sealed bidding, except as may be provided elsewhere in this chapter."

92. Section 2-323(c) (12) provides that "[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interest of the town." (Emphasis added.)

93. Section 2-323(c)(17) provides that "[p]rocurements costing more than \$25,000 shall be accomplished by purchase orders in accordance with departmental procedures with supporting bid award documents and source justification and/or written rationale as to why the procurement may be considered under other procurement methods as provided elsewhere within this chapter, or more specifically, considered as a sole source procurement, sensitive procurement, emergency procurement, procurement through the State of South Carolina or one of its agencies or procurement through an existing town contract. Supporting bid award documents should include bid tabulation and a concise statement as to the reasons for the bid award recommendation. Purchase orders more than \$25,000 must be approved by the finance committee of town council." (Emphasis added.)

94. Section 2-324, entitled "Competitive bidding; exceptions," provides that "[c]ompetitive bidding is required on all purchases exceeding \$2,500 with the following exceptions: [list of five exceptions that correspond to those described in Section 2-323(c) (17) quoted above]."

95. S.C. Code Ann. Sec. 11-35-1520(13), entitled "Minor Informalities and Irregularities in Bids," states that immaterial variation from the exact requirements of an invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, delivery or performance may be waived by a procurement officer.

96. S.C. Regulation 19-445.2070(A) provides: "Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." (Emphasis added.)

97. S.C. Code Ann. Sec. 11-35-1530(1) provides that the provisions of S.C. Code Ann. Sec. 11-35-1520(13) and S.C. Regulation 19-445.2070(A), both quoted above, apply to Requests for Proposals as well as to Invitations for Bids.

## **V. GENERAL FACTUAL ALLEGATIONS**

### **A. AGREEMENTS**

98. This lawsuit is based in part on purported contractual agreements between and among the Defendants which are invalid and void ab initio, including but not limited to each of the following:

#### **(1) "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT"**

99. On July 9, 2014, the Town of Summerville, the RDC and the Developer signed a purported agreement and contract entitled a "PARTICIPATION AGREEMENT" and a "PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ["Partnership Agreement"] BETWEEN

TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE & CO." (the "PARTIES"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. This Partnership Agreement causes the Town of Summerville and the RDC to be "partners" with the Developer, which is a private entity owned and controlled and that may become owned and controlled by persons unknown to the Town and the RDC and who may be or become undesirable as partners to the Town and the RDC. This Partnership Agreement is a "Redevelopment Contract" as defined by SC Code Section 31-10-20(14), and causes the Town and the RDC to contribute property, including real property and millions of dollars of loans, interest free and unsecured, to the Developer in a joint venture for the purpose and with the intended effect of making profits for the Developer, a private for-profit entity, the Town and the RDC. In this Partnership Agreement, Applegate & Co. is a "Redeveloper" within the meaning of Section 31-10-20(11).

100. The Partnership Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY;
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space;"
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY;
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and desires to create a partnership to provide for the efficient and timely development of the proposed project" (emphasis added);
- E. The Developer will "construct a new mixed-use project" ("Project") . . . that will include both private and public improvements . . . expected [to cost] approximately \$20,000,000 . . ."
- F. The Developer entered into a contract to purchase .65 acres or property adjacent to the TOWN PROPERTY and that .65 acres will be combined with the TOWN



PROPERTY to constitute the "PROJECT SITE" where the Project will be built and operated; and

- G. The Developer will "construct public improvements" and "manage and operate, or cause the management and operation by means of the SPE of, [sic] the public parking garage and conference center . . ." Partnership Agreement, at 1-2.

The "Project" reference above is a "Redevelopment Project" as defined by S.C. Code Section 31-10-20(14),

101. The Partnership Agreement defines the "PRIVATE IMPROVEMENTS" portion of the Project as "privately-owned improvements" consisting of the following: (a) a "hotel of approximately 74,000 square feet, containing no less than 65 rooms . . . retail and restaurant space . . . and a rooftop bar" and (b) "approximately 34 residential condominium units and shared common space." Partnership Agreement, at 2. The Request for Proposal ("RFP") by the Town did not include a request for condominium or residential housing units ("condominiums" or "residential units").

102. The Partnership Agreement defines the "PUBLIC IMPROVEMENTS" portion of the Project as "publicly-owned improvements," with the PROJECT SITE consisting of the following: (a) "Conference Center," with at least 10,000 square feet of conference/event space; (b) "Parking facilities and parking garage," with at least 179 spaces. Partnership Agreement, at 2-3.

103. The Partnership Agreement requires that the Town of Summerville do the following: "[s]ubject to approval of its Bond Counsel and closing on bond financing": (a) convey to the RDC the TOWN PROPERTY by deed for use for the PROJECT; and (b) gift to the RDC a grant of \$8,950,000 "for purposes of participation in the PROJECT . . ." Partnership Agreement at 3.

104. The Partnership Agreement requires that the RDC do the following:

A. "Subject to approval of the TOWN's Bond Counsel and closing on bond financing" provide "GAP FINANCING" consisting of "an unsecured loan to the Developer or the SPE with a limited, subordinate personal guarantee of Arthur H. Applegate . . . ending upon completion of construction of the Hotel, Parking Garage, and Conference Center" in the amount of \$3,750,000 to be repaid by the Developer as follows:

(1) "[A]t no interest for a period of 24 months to assist in financing the PRIVATE IMPROVEMENTS;"

(2) Making interest payments of 3.75% to the RDC at the end of 24 months "until the DEVELOPER or the SPE obtains permanent financing for the PROJECT;" and

(3) "[B]ased on the terms of the construction loan for the PROJECT, with final payoff of the GAP LOAN no later than final maturity of the Developer's construction loan . . ." (emphasis added);

B. Make a "PUBLIC IMPROVEMENTS INVESTMENT" in the PROJECT by:

(1) Conveying a portion of the TOWN PROPERTY to the Developer or the SPE;

(2) Funding up to \$5,200,000 to pay costs of the PUBLIC IMPROVEMENTS; and

C. Lease up to 55 parking spaces to the Developer or the SPE for twenty years "to support the residential portion of the project," with the Developer or the SPE purchasing those parking spaces within twenty years. Partnership Agreement, at 3-4.

105. The Partnership Agreement states that regarding the repayment of the \$3,750,000 loaned by the RDC to the Developer or the SPE, with required interest, the "RDC agrees to maintain a subordinate position to the Construction Lender and the Equity Investors with respect to the" PRIVATE IMPROVEMENTS; and that "this [Partnership] Agreement and its exhibits may be collaterally assigned to the construction lender." Partnership Agreement, at 7 (emphasis added).

106. The Agreement requires a "PROPERTY SWAP" by the Town, the RDC and the Developer, as follows: "... the PARTIES shall [exchange] title to certain property within the PROJECT SITE. ... The DEVELOPER will form a special purpose entity ("SPE") to acquire and transfer title and own and operate the PROJECT SITE ... resulting in the RDC owning the parcel that will contain the parking garage and the parcel that will contain the conference center, and the SPE owning the remaining parcel(s)." Partnership Agreement, at 5.

107. The Partnership Agreement states in part the following regarding "site and architectural design":

"The project site and architectural design will be based on the conceptual [sic] provided in Exhibit F . . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.

DEVELOPER agrees that all development, construction, operation and leasing of the PROJECT will be done in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental or quasi-governmental entities, agencies or instrumentalities relating to the development, use or condition of the PROJECT . . . ."  
Partnership Agreement, at 5-6 (emphasis added).

108. The Partnership Agreement requires that "should the PROJECT not proceed to construction as a result of default of this [Partnership] Agreement by the TOWN or RDC, the RDC agrees to pay the DEVELOPER for those preconstruction costs incurred for the PUBLIC IMPROVEMENTS and for PRIVATE IMPROVEMENTS by the DEVELOPER or the SPE . . . up to . . . \$400,000) . . . ." Partnership Agreement, at 7 (emphasis added).

109. Paragraph 11 of the Partnership Agreement states in part as follows:

"ISSUANCE OF LIMITED OBLIGATION BONDS. . . . "[T]he PARTIES acknowledge that the obligations of the Town and the RDC hereinafter are contingent upon the TOWN's ability to issue, upon

reasonable terms and conditions and at reasonable rates of interest, hospitality fee revenue bonds in an amount sufficient, together with other funds (if any) of the TOWN identified by the TOWN for such purpose, to fund the GAP LOAN and the costs of the PUBLIC IMPROVEMENTS, all of which shall be of a nature which satisfies the criteria set forth in Section 6-1-730 of the Code of Laws of South Carolina 1976, as amended.” (Emphasis added.)

110. Paragraph 15b of the Partnership Agreement states in part that the “RDC represents to the TOWN and the DEVELOPER that it has full power and authority to do business in the State of South Carolina and to perform its obligations under, as and when required by this [Partnership] Agreement and shall . . . continue to have such power and authority throughout the term of this [Partnership] Agreement.” Partnership Agreement, at 8-9 (emphasis added).

111. Paragraph 15h of the Partnership Agreement states that the “DEVELOPER may not assign its rights in this [Partnership] Agreement without the prior written consent of the TOWN and the RDC.” Partnership Agreement, at 9. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or the SPE to sell ownership or control of itself to any third party without the consent of the Town or the RDC. The Partnership Agreement exposes the Town of Summerville and the RDC to liability, potentially unlimited, for wrongful acts by the Developer and/or the SPE, and does not require the Developer or the SPE to indemnify the Town or the RDC for damages caused them by the wrongful acts of the Developer.

112. The Partnership Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Partnership Agreement, at 10.

113. Exhibit “A” to the Partnership Agreement consists of a “Project Site Illustration,” which defines the land area of the PROJECT SITE referenced above.

**(2) "PARKING GARAGE/CONFERENCE CENTER  
OPERATION AGREEMENT"**

114. Exhibit "B" to the Partnership Agreement consists of a "PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT" ("Operation Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

115. At the time The Dorchester, LLC signed the Operation Agreement, the Dorchester, LLC did not exist. It was incorporated on October 16, 2014.

116. The Operation Agreement states that:

- A. The Town owns 1.58 acres of property ("TOWN PROPERTY") in downtown Summerville and solicited a "Request-for-Proposals ("RFP") for private development of the TOWN PROPERTY";
- B. The Town received a proposal from the Developer "for a mixed-use development that includes a hotel, residential units and retail space";
- C. The Developer has entered into a contract to purchase .65 acres adjacent to the TOWN PROPERTY; and
- D. The Town "established the RDC to facilitate financing and funding for various . . . development projects . . . and to create a partnership to provide for the efficient and timely development of the project" (emphasis added). Operation Agreement, at 1-2.

117. Section 1 of the Operation Agreement states that the "RDC hereby appoints the Manager as its exclusive independent contractor for the management of the Conference Center and the Parking Garage, and the Manager accepts such appointment . . ." Operation Agreement, at 2.

118. The Operation Agreement states in part that:

- A. "The Manager shall prepare a marketing program for the Conference Center and the Parking Garage and shall supervise the

marketing activities for the Conference Center and the Parking Garage including all advertising layouts, brochures, and campaigns. Advertising expenses shall be paid as operating expenses of the Conference Center and the Parking Garage." (Emphasis added.) Section 3(c), at 3.

B. "... The RDC understands that the Manager may offer discounts of up to 50% off of the published rates and charges to patrons of the hotel located on the Project Site for use of the Conference Center or spaces in the Parking Garage." (Emphasis added.) Section 3(d)(ii), at 3.

C. "The Manager shall contract on behalf of the RDC . . . for the maintenance and repair of heating and air conditioning systems and for other extraordinary repairs . . . . In the event that repairs of an emergency nature are required at a time when it is impractical to consult with the RDC as to cost, the Manager is hereby authorized to contract on behalf of the RDC to undertake such repairs and shall promptly notify the RDC of such action." Section 3(g)(ii), at 4-5 (emphasis added).

D. "The Manager is hereby authorized to purchase all materials, equipment, tools, appliances, supplies, and services reasonably necessary for proper maintenance and repair of the Conference Center or the Parking Garage." Section 3(g)(iv), at 4 (emphasis added).

E. "... The Manager is hereby authorized at the reasonable expense of the Conference Center or the Parking Garage, as applicable, to make contracts for all necessary renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan." Section 3(h)(i), at 4 (emphasis added).

F. "The Manager shall make arrangements and execute any necessary agreements for water, electricity, gas, telephone, data, CATV, internet, sewage and trash disposal, vermin extermination, snow removal, landscape care and related utilities and services for the Conference Center and the Parking Garage. The Manager is hereby authorized to make such contracts on behalf of the RDC as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services, if any, shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(i), at 4-5 (emphasis added).

G. All staffing to manage and operate the Conference Center and Parking Garage "shall be employees of the Manager, its Affiliates, or Subcontractors. "The compensation, including fringe benefits, of the employees performing on-site functions shall be within the Manager's sole discretion. . . . The Manager shall be reimbursed for reasonable

compensation, including fringe benefits, payable to all employees performing on-site functions," and for all taxes and other reasonable expenses regarding personnel. "Such reimbursements shall be paid as operating expenses of the Conference Center and the Parking Garage." Section 3(j), at 5 (emphasis added).

119. The Operation Agreement states that "It is the expectation of the RDC that the Manager shall . . . provide a high level of customer service to the users of the Conference Center and the Parking Garage." Section 3(l), at 5. This provision is illusory because it imposes no duty on and contains no covenant by the Manager.

120. The Operation Agreement provides that "certain functions and services" of the public conference center and garage shall be shared with the Private Improvements . . ." Section 5, at 6.

121. Section 7 of the Operation Agreement states that "RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Exhibit A." Operation Agreement, at 6.

122. Section 9(a) of the Operation Agreement states as follows:

"During the initial one (1) year term of this Agreement, the Manager shall be compensated for its services hereunder by the RDC by payment of a management fee in the amount of \$3,000.00 per month . . ." Section 9(a), at 7.

This Operation Agreement went into effect on July 1, 2014, the date it was executed.

123. Section 10 of the Operation Agreement states in part as follows:

"If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete . . . any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. . . In the event that the RDC fails promptly to

commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay, upon written demand, to the Manager. . ." Section 10, at 7 (emphasis added).

124. Section 12 of the Operation Agreement states that the "Manager may not transfer, assign, pledge, or hypothecate . . . its rights, duties, or obligations under this Agreement without the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager." Section 12, at 7-8. This Operation Agreement does not prevent, restrict or limit the ability of the Manager to sell or give ownership or control of itself to any third party and thereby transfer its duties and obligations under this Operation Agreement to whomever or whatever gains control or ownership of the Manager, without the consent of the RDC. Further, these statements in Section 12 are illusory, because there is no restriction in the Operation Agreement on the ability of any person or entity to become an Affiliate of the Manager.

125. Section 13 of the Operation Agreement states in part as follows:

"(a) This Agreement shall be in effect for an initial term of one (1) year, beginning on the date of execution and delivery hereof and ending one year later. The Manager and the RDC may extend the term of this Agreement for an additional one year period up to fifteen (15) years by their mutual agreement on the Manager's compensation under Section 9 for such renewal term." Section 13, at 8 (emphasis added).

126. The Operation Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC. Operation Agreement, at 12.

### **(3) "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION"**



127. Attachment "A" to the Operation Agreement consists of a "PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION" ("Parking Lease Agreement") dated July 9, 2014, between the RDC and THE DORCHESTER, LLC ("Manager").

128. At the time The Dorchester, LLC signed the Parking Lease Agreement, The Dorchester, LLC did not exist as a corporate entity recognized by the Secretary of State of South Carolina.

129. The Parking Lease Agreement states in part that the RDC is a 501(c)(4) organization. It is not.

130. The Parking Lease Agreement states in part that:

A. "The Town of Summerville . . . created the RDC . . . to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space . . .;"

B. "Applegate & Co. . . . agreed in the Public-Private Partnership Agreement . . . to construct Private Improvements . . . including approximately 34 residential condominium units . . . and to construct Public Improvements . . . including the Parking Garage . . . and further to manage and operate, or cause the management and operation [sic] the public Parking Garage . . . as detailed in the PPP Agreement by means of [The Dorchester, LLC] pursuant to the terms of the Parking Garage/Conference Center Operation Agreement . . .;" and

C. The "RDC has agreed . . . to lease 55 spaces in the Parking Garage to the [The Dorchester, LLC] for a twenty (20) year term to support the Residential Units per the terms of this Lease;" and

D. The "RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage . . .;" Parking Lease Agreement, at 1.

131. The Parking Lease Agreement states in part that:

A. The "RDC leases to [The Dorchester, LLC] and [The Dorchester, LLC] hereby leases from the RDC . . . fifty-five (55) parking spaces . . . for a period of twenty (20) years commencing on [date not stated]; Parking Lease Agreement, at 1.

- B. "... [T]he RDC hereby agrees to sell to [The Dorchester, LLC], and [The Dorchester, LLC] hereby agrees to purchase from the RDC ... all or any portion of the [55 parking spaces] ...;"
- C. "... Tenant shall have the exclusive use of the [55 parking spaces] for the operation and maintenance by Tenant of automobile parking spaces to be sublet to owners of the Residential Units and for any other associated lawful purposes;" and
- D. The RDC shall maintain Commercial Property insurance, Commercial General Liability insurance and other insurance for the benefit of the RDC and The Dorchester, LLC. (Emphasis added.) Parking Lease Agreement, at 1-4.

132. The Parking Lease Agreement requires the RDC to indemnify and save harmless The Dorchester, LLC from losses, by stating as follows:

- A. "The RDC shall indemnify and save harmless [The Dorchester, LLC] from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of negligence or willful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease ... ." Paragraph 13, at 5 (emphasis added);
- B. "ENVIRONMENTAL MATTERS. ... The RDC shall and hereby does indemnify [The Dorchester, LLC] and hold [The Dorchester, LLC] harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by [The Dorchester, LLC] in connection therewith) suffered by [The Dorchester, LLC] by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors ... ." Paragraph 15, at 6-7 (emphasis added); and
- C. "... [E]ach party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease." Paragraph 28, at 9 (emphasis added).

133. The Parking Lease Agreement requires the RDC to pay costs and expenses associated with the parking garage, including for taxes; insurance; debt service; repair, maintenance and operation expenses related to the Premises; and "any other costs . . . ." paragraphs 15-16, at 7; and that the RDC "provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises." In contrast, The Dorchester, LLC's "costs and expenses . . . shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to" the Parking Lease Agreement. Paragraph 15, at 7.

134. The Parking Lease Agreement provides that The Dorchester, LLC "may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this lease upon payment to the RDC or one month's rent as an early termination fee." Paragraph 20, at 8 (emphasis added). In contrast, the "RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default [after a ten day opportunity to cure any Tenant default] and upon ninety (90) days written notice to the Tenant." Paragraphs 18, 20, at 8.

135. The Parking Lease Agreement was signed on behalf of the RDC by its Chairman, but not by any other person or entity on behalf of the RDC.

#### **(4) "GRANT AND PROPERTY CONVEYANCE AGREEMENT"**

136. Exhibit "C" to the Partnership Agreement consists of a "GRANT AND PROPERTY CONVEYANCE AGREEMENT FOR TOURISM AND OTHER ECONOMIC DEVELOPMENT PROJECTS" ("Property Conveyance Agreement"), dated July 9, 2014, between the Town of Summerville and the RDC.

137. This Property Conveyance Agreement states in part as follows:

A. The "TOWN and the RDC determined that the development of [sic] mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage . . . ("PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community;"

B. The "TOWN owns approximately 1.58 acres of property . . . that is necessary for the development of the PROJECT;"

C. On July 9, 2014, the "TOWN passed Ordinance No. \_\_\_\_\_ [sic], approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. (. . . "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT;"

D. "The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT;"

E. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$5,200,000 for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT;"

F. "The TOWN agrees to provide a grant to the RDC in the total amount of . . . \$3,750,000 for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT; and

G. "The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT."

138. The Property Conveyance Agreement was signed on behalf of the RDC by its Chairman but not by any other person or entity on behalf of the RDC.

##### **(5) "PROMISSORY NOTE/LOAN AGREEMENT"**

Agreement "and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject . . . to the following limitations:

1. This guarantee shall be effective . . . only for the period of time beginning with the first disbursement of funds . . . and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center . . .;" [and]
2. The obligation of the guarantor . . . is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors . . . which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder." (Emphasis added.)

**(7) "The Dorchester Estimated Public Improvements Budget"**

144. Exhibit "E" to the Partnership Agreement consists of an "Estimated Public Improvements Budget" showing, inter alia, that the RDC would pay \$260,000 to a private entity as a "Development Fee."

**(8) "Conceptual Site and Architectural Illustrations"**

145. Exhibit "F" to the Partnership Agreement consists of eight "Conceptual Site and Architectural Illustrations."

**B. CHRONOLOGICAL HISTORY OF EVENTS**

146. While a candidate for Mayor of Summerville in 2011, Defendant Collins announced that as Mayor he would build a boutique hotel in downtown Summerville (the "boutique hotel project" or "Hotel project"). After his election in 2011, Defendant Collins orchestrated and contrived actions, some unlawful and some shams, to accomplish that campaign pledge, in conspiracy with other Defendants and for the special benefit of private parties, including real estate developers and others. These actions included, but were not limited to,

unlawfully diverting, using and expending public funds for private purposes; pledging the Town's full faith and credit for private purposes; conducting private, secret meetings that by law were required to be public; holding meetings confidentially and without proper notice; appointing and using the services of an advisory committee that met, deliberated, provided recommendations and advice to the Town and its consultants, and otherwise conducted Town business, in secret; obscuring and withholding information from the public, including the fact that the costs of the public portion of the Hotel project had more than doubled; misleading, defaming, intimidating and bullying citizens to prevent or impede their ability to exercise their rights, influence public opinion and oppose Defendants' actions; purporting to cause the Town of Summerville to enter into a "partnership" with private parties; executing invalid contracts on behalf of governmental entities; making unlawful pledges of public assets and indemnification by government entities to private interests in purported contracts; unlawfully delegating authority; exerting and attempting to exert improper influence on governmental decision makers; failing to follow required substantive and procedural laws; engaging in dual office holding; and exposing taxpayers to excessive, unnecessary, unlawful and unjustified risks.

147. During 2012 and through the present, members of the Summerville Town Council and its governmental subdivisions frequently and excessively have excused themselves from public meetings to confer "behind closed doors" in "executive sessions," to discuss and reach consensus on issues pertaining to the boutique hotel project. The only information provided to the Plaintiffs and the rest of the public regarding these executive session discussions was that they pertained to an "economic development or redevelopment project," the leasing of properties, the sale of real estate or a proposed master plan. Despite statements made for the record upon returning from executive sessions that no actions had been taken, ordinances,

motions and resolutions pertaining to an "economic development or redevelopment plan" invariably followed. For example, on December 18, 2013, the Town Council held a Special Meeting during which members excused themselves into executive session. Upon re-adjoornment of the public special meeting from the executive session, Town Council authorized the Mayor "to enter into non-binding negotiations with the company that recently submitted an economic development proposal." The minutes of the meeting state that "Council returned to public session . . . and announced that no action was taken" during the executive session. Plaintiffs now know that the words "economic development proposal" meant the boutique hotel project proposed by Defendant Applegate in response to the Town's Request for Proposal published on November 10, 2013, and the "company" meant Defendant Applegate & Co.

148. On information and belief, during 2012 through November 10, 2013, Defendant Collins asked three or more experienced hotel developers, including Defendant Applegate, who has participated in many real estate development projects in the Town of Summerville, to build a privately financed boutique hotel on 1.58 acres of land owned by the Town of Summerville near the intersection of West Richardson Avenue and Cedar Street in Summerville. Each developer consulted declined to build a boutique hotel at that location because it was not economically feasible to do so.

149. Unable to get a private developer to finance the boutique hotel at that location, on October 7, 2013, Defendant Town of Summerville contracted with the Lawrence Group, headquartered in Charlotte, North Carolina, "for the development of a master plan for the Town of Summerville." On information and belief, the Lawrence Group is a "redevelopment specialist" and was hired to develop a "master plan" for the following purposes, in whole or in part: (a) instructing the Town with respect to the steps necessary to create a "redevelopment

commission," as defined in the South Carolina Community Development Law, that would take advantage of state laws granting extraordinary powers to these organizations with respect to areas the Town desires to designate as "blighted" or "conservation areas;" (b) instructing the Town with respect to creating a "Vision Plan," that contains all of the development projects desired to be undertaken by the Town Council without public hearings in areas that the Town desires to designate as "blighted" or as "conservation areas;" (c) instructing the Town how to take the steps necessary to enable the Town to participate in financing the boutique hotel project and other projects with a private developer on lands the Town desires to designate as "blighted" or as "conservation areas;" and (d) enabling the Town to rezone areas it desires to designate as "blighted" or as "conservation areas" from mixed-residential to commercial, all with little or no prior public awareness, input or scrutiny.

150. The Town's only authorized procurement method relevant to the Hotel project is the "Invitation for Bid" method. The "Request for Proposal" ("RFP") method of procurement, commonly used by governments for capital improvements, is not mentioned or authorized in the Town's Purchasing Ordinance. Nevertheless, and despite the Town's lack of authority to do so, on November 10, 2013, the Town of Summerville published in the *Charleston Post and Courier* newspaper a Request for Proposal, in Ad # 1065489, stating as follows:

**"REQUEST FOR PROPOSAL** The Town of Summerville owns a 1.58 acre tract of land in the downtown historic district. We are seeking developers with hotel experience interested in building a boutique hotel on this property as a private-public partnership with the town. Interested developers should outline the size and design of the hotel they would build, number of rooms, on-site restaurant/lounge, and number of parking spaces they could provide. Proposal should also consider the possibility of a conference center on that site that could accommodate 300 people for a seated dinner. Interested parties should outline their plan for financing the venture." Interested parties were instructed to submit their qualifications, references and proposals to Lisa Wallace, Director of Administrative Services no later than 5:00 p.m. on Friday, December 6, 2013."



151. S.C. Code Sec. 11-35-50 requires political subdivisions such as the Town of Summerville to adopt and utilize "procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." The Purchasing Ordinance adopted by the Town did not authorize the Request for Proposal method of procurement. Therefore, any procurement by the RFP method, including the publication of the RFP quoted above and the award of the development contract to Applegate, is unlawful and ultra vires. Moreover, the Partnership Agreement and all other contracts and agreements emanating from the unauthorized award are illegal, invalid and void *ab initio*. See *Sloan v. Greenville Hospital System, et al.*, Case No. 03-CP-23-3785 (May 12, 2008) (unpublished opinion).

152. The RFP was published only once, in violation of S.C. Code Ann. § 31-10-110(c). The RFP did not mention or request a proposal for any condominiums or any other residential units even though Town officials, including Collins, knew Applegate wanted and intended to build condominiums and would respond to the RFP with a proposal to build condominiums, in order to enable Applegate to be awarded the Hotel project by being the only responder to the RFP who proposed condominiums. The Request for Proposal was published on Sunday, November 10, 2013, which was 18 days before the Thanksgiving holiday on November 28, 2013. Interested developers were given only 26 calendar days (18 business days), until December 6, 2013, to respond to the RFP, with Veterans' Day, Thanksgiving and Hanukkah holidays intervening.

153. The Town of Summerville received only one proposal pursuant to the RFP, from Applegate & Co. That response was a comprehensive 18-page document that included references to discussions with two prospective construction lenders, a named general contractor, a "development team," "equity partners," 11 pages of pro forma projected costs and revenues for

each component of the complex (hotel, parking garage, etc.) as well as drawings and renderings of the proposed development, and that states in part as follows:

“Enclosed . . . is a proposal . . . to develop a mixed use project on a 1.58 acre tract of land owned by the Town and an adjacent .658 acre tract of land that Applegate & Co. has under contract in the downtown historic district. The project consists of a 66 room boutique hotel, a restaurant, a roof top bar, a roof top terrace, retail space, a conference center with seating capacity for a three hundred person seated dinner, thirty-four high end residential units, a one hundred and fifty-seven space parking deck and twenty-nine surface spaces.” (Emphasis added.)

154. The 1.58-acre tract of land owned by the Town and the .658-acre tract of land purchased or to be purchased by Defendant Applegate & Co. are adjacent properties in the official historical district of Summerville.

155. Applegate’s proposal, dated December 6, 2013, included, in addition to all of the requirements of the RFP, “thirty-four high end residential units” (i.e., condominiums). Residential units were not included in the RFP. The proposal also stated that Applegate & Co. “has under contract” an “adjacent .658 acre tract of land in the downtown historic district.” That tract of land is Applegate’s proposed site for the condominiums.

156. The inclusion in Applegate’s response to the RFP of 34 high-end residential units rendered Applegate’s proposal non-responsive, according to, inter alia, S.C. Code Ann. Sec. 11-35-1520 (13) (Competitive Sealed Bidding — Minor Informalities and Irregularities in Bids) and S.C. Regulation 19-445.2070(A) thereunder, which provides as follows: “Rejection of Individual Bids. A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.” (Emphasis added.) The addition of 34 condominium units in Applegate’s proposal caused it to fail to conform to the essential elements of the Town’s RFP.

157. The award to Applegate also violated Section 2-323(c) (12) of the Town's Purchasing Ordinance, which provides that "[t]he bid shall be awarded with reasonable promptness by notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria set forth in the invitation for bids, and in the best interests of the town." (Emphasis added).

158. If "residential units" (i.e., condominiums) were desired by the Town or necessary to make the boutique hotel project viable and to procure competing bids, the Town should have issued a new RFP that included residential units. By failing to do so, the Town deprived itself, the Plaintiffs, other citizens and taxpayers and other bidders, including qualified minority bidders, of the benefits of free and open competition, and deliberately enabled and facilitated Applegate being awarded the Hotel project by helping to ensure that only Applegate responded to the RFP with a proposal to build condominiums.

159. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c) and 2-323(c) (17) of its own Purchasing Ordinance which require competitive procurement.

160. Because the Town's acceptance of Applegate's non-responsive proposal violated the Summerville's Purchasing Ordinance, the PPPA and all other contracts and agreements emanating from the unlawful award are illegal, invalid, *ultra vires* and void *ab initio*.

161. On information and belief and based in part on the following factors, the Town and/or one or more of the other Defendants gave Applegate information about the RFP before the issuance of the RFP; unfairly, uncompetitively, discriminatorily and illegally helped Applegate be awarded the Hotel project; and assured Applegate that he and it would win the bid in advance

of the submission of Applegate's proposal: (a) the Town limited the time for submission of bids when there was no need to do so, thereby creating a situation where only those with advance information had adequate time to prepare bids or proposals; (b) the Town failed to assure that a sufficient number of potential competitors was aware of the solicitation by publishing the RFP on a Sunday and during a holiday season which included Veterans' Day, Thanksgiving and Hanukkah; (c) the Town received only one proposal pursuant to its RFP, and that proposal was non-responsive; (d) the Town accepted the non-responsive proposal, in violation of its own Purchasing Ordinance which requires competitive bidding; (e) the extensive work evident in the comprehensive proposal submitted by Applegate could not have been completed in the time allowed without advance information about the RFP; and (f) Applegate's hiring of an architect and others to prepare a proposal for the Hotel project including condominiums several weeks before the Town's issuance of the RFP, and Applegate's purchase in advance of submission of its proposal of a contract to buy the tract of land on which the condominiums were to be built show advance knowledge that the Town would accept a non-responsive proposal that included condominiums.

162. On information and belief, based on the foregoing factors, the award of the development contract to Applegate for the Hotel project resulted from anti-competitive collusion, bid rigging and/or fraud between the Developer and one or more other Defendants.

163. Anti-competitive collusion, bid rigging and/or fraud in the procurement process violate Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c) (17), which require competitive procurement, and inure to the detriment of taxpayers, for whose benefit the competitive bidding requirements of the Purchasing Ordinance were enacted.

164. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the Partnership Agreement and all other contracts and agreements emanating from that conduct are illegal, invalid, *ultra vires* and void *ab initio*.

165. This case demonstrates why procurement laws are essential to good government and how much can go wrong when government officials fail to enact procurement laws or fail to comply with the laws they have enacted. The only proposal Summerville ended up with was materially non-responsive and non-competitive, and, as described below, was followed by a contract and other agreements that were negotiated in secret, decidedly adverse to the Town's best interests, based on an illegal RFP and otherwise in violation of law. None of the goals of the Purchasing Ordinance were achieved, and other bidders were not given an opportunity to bid on the project, due to the Defendants' unlawful conduct.

166. On July 9, 2014, the Summerville Town Council authorized Defendant Collins to sign the Partnership Agreement with Defendant Applegate and the Town of Summerville Redevelopment Corporation, providing for a \$30 million hotel/condominium complex, financed in part with \$10 million in Town revenue bonds. This Partnership Agreement and its exhibits were based on and emanated from the Town's illegal RFP and acceptance of Defendant Applegate's non-responsive proposal submitted pursuant to the RFP.

167. There were no public hearings regarding the Hotel project or the Partnership Agreement.

168. The response to the RFP by Applegate & Co. included in part the following "financing and transactional structure" proposal:

" . . . Without limited guarantees from the Town of Summerville and firm lease commitments, the ability to finance the project would be extremely remote. Because what is being proposed for the site has no precedent, there are no available comps to be used to appraise the project. While the

development team is extremely bullish on the probability of success, the bullish stance is based upon intuitive intangibles that come from many years of development experience and numerous successful projects. Unfortunately, commercial banks do not make loans based upon a developer's intuition and past success. The project is ideally suited to be a model private-public partnership.

Applegate & Co. is attempting to structure the deal in such a way that the base case would, at worst, result in a revenue neutral outcome for the Town . . . and, at best, would result in substantial economic benefits to the Town. . . All net revenue produced from the garage and the conference center would be paid to the Town on a monthly basis. . . . The Pro forma rebate to the town is currently projected to be \$12,917 per month from the garage and \$18,750 per month from the conference center. The Town's portion of the property taxes is projected to be \$9,672 annually for the garage and \$11,160 annually for the conference center. . . . The sponsor/developer would look to the Town to contribute the 1.58 acre tract owned by the Town in exchange for an ownership interest in the Hotel. . . .

. . . . Based upon hard costs the total annual tax on the Hotel would be \$368,628. It should be noted that a significantly lower property tax has been used for the Hotel operating Pro forma. It was based upon a lower assessed value and some type of tax relief. If the Hotel, in fact, had to pay taxes of \$368,628, it would significantly reduce the viability of the project. It would further be proposed that the Town would provide a limited guaranty for that portion of the construction loan pertaining to the Hotel. .  
.."

It is anticipated that the bank providing the construction financing will do so based upon equity in the amount of 20% of the total project cost (\$6,056,725) and the bank making a loan for 80% of the total project cost (\$24,226,901). Applegate & Co., the Town's land, and local partners will provide the required equity." (Emphasis added.)

169. Upon information and belief, Defendant Applegate & Co. contracted to acquire the .658-acre tract adjacent to the location of the proposed boutique hotel project prior to its submission to the Town of a response to the RFP on December 6, 2013, because Defendant Applegate had received assurances from one or more of the Defendants in advance of the RFP or submission of Defendant Applegate's response to the RFP that Defendant Applegate & Co. would win the bid. In addition, Defendant Collins stated in August, 2014, that he had named the

boutique hotel "The Dorchester," which is the name Defendant Applegate & Co. had used for the boutique hotel project in its bid submission in response to the Town's RFP on December 6, 2013. In addition, upon information and belief, the submission included a picture of a complex boutique hotel project design at the corner of South Cedar Street and Richardson Avenue in Summerville that was enabled by Defendant Applegate's having been informed about the content, location and timing of the RFP before the RFP was advertised, thereby causing Defendant Applegate to have started creating that design before the publication of the RFP. Therefore, the award of the bid to Defendant Applegate & Co. resulted from anticompetitive collusion, bid rigging and/or fraud between the Developer and the Town.

170. On May 14, 2014, the Town of Summerville did the following to advance the boutique hotel project:

- A. Introduced as a first reading an ordinance to create a "redevelopment commission" called the "Town of Summerville Redevelopment Commission," pursuant to SC Code Section 31-10-30;
- B. Discussed a "proposed economic development project," which was "code" for the boutique hotel project, in an executive session that lasted 51 minutes; those discussions are unknown to the public; and
- C. Passed a second and final reading of an ordinance to change the zoning of property on West Richardson Avenue in Summerville owned by the Town, from B2 "Neighborhood Business Center" to B3 "General Business."

These actions were taken without the public being aware that their purpose was to arrange, advance and finance the boutique hotel project and other projects Town Council may decide to implement in the future through the mechanism of a redevelopment corporation. Upon information and belief, this first reading of the ordinance to create the RDC was taken without the Town having published notice as required by law.

171. On May 28, 2014, the Town held a Special Council Meeting, at which it passed the "second and final reading of an ordinance to create the" RDC. In Ordinance #14-0502, the Town Council also made the following findings, which are required by Section 31-10-30 of the SC Community Development Law to be made before a redevelopment commission can be created. The Town Council found: "(1) that one or more blighted areas or conservation areas exists in whole or in part in the town and [the Town Council] has begun to identify additional blighted areas and/or conservation areas, and (2) that the redevelopment of such areas is necessary in the interest of the public health, safety or general welfare of the residents of the Town." Section 31-10-20 of the Community Development Law contains precise definitions of the terms "blighted area" and "conservation area." "Blighted areas," if improved, must be found to be detrimental to the public safety, health, morals, or welfare, and if vacant, must be found to suffer from specified factors that impair sound growth. "Conservation areas" in general refer to areas that are about to become blighted and are detrimental to the public safety, health, morals, or welfare. The Town Council did not advise the public that these findings had been made. Although there may be areas within the Town limits that could be defined as blighted or about to become blighted, Council's findings with respect to the area selected for construction of the boutique hotel project are not supported by the facts. The area is a highly desirable mixed residential and commercial site in the heart of Summerville's Historic District which is not blighted or about to become blighted. Moreover, one small parcel of the area is owned by the Town and deliberately was allowed by the Town to become overgrown to try to justify the selection of that area as the hotel development site.

172. Immediately after the Council meeting on May 28, 2014, creating the RDC, the RDC held its first meeting, at which the RDC adopted its by-laws; elected its officers, including



Mayor Collins as Chairman and Lisa Wallace as Secretary, and elected each member of the Town Council as a member of the RDC. This meeting of the RDC was held illegally, and its actions therefore are invalid, because notice of the meeting had not been provided as required by law, after the RDC had come into existence, and the RDC had not been lawfully created. When these actions by the Town and the RDC were taken on May 28, 2014, Summerville residents, including all the Plaintiffs, were unaware, and reasonably could not have been aware, of the nature, purpose, function and existence of a "redevelopment commission", and that it would in any way finance or otherwise promote or facilitate the transfer of public funds to a private developer for the purpose of building a privately owned boutique hotel project in Summerville and other projects the Town Council may decide to implement in the future.

173. On June 4, 2014, Town Council held a Special Meeting at which the Lawrence Group presented only a partially completed version of its proposed "Vision Plan" for the Town of Summerville to a combined meeting of the Summerville Town Council, the Summerville Planning Commission and the Master/Vision Plan Advisory Committee. This meeting was not properly held or noticed. At this Special Council Meeting, the Lawrence Group "advised that the revised documents [Vision Plan] will be provided to the town next week and the town will make them available to the public via the town website."

174. On June 9, 2014, the Summerville Planning Commission published a notice of a public hearing purporting to advise the public of a Public Hearing to be held on June 16, 2014, using the following language: "Request to amend the Town s [sic] current Comprehensive Plan 2009-2011 with the prepared Vision Plan as an update and exhibit that further details the potential implementation strategies for the Comprehensive Plan." This notice was confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and

significance of the hearing, and it should be declared inadequate as a matter of law. The meeting held on June 16, 2014, was effectively held without notice, and therefore all actions taken by the Planning Commission at the meeting are invalid. There was no mention of a boutique hotel project in the notice.

175. At this meeting held on June 16, 2014, several members of the public spoke about the need for more time to study the Vision Plan and felt that it was being rushed, among other concerns. During discussion by the members, Planning Commission member Marc Hehn suggested that any decision be postponed until the July meeting so that staff could address some of the public comments and concerns and errors in the Vision Plan that Mr. Hehn had noted. Planning Commission member Charles Cuzzell assured those in attendance that no changes to zoning would occur because of the Vision Plan. Planning Commission member Travis Williams stated that there was no reason to wait, that concerns could be addressed but it was important to get started on the Vision Plan. Planning Commission member Jim Reaves agreed with Mr. Williams and said that the Vision Plan needs to move forward and that the Vision Plan can be amended as the Town goes along, so there was no reason to wait. Other commissioners expressed concern that the Vision Plan would "wither on the vine," if action were not taken immediately. This was a key public meeting at which the Planning Commission members were to decide whether to recommend that Town Council amend the Town's 60-page Comprehensive Plan with the 300-plus page Vision Plan, essentially replacing the existing Comprehensive Plan with the new Vision Plan. The reasons given for ignoring the public's comments were either erroneous or superficial. First, the statement that no zoning changes would be made because of the Vision Plan was erroneous; zoning decisions most certainly can be made and are recommended in the Vision Plan, and in fact had already been made by Town Council on the

land designated for the Hotel project. A motion to rezone the Hotel block from B2 "Neighborhood Business Center" to B3 "General Business" passed unanimously at meetings held on April 9, 2014 and May 14, 2014. As for amendments to the Plan, they cannot easily be made once the Vision Plan is adopted as the Town's Comprehensive Plan. In fact, changes to the Vision Plan then become extremely difficult and require public hearings. The many comments about moving this matter forward reflect a tension about causing a delay in the process of getting the Vision Plan elevated to a quasi-legal status as the Town's Comprehensive Plan. The minutes of the public hearing before the Planning Commission also reflect a panel of commissioners who were uninformed about the Vision Plan and the consequences of the action they were about to take.

176. On June 9, 2014, at approximately 5 p.m., a "draft" of the Lawrence Group's "Vision Plan," also sometimes called a "Master Plan," consisting of approximately 375 pages, first appeared on the Town's website. This was the first publication of the Vision Plan and the first opportunity for Summerville citizens to read the Vision Plan. The publication of the Vision Plan afforded no effective opportunity for Summerville residents who do not use the internet to review the Vision Plan. Among the Vision Plan's recommendations was one to create a Redevelopment Commission and a Redevelopment Fund to "organize a public/private partnership" to act as an agent for the Town in getting development contracts financed with public and private funds. Vision Plan, Code and Policy Report, Sec. 6.1 and Sec. 6.5, at 38. The Vision Plan also mentions a boutique hotel at the corner of South Cedar Street and West Richardson Avenue as a "development opportunity," see Vision Plan, Infrastructure and Development Plan, at 72, but not as a top ten priority, see Vision Plan, Infrastructure and

Development Plan, at 109 and Vision Plan, Reconnaissance Report, at 36. The Vision Plan posted on the Town's website is still referred to as a "draft" of June 9, 2014.

177. The Vision Plan is extremely long and difficult to read and navigate as there are no hyperlinks that enable readers to access remote sections referred to in the text. The document is written in three separate parts that must be read separately. Each part depends on the other two parts to be comprehensible, and it is necessary to read all three parts in order to understand the goals and how to implement the goals.

178. The content of the Vision Plan substantially consisted of recommendations and advice from the Master Plan Advisory Committee to the Town and its consultants, generated illegally in violation of the South Carolina Freedom of Information Act and other laws. In addition, the unlawful actions of the Town and the other Defendants complained of herein resulted substantially from the secretive recommendations, advice and promotional efforts of the MPAC.

179. At a meeting of the Summerville Town Council on June 11, 2014 (two days after the draft Vision Plan was posted on the Town's website), the Summerville Town Council passed the "[I]ntroduction and first reading of an ordinance (by title only) to amend the Town of Summerville Comprehensive Plan as amended by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan." (Emphasis added.) This notice is confusing, inarticulate, insufficient and inadequate to inform the public of the true nature, scope and significance of the hearing and it should be declared inadequate as a matter of law. This meeting was, therefore, held without notice, and all actions taken by the Town Council at the meeting should be declared invalid. There was no mention of a boutique hotel project in the notice of the meeting or at the meeting.

180. Prior to June 11, 2014, there was inadequate notice and no public hearing as required by law regarding Council's intention to update, amend and essentially replace the Town's Comprehensive Plan (60 pages) with the new Vision Plan (375 pages). Prior to the first reading on June 11, 2014, the public had inadequate opportunity to review and understand the Lawrence Group's Vision Plan and to be aware of and understand that the Town would amend or update the Town's Comprehensive Plan with the Vision Plan. Moreover, there was no disclosure of the consequences of amending the Town's Comprehensive Plan with the Vision Plan, which included enabling Town Council to implement future projects through the RDC, enter into partnerships with and pay money to private developers, issue bonds and take other actions materially affecting the citizens of Summerville with no public hearings.

181. On June 13, 2014, the Secretary of State of the State of South Carolina issued a Certificate of Incorporation for the "Summerville Redevelopment Corporation." The Summerville Redevelopment Corporation was not validly created, and its purported meetings and activities were not validly noticed and held, in part because notices were not timely made and pertained to a "Summerville Redevelopment Commission" rather than to the "Summerville Redevelopment Corporation." (Emphasis added.)

182. On June 16, 2014, the Town published notice of a meeting of the "Summerville Redevelopment Corporation" to be held on June 25, 2014, having in part the following agenda:

"II. . . . Public hearing on the Summerville Redevelopment Commission's Proposed Redevelopment Plan (Town's Vision Plan)" and

III. . . . Adoption of Summerville Redevelopment Plan (Town's Vision Plan) and recommendation for approval by Summerville Town Council."

This notice was insufficient and unlawful, in part because: (1) the notice was not timely published; (2) the notice was published by the Town but was not published by the RDC, which did not yet validly exist; (3) the notice was inadequate and confusing as it was published regarding a "Proposed Redevelopment Plan" of the Summerville Redevelopment Commission when the meeting was to be held by the Summerville Redevelopment Corporation; (4) the notice was for a meeting of the Summerville Redevelopment Corporation, but S.C. Code Section 31-10-100(d) requires that the "commission [not the corporation] shall hold a public hearing prior to adoption of a redevelopment plan;" and (5) the public did not know and could not reasonably have known timely the final content of the Town's Vision Plan or the meaning of the phrase "Adoption of Summerville Redevelopment Plan." Thus, the notice of this meeting is inadequate as a matter of law. The meeting was therefore held without notice, and all actions taken by the Redevelopment Corporation at the meeting are invalid.

183. Section 31-10-100(d) of the Community Development Law requires that a redevelopment commission must hold a public hearing prior to its final adoption of a redevelopment plan, and that notice of such hearing must be published 15 days prior thereto in a newspaper of general circulation. On June 25, 2014, a public meeting was held on the adoption of the Vision Plan as the Redevelopment Corporation's redevelopment plan, and thereafter a resolution to that effect was unanimously adopted. However, the hearing was conducted and the resolution was adopted by the Summerville Redevelopment Corporation, not the Summerville Redevelopment Commission, as required by law. Therefore, the adoption of the Vision Plan as a redevelopment plan was invalid. Further, the notice of this meeting was not published by the Summerville Redevelopment Commission, as required by law. Therefore, the notice is also invalid.

184. On July 9, 2014, the Town Council passed a resolution approving the Vision Plan as the Town's Redevelopment Plan. The resolution recited that it was based on the recommendation of the Redevelopment Corporation at a public hearing. However, Section 31-10-100(e) of the Community Development Law requires that the recommendation to the Town Council to approve a redevelopment plan must come from the Redevelopment Commission, not the Redevelopment Corporation. The Town's Redevelopment Commission did not give notice of a meeting, did not conduct a public hearing and did not recommend to the Town Council adoption of the Vision Plan as the Town's Redevelopment Plan.

185. Thus, the requirements of the Community Development Law were not satisfied, and Council's adoption of the Vision Plan as the Town's redevelopment plan was invalid. Further, Council's authorization to Mayor Collins to sign the Partnership Agreement, which implements the redevelopment plan, was invalid because the Town has no redevelopment plan.

186. The Summerville Redevelopment Commission and the Summerville Redevelopment Corporation could adopt a redevelopment plan only by following the requirements of the South Carolina Community Development Law, which were circumvented and not followed when the Town adopted its Vision Plan; when the Town, rather than the RDC, published a Request for Proposal; and when the RDC adopted as its Redevelopment Plan the Town's Vision Plan, rather than going through the procedure specified in the statute for creation and adoption of a Redevelopment Plan, which requires, inter alia, public hearings and public input. Therefore, any purported adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Commission or the Summerville Redevelopment Corporation was and is void and unlawful.

187. On Wednesday, June 25, 2014, beginning at 5:30 p.m., the Summerville Redevelopment Corporation purported to hold a meeting and a public hearing regarding its proposed adoption of the Town's Vision Plan as the Redevelopment Plan of the Summerville Redevelopment Corporation. The public meeting and hearing were unlawful because, inter alia, notice of the meeting was insufficient; the RDC had not been lawfully created; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan. It is likely that there was no participation by the public at this public meeting, because the public was not adequately notified of the meaning and significance of the actions to be discussed at the public hearing, due to the failure of the Town and the RDC to follow the Community Development Act, the open meetings law under FOIA and the rapidity of Defendants' actions and Defendants' repeated use of confusing, misleading and undefined terminology interchangeably and inconsistently in their public notices, including "Vision Plan," "Master Plan," "Comprehensive Plan," "economic development plan," "Redevelopment Plan," "Summerville Redevelopment Commission" and "Summerville Redevelopment Corporation."

188. According to the minutes of the June 25, 2014, meeting referenced above, after approving prior meeting minutes, the Chairman "announced the next item was a public hearing on the Redevelopment Corporation's proposed Redevelopment Plan and called for any comments from the public. There being no comments offered, Chairman Collins declared the public meeting closed." There was no mention at this meeting of a boutique hotel. Immediately after closing the public hearing portion of the meeting, the RDC passed a resolution adopting the Town's Vision Plan as the RDC's Redevelopment Plan. This resolution was unlawful because, inter alia, notice of the meeting was insufficient and unlawful; the RDC had not been lawfully created; the RDC had not created a Redevelopment Plan as required by the Community



Development Law; and the RDC had not followed other provisions of the Community Development Law prior to adopting a Redevelopment Plan.

189. On June 30, 2014, the RDC applied to the United States Internal Revenue Service ("IRS") for an Employer Identification Number ("EIN"). The RDC has applied to the IRS for a 501(c)(4) tax-exempt status, which is inconsistent with the RDC's contractual obligations it has assumed to make interest-free loans to private developers and to be a partner with a private developer in a for-profit venture. The 501(c)(4) tax exempt status is inconsistent with the RDC being in a profit-making partnership with the for-profit Developer and other private for-profit party Defendants.

190. On July 7, 2014, the Town's Finance Committee held a meeting at which Defendant Collins announced that he had removed language about 880 residential homes from the Town's Vision Plan. This statement was made after the purported adoption of the Town's Vision Plan as the RDC's Redevelopment Plan, on June 25, 2014. Moreover, the reference to the 880 residential units has not been removed from the Vision Plan appearing on the Town's website.

191. At a date unknown to the Plaintiffs, the RDC may have published notice of a meeting to be held on July 9, 2014, having in part the following new business on the meeting's agenda: "Authorize Chairman [Collins] to finalize negotiations and execute a Public/Private Partnership Agreement between the Town of Summerville, the Summerville Redevelopment Corporation and Applegate & Co." This notice, if published, was untimely, unclear, confusing, insufficient, unlawful and invalid. Neither the notice, the minutes, nor any other communication published by the Defendants informed the public that the purpose of the "Public/Private

Partnership" would be the construction of a boutique hotel project and its financing, including interest-free, unsecured and subordinate loans to the Developer, the issuance of bonds and the use of other Town funds from unspecified sources. Moreover, the RDC's authorization of Chairman Collins to negotiate and execute the Partnership Agreement on behalf of the RDC containing provisions unknown to the RDC is ultra vires and constitutes an unlawful delegation of authority by the RDC.

192. On July 9, 2014, the Town held a meeting (not a public hearing) at which (a) a second reading of an ordinance was given by Town Council to update and amend the Town's Comprehensive Plan with the Town's Vision Plan; (b) the Town Council passed a resolution approving the adoption by the RDC on June 25, 2014, of the Vision Plan as the RDC's Redevelopment Plan; and (c) Town Council passed a motion to allow Defendant Collins to finalize negotiations and execute a Public-Private Partnership Agreement between the Town, the RDC and Defendant Applegate & Co. At this meeting, Town Council also voted "to amend the Town's Comprehensive Plan by adopting the Town of Summerville Vision Plan and appending the Vision Plan as an update to the Comprehensive Plan," according to minutes of the meeting. The motion allowing Defendant Collins to sign a contract on behalf of the Town containing provisions to be negotiated by him constituted an unlawful delegation of authority by the Town.

193. As a result of the above, Defendants believed that the Vision Plan officially had become the Town's Comprehensive Plan; that the RDC was in place, through which the Town could funnel money and property to Defendant Applegate and to other developers who are engaged in the future to develop other projects for the Town; and that Council therefore could proceed to inform the public, for the first time, that the "economic development project" or

redevelopment the Town repeatedly had been discussing in executive sessions was the boutique hotel project; that it would consist of a hotel, parking garage, events facility, fitness center, swimming pool, restaurants, rooftop bar and condominiums; that it would involve a Public-Private Partnership between the Town, the RDC and a private real estate developer as well as a bond offering, forgiveness of real estate taxes, interest-free, unsecured and subordinate loans and other financial concessions to Defendant Applegate & Co.

194. The Mayor, Applegate & Co., Applegate and other Defendants had been negotiating in secret at least since December 18, 2013, when, at a Special Council Meeting, after an Executive Session, the Mayor was authorized to enter into non-binding negotiations with "the company that recently submitted an economic development proposal." The Defendants did everything they could to avoid public awareness and scrutiny of, and to keep secret, as long as possible, the plans for the boutique hotel project and the Public-Private Partnership Agreement, in part by discussing those matters without public knowledge and obscuring them in the fine print and hundreds of pages of the Vision Plan. As late as July 4, 2014, Defendant Collins was quoted in the Summerville Journal Scene newspaper saying that "no Vision Plan project in particular is at 'the top of the list' for the town. If the costs of all the proposed ideas were to be added up the total would accumulate to billions of dollars. We have to do what we can pay for." Five days later, on July 9, 2014, Defendant Collins signed the Partnership Agreement with Defendant Applegate to develop the hotel project, after the Council finally had spent eight months developing the Vision Plan, attempting to form the RDC and causing the Town and the RDC to adopt the Vision Plan as an amendment and update to the Town's Comprehensive Plan, the Defendants finally disclosed to the public their plans for a boutique hotel project.

195. Despite it being pursued as a Redevelopment Project under the Community Development Law, the boutique hotel project has never been the subject of a public hearing before the Summerville Town Council, the Town Finance Committee, the Town Planning Commission, the Redevelopment Commission or the Redevelopment Corporation.

196. The Vision Plan contains over 300 pages, does not recommend that a boutique hotel project be built in Summerville and does not list the boutique hotel project as one of the 10 priority recommendations of the Vision Plan to be implemented during the next five years. The Vision Plan is not a Redevelopment Plan created and adopted according to South Carolina law, and the boutique hotel project was neither created nor adopted as a Redevelopment Plan under state law.

197. Two public hearings were held concerning the Vision Plan, one by the Town's Planning Commission on June 16, 2014, and one by the Town's Redevelopment Commission on June 25, 2014. The boutique hotel project was not discussed during these hearings.

198. On October 6, 2014, the Town's Board of Architectural Review held a meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique hotel project. At that meeting BAR Chairman Phillip Dixon intimidated and denied the statutory and constitutional speech rights of citizens attending the meeting by prohibiting or unreasonably limiting comments and questions by the attendees. Dixon repeatedly stated that the public could address only the appearance of the Developer's drawings but make no other comment, and warned that, if any member of the public spoke in opposition to the project, he or she would be gaveled out of order and escorted from the room by the two policemen standing at the back of the meeting room. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project violated the free

speech, due process and equal protection rights of the Plaintiffs and others, under the United States and the South Carolina Constitutions; and the Developer's plans were reviewed without, as required by law, the Developer previously having submitted to the BAR a completed application available for review by the public and without those plans previously having been approved by the RDC and the Town as required by Section 8a of the Partnership Agreement.

199. On October 27, 2014, the Town sent Defendant Faye Croft a written "courtesy notice" of a meeting of the Defendant BAR to be held on November 3, 2014, regarding the boutique Hotel project. Characterizing this notice as a "courtesy" was misleading because that notice was required by law. In violation of law, this notice did not inform Croft that she was entitled to speak at this BAR meeting at which demolition would be considered, in violation of Town Ordinance, Sec 32-182(b).

200. On November 3, 2014, the BAR held a second meeting at which Defendant Applegate was allowed to present to the BAR, for over thirty minutes, his plans for the boutique Hotel project. At this meeting BAR Chairman Phillip Dixon again limited public input, in violation of the United States and South Carolina constitutions requirements for free speech, due process and equal protection of the laws, as described above regarding the previous BAR meeting held on October 6, 2014. These actions by the BAR and this consideration by the BAR of the Developer's plans for a boutique hotel project were illegal because they violated the United States and South Carolina Constitutions, including the free speech, due process and equal protection rights of Plaintiffs and others; because attendees at the meeting were not informed by public notice that they had a right to speak at the meeting, as required by law; because the Developer's plans were reviewed without, as required by law, the Developer having previously submitted to the BAR a completed application available for review by the public; and because

the developer's plans had not previously been approved by the RDC and the Town. Plaintiff Hutson read to the BAR the following statements in Paragraph 8a of the Partnership Agreement to demonstrate to the BAR that its review of Defendant Applegate's plans was unlawful:

"The project site and architectural design will be based on the conceptual provided in Exhibit F . . . Prior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, DEVELOPER will submit a final design for both the PRIVATE and PUBLIC IMPROVEMENTS to the RDC for review and approval.  
(Emphasis added.)

Notwithstanding the foregoing, the BAR did consider Defendant Applegate's plans for the boutique hotel project and advised him to return with revised drawings for further consideration by the BAR.

201. Because Defendant Mayor Collins and Defendant Town Council members failed and refused to hold public hearings regarding the boutique hotel project, on November 6, 2014, the Summerville Preservation Society held a public meeting at Dorchester County Council Chambers at which citizens discussed and expressed their concerns about, and opposition to, the boutique hotel project. Mayor Collins and all Defendant Town Council members were invited to attend this meeting. Only Council members Walter Bailey and Robert Jackson attended part of the meeting. On information and belief, Defendants failed and refused to hold public hearings to avoid a public demonstration and airing of opposition to the boutique hotel project and its attendant financial risks.

202. In response to learning that the Summerville Preservation Society would sponsor and hold a public hearing about the Hotel project on November 6, 2014, Defendant Collins and the Town scheduled and held in response an "informational meeting" (not a public hearing) on November 12, 2014. That meeting was tightly controlled by the Mayor and was allowed to last

only one hour, most of which time was used by proponents of the project selected by Mayor Collins, who controlled who would speak and when. Mayor Collins began the meeting by allowing Defendant Applegate about thirty minutes to promote and explain his latest design of the project, followed by a succession of several proponents of the project being allowed by the Mayor to speak, often about sports history and other irrelevancies, to orchestrate and control the information provided at the meeting to avoid or minimize negative comments against the project.

203. On November 12, 2014, immediately after the Town's "informational meeting," the RDC held a meeting "to review for approval conceptual plans for The Dorchester Project," which is the name given to the boutique hotel project.

204. On November 12, 2014, Plaintiffs Hutson and Gorman were allowed by Lisa Wallace to inspect, and photograph certain records of the RDC. However, Lisa Wallace had removed from the file, withheld and refused to allow Plaintiffs Hutson and Gorman to inspect certain other RDC records described by Wallace as records pertaining to insurance and banking matters. Wallace thereby violated S.C. Code Section 31-10-160(a), which states in part that "[t]he books and records of a [redevelopment] commission are at all times open and subject to inspection by the public." SC Code Section 31-10-160(a) (emphasis added).

205. On November 19, 2014, one or more of the Defendants placed, and authorized the placement of, a full-page advertisement on page 8B of the *Summerville Journal Scene* newspaper stating that the "Residences at the Dorchester," which are the condominiums of the boutique to be built as part of the Hotel project, are "Now Available For Sale!" and soliciting buyers to "reserve your Condominium Home" now. That advertisement also states in part:

"The Residences at the Dorchester are part of Summerville's new Boutique Hotel Complex and offer residents all of the Hotel Amenities including a fine dining Restaurant, Roof-top Bar, Pool, Fitness Center, Garage Parking, Conference Rooms, and Business Center.

Sales Office Hours are Tuesday-Saturday from 10-6 . . .  
ResidencesatDorchester.com”

This advertisement contains false and misleading representations and information because the Hotel project had not been approved, and may never be approved validly, by the BAR and other required authorities; the Partnership Agreement and other actions by the Defendants are unlawful; and the condominium units displayed and offered for sale in the advertisement had not been approved by the BAR after two previous BAR meetings and had not been approved by other required authorities.

206. On January 5, 2015, the BAR held a public meeting to consider demolition for and the design of the Hotel project. The BAR deliberately and unnecessarily held that meeting in a room that was much smaller than the Town Council chambers where previous BAR meetings addressing the Hotel project had been held because of large citizen attendance. Chairman Dixon's and the BAR's purpose was to limit the number of citizens who could attend, view, hear, speak at and participate in the meeting; they refused all entreaties to move the meeting to the Council chambers which had much more space for attendees at a meeting and was not in use. As a result, there was insufficient room for most citizens desiring to attend the meeting to attend the meeting; and many citizens, including many who were elderly, were forced to stand or sit on the floor in the hallway outside of the room where the BAR meeting was held, and were unable to hear or see what occurred at the meeting or to participate in the meeting. Further, at that BAR meeting Mayor Collins and Town Councilman Jenkins positioned themselves sitting directly in front of the members of the BAR, for the purpose and with the effect of intimidating the BAR members and members of the public at the meeting and of taking up limited space thereby depriving other citizens of the opportunity to attend the meeting. In contrast, Town Councilman



McIntosh refused to attend BAR meetings to avoid, as stated by him, intimidation of BAR members and conflicts of interest, or the appearance thereof. As a result of the conduct of Chairman Dixon and the other members of the BAR, the BAR meeting on January 5, 2015 was not "open to the public" as required by Section 30-4-60 of the South Carolina Freedom of Information Act. Moreover, attendees at the meeting were not allowed to speak at the meeting even though they were entitled by law to speak at the meeting because the BAR was considering demolition. As a result of all of this, all actions taken at the meeting should be declared invalid.

207. At the beginning of this BAR meeting on January 5, 2015, Chairman Dixon announced that citizens would be allowed to speak about the Hotel project at this BAR meeting. Numerous citizens attended that BAR meeting prepared to speak and for the purpose of speaking against the Hotel project, including against demolitions the BAR was considering as part of the Hotel project. Despite these representations by the BAR and Chairman Dixon, despite these legitimate expectations by the attendees and despite the fact that the BAR was required by law to allow attendees to speak at a BAR meeting considering demolition, no attendee was allowed to speak at the meeting. However, Defendant Applegate was allowed as much time as he desired to discuss and promote the Hotel project.

208. Peter Gorman was prepared to speak against the Hotel project, but after public testimony was prohibited by Chairman Dixon, Gorman submitted a written copy of his planned oral testimony to BAR Secretary Lucy Dreyer after adjournment of the meeting, and two days later mailed a letter to Chairman Dixon stating that the BAR had no authority to rule on the Applegate application prior to final approval of that application by the RDC.

209. Notwithstanding Gorman's letter, and Plaintiff Hutson's statements before the BAR on November 3, 2014, regarding the requirement that the RDC approve Applegate's application

before the BAR had authority to do so, the BAR proceeded at its next meeting on January 12, 2015, to approve the Applegate proposal, moving it to the next stage of approval from "conceptual" to "preliminary."

210. Citizens desiring to express their opinions about the Hotel project and hoping to have some influence on the BAR's decision at the meeting on January 5, 2015, were unaware that most BAR members had already discussed the Hotel project with Applegate and among themselves, and had decided how they would vote, as the result of their private meetings with Applegate in December, 2014. On December 15, 2014, several BAR members attended secret "workshop" meetings, arranged by Defendants Dreyer and/or Robinson, with Applegate to discuss the Hotel project. This first secret "workshop" meeting was attended by BAR members Phil Dixon, Rachel Burton and Cecile Cothran; developer Arthur Applegate; and Town staff member Madelyn Robinson. This second secret "workshop" meeting was attended by BAR members David Price, Beth Huggins and John Kwist; developer Arthur Applegate; and Town staff member Madelyn Robinson. The BAR and the Town deliberately did not have a quorum of the BAR members attend either of these meetings in an effort to circumvent the public notice and public meeting requirements of the Freedom of Information Act. The public deliberately was not noticed, informed about or allowed to attend, observe, hear or participate in either of these secret "workshop" meetings, at which BAR members and Defendant Applegate privately discussed, negotiated, considered and made decisions about Applegate's Hotel project, a matter of great controversy, public interest and public importance. By holding these private "workshop" meetings the BAR, Robinson, Dreyer and the Town willfully, knowingly and deliberately circumvented and violated the Freedom of Information Act, in numerous respects, including, inter alia, S.C. Code Ann. § 30-4-70(c), which states:

"No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." (Emphasis added.)

211. At these secret "workshop" meetings BAR member David Price boasted that the Hotel project personally would benefit his bed and breakfast property and BAR member Beth Huggins boasted that the Hotel project personally would benefit her events planning business, personally and uniquely, and that they therefore supported the Hotel project. Thus, Price and Huggins have direct or indirect conflicts of interest that render their decisions and actions regarding the Hotel project as members of the BAR inappropriate, violations of a Town ordinance prohibiting conflicts of interest by BAR members, breaches of their fiduciary duties and of the public trust, and tainted by conflicts of interest. These Defendants and other BAR members similarly situated should have recused themselves from voting on or participating in discussions about the Applegate Hotel project design proposals and any votes cast at meetings attended by these members should be voided and re-counted.

212. After a meeting of the BAR on February 1, 2017 had adjourned and members of the public who had attended that meeting had left that meeting, all members of the BAR convened a second, non-public BAR meeting, at the same location of the first meeting, without complying with any of the requirements of the Freedom of Information Act regarding a public body conducting a public meeting. The sole purpose, business and agenda of this second "meeting after the meeting" was for BAR members to complain to and about BAR member John Kwist having taken written notes about the secret, illegal "workshop" meeting Kwist and other BAR members attended on December 15, 2014, referenced above; about the content of those notes; and about Kwist's having produced those notes to the Plaintiffs' attorneys in response to a

subpoena. At this second meeting BAR members, especially Dr. David Price, severely criticized, denigrated and intimidated Kwist for having taken and produced the notes, and for the content of the notes, which Price and Huggins disputed.

213. On information and belief, the BAR has not promulgated, created or published any rules, regulations, policies, procedures or guidelines regarding the conduct of its meetings and its process of decision making. As a result, the BAR follows no consistent and fair procedure or process in its deliberations and conducts its meetings on an *ad hoc* and arbitrary basis, leaving its members exposed to political pressure.

214. The BAR has engaged in numerous violations of law regarding the Hotel project, including those stated by the Appellants in Faye P. Croft, et al. v. Town of Summerville, et al, Appellate Case No.: 2015-002199 PTW No.: 7754.001 (South Carolina Court of Appeals).

215. Certain Defendants have harassed and attempted to intimidate certain Plaintiffs in retaliation for having brought this lawsuit and in an attempt to discourage the Plaintiffs from continuing this lawsuit. For example, recently Defendant Aaron Brown warned that Plaintiffs should be aware that when they sue the Town, those Plaintiffs can be sued in return by the Town. Further, on February 3, 2015 Lucy Dreyer sent, as Secretary to the BAR, an intimidating demand letter to Plaintiff Hutson claiming that "[i]t has come to the Planning Department's attention that the paint color of [Plaintiff Hutson's] house at 200 S. Pine Street has been changed." That letter informed Plaintiff Hutson that "[s]ince this house is part of the Historic District all paint color changes must be approved by the" BAR; cited Section 32-175 as containing requirements regarding the color of his house with which he must comply; sent Plaintiff Hutson an "application" to submit to the BAR seeking BAR approval for the changes to the color of Plaintiff Hutson's house; and demanded that Plaintiff Hutson submit that "application along with

color samples for the Board's review" to the BAR by February 20, 2015, and appear before the BAR on March 2, 2015 where the BAR would consider these allegations against him.

216. On February 12, 2015, Plaintiff Hutson notified Dreyer in writing that there had been no change in the color of paint on his house. Plaintiff Hutson also asked in writing that the BAR provide him "[a]ll evidence the BAR has indicating that the color of the paint on my house was changed, including the name and contact information for anyone who told you the color of the paint on my house was changed" and "[a]ll guidelines developed by the BAR as required by Section 32-175." Dreyer replied to these requests by informing Plaintiff Hutson that the only information the BAR had supporting the allegation against him was from an anonymous telephone caller in December, 2014; that neither the BAR nor Dreyer knew who made the call or had a record thereof; and that the BAR and Dreyer sent the demand letter to Plaintiff Hutson based on nothing more than the accusation made in the call. In addition, Dreyer informed Plaintiff Hutson that the BAR had not developed any guidelines as required by Section 32-175, referenced above. Thus, Dreyer and the BAR purported to require Plaintiff Hutson to submit color samples to and to appear before the BAR based on false and unfounded representations that Plaintiff Hutson had violated color guidelines established by the BAR in accordance with Section 32-175, when in fact those guidelines did not exist.

217. Upon receipt of the complaint about Plaintiff Hutson in an anonymous telephone call in December, 2014, referenced above, Dreyer caused a Town employee to inspect the property Plaintiff Hutson was alleged to have painted unlawfully. The Town employee who performed that inspection reported to Dreyer that based on the inspection, the inspector found insufficient evidence of a violation by Hutson. Based on that report, Dreyer decided not to issue Plaintiff Hutson any kind of summons or complaint that he had painted a house improperly.

However, after Dreyer had dropped this matter by deciding not to complain to Plaintiff Hutson about the alleged violation and despite the exoneration of Plaintiff Hutson of wrongdoing by the Town employee inspector, Dr. David Price called Dreyer and instructed her to issue Hutson a letter summoning Hutson to appear before the BAR due to the anonymous complaint that Hutson painted his house illegally. As a result, Dreyer sent Plaintiff Hutson the letter dated February 3, 2015, referenced above.

218. In addition, a Summerville building code inspector ("code inspector") repeatedly drove his official Town vehicle in front of the homes of Plaintiffs Greene and Harbeson on Laurel Street. The code inspector unexpectedly knocked on the front door of the home of Gary and Carol Lee Brewer located on Laurel Street next door to the home of Plaintiff Greene and across the street from the home of Plaintiff Harbeson. After Carol Lee Brewer opened her door, the code inspector falsely accused Mrs. Brewer of doing electrical and plumbing work on her house without a required Town permit, and demanded that she immediately allow the code inspector to enter her house to inspect whether electrical and plumbing work was being illegally performed. After the code inspector asked in an intimidating tone of voice if Mrs. Brewer was refusing to grant him access, Mrs. Brewer allowed the code inspector to enter her home. The code inspector saw that Mr. and Mrs. Brewer were remodeling their ceilings and cabinets, which required no Town approval, and were not doing any electrical or plumbing work. When the code inspector went into the bathroom of the house and to the electrical box for the house, Mrs. Brewer told the code inspector "I don't know why you are doing this; you do not need to do that" and demanded that he leave, whereupon the code inspector left the house. Upon returning home and learning that the code inspector had falsely accused the Brewers of doing illegal plumbing and electrical work and gained entry to the interior of their home by means of accusations and

intimidation, Gary Brewer called Town officials and told them they should not harass the Brewers as they were not parties to the lawsuit. Upon information and belief, this harassment by the code inspector was directed to the Brewers because the code inspector mistakenly believed the Brewers' house belonged either to Plaintiff Greene or to Plaintiff Harbeson, as an attempt to intimidate and with the intention of intimidating the Plaintiffs into not prosecuting this lawsuit.

219. On February 11, 2015, Town Council gave second reading to a new Town noise ordinance that repealed the Town's previous, more stringent noise ordinances and replaced them with a less stringent noise ordinance offering less public protection, for the purpose and with the effect of facilitating the building and operation of the Hotel project. Sec. 12-31(f) of this new noise ordinance states in part:

"[I]t shall be unlawful for any person or entity to conduct any construction operations between the hours of 11:00 p.m. and 7:00 a.m. The Mayor or his designee may grant a written variation to allow construction between the hours of 11:00p.m and 7:00a.m. on a public or private project on a case by case basis." (Emphasis added.)

This provision is unconstitutional and violates the liberty and property rights of the Plaintiffs, especially Plaintiffs Croft, Croft Trust, Harbeson, Greene, Klinger, Beck and Hutson, by depriving them of due process of law and the equal protection of the laws, in part because this provision enables the Mayor to arbitrarily allow excessive noise creating a nuisance and damaging the Defendants without reasonable and fair criteria, standards or procedures. In addition, this ordinance is unconstitutionally vague and enables the Town to confiscate property without due process of law and without just compensation.

220. This 66-room hotel/rooftop bar/restaurant/garage 34 condo/convention center/swimming pool project complex on two acres of land in the heart of the Historic District at one of the town's busiest intersections appeared to be the highest priority of Mayor Collins and

the Town Council. Construction would take two years and require the destruction of several historic houses and the oldest pine in the "Flowertown in the Pines." (The town motto is "The Pine is Sacred.") The anticipated and highly touted 60 new jobs created by the project would be mostly low-paid room cleaners and garage attendants.

221. Previous "boutique" hotels in Summerville have failed because, unlike Charleston, Summerville is not an overnight destination for tourists or business travelers necessary to sustain an expensive hotel and convention center. Moreover, the Summerville market has become more competitive with two new hotels, Courtyard by Marriott and Residence Inn, in Summerville near Interstate-26. If the boutique hotel project fails, the town-owned convention center and garage will also fail, leaving taxpayers with a staggering \$12 million debt and a two-acre "white elephant" in the heart of downtown Summerville.

222. Most of the traffic from developments in newly annexed areas is channeled through the Historic District, where the main railroad crossings leading to I-26 are located. Traffic is the No. 1 complaint of Summerville residents, and the hotel/condo complex will greatly aggravate the congestion.

223. The boutique hotel project is too massive for the selected location.

224. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to subsidize a private development that may not be and probably is not feasible.

225. The boutique hotel project as provided in the Partnership Agreement will use taxpayer money to compete with other Summerville businesses that collect the taxes that will be used to finance the boutique hotel project.

226. The Town has been failing, and will continue to fail, in violation of its Comprehensive Plan, to fix dangerous sidewalks; add or replace antiquated street lights; put



electrical lines and wires underground; prevent continued flooding of water and flooding of homes; fix dangerous and decaying roads; and create and maintain other necessities for public health and safety, opting instead to finance and promote the commercialization of the Town of Summerville and the boutique hotel project. Many of these infrastructure repairs not being implemented by the Town are recommended in the Town's Comprehensive Plan and in the Vision Plan.

227. Plaintiffs' and other Summerville residents' requests to Defendants to review feasibility, market assessment and traffic studies have been ignored or thwarted. Defendant Mayor Collins repeatedly replied to requests for information and review of the project by claiming and exclaiming, "It is a done deal!"

228. Defendants that are governmental entities have responded to Plaintiffs' requests for documents pertaining to the boutique hotel project pursuant to FOIA either by not responding at all or with prohibitive fees and unreasonable delays, instead of producing the public documents requested and doing so free-of-charge due to the public importance of the documents requested.

229. Defendant Collins and other Defendants promoted the boutique hotel project using, under the color of state law, deceptive, intimidating, bullying and other unlawful actions and tactics that violate Plaintiffs' rights under the United States and South Carolina Constitutions to free speech and association, due process and equal protection of the laws, and other laws and customs, causing injury to their protected property and liberty interests, including but not limited to each of the following:

- A. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based

on nothing more than false hearsay in an anonymous telephone call; despite a Town employee having concluded after inspecting Plaintiff Hutson's property that there was insufficient evidence to warrant accusing Plaintiff Hutson of this violation; and in retaliation for Plaintiff Hutson's having filed this lawsuit;

- B. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- C. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town;
- D. Orchestrating an "informational meeting" (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including members of the MPAC and those whose organizations receive monetary benefits from the Town, to speak for the project, and determining who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- E. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- F. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- G. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, excessively charging for Town responses to FOIA requests and conducting business in secret and non-transparently;
- H. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;
- I. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the

Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;

- J. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- K. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- L. Violating numerous State and Town laws, ordinances and customs, as stated herein; and
- M. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities.

230. Defendants have violated, and have conspired to violate, the Constitution of the United States, the Constitution of the State of South Carolina, due process of law, the equal protection of the laws, the prohibition against taking property without just compensation and various State and Town statutes, ordinances, regulations and customs, in numerous respects, including but not limited to the following:

A. The Partnership Agreement violates Article I, Article VIII and Article X, §§ 5, 11, 13 and 14 of the South Carolina Constitution in numerous respects, including but not limited to the following:

- 1. The Town of Summerville and the RDC purport to be in, and are in, a "partnership" with private persons and entities and to indemnify or pledge to indemnify private persons and entities;

2. The Partnership Agreement purports to make, and makes, the Town and the RDC "partners" with a private Developer, thereby making the Town, the RDC and the Developer fiduciaries with each other in conflict with the Town's and the RDC's fiduciary obligations to the taxpayers; thereby making a private Developer an agent of the Town and the RDC with the actual, implied and apparent authority to act for and bind in contract the Town and the RDC; and potentially exposing the Town and the RDC to unlimited liability for unlawful acts of private parties;
3. The Partnership Agreement requires the Town and the RDC to indemnify private parties for losses that may be suffered by the Developer, thereby potentially exposing the Town and the RDC to great and unlimited liability and requiring the RDC to compensate private parties for any environmental damage, which could be astronomical, given that the project will be located on or near where one or more gas stations existed for decades and from which petroleum may have leaked and may leak causing contamination;
4. The Partnership Agreement does not require the private Developer to indemnify the Town or the RDC for damages caused them by the wrongful acts of the private Developer;
5. The Partnership Agreement purports to require, and requires, the Town and the RDC to pay attorney's fees and costs to the private Developer;
6. The Partnership Agreement purports to require, and requires, the Town and the RDC to be a "partner" with a private Developer owned and controlled, and which may become owned and controlled, in whole or in part, by parties unknown and unacceptable to the Town or RDC and who may be irresponsible and undesirable as partners of the Town and RDC;
7. The Partnership Agreement does not prevent, restrict or limit the ability of the Developer or of the special purpose entity ("SPE") formed or to be formed by the Developer to acquire and transfer title and own and operate property to sell ownership or control of themselves to any third party without the consent of the Town or the RDC;
8. The Partnership Agreement requires the RDC and the Town to pledge or loan its credit for the benefit of the private Developer, which is an individual, company, association or corporation;

9. The Partnership Agreement requires that the Town and the RDC become joint owners in an association or joint venture among the Town, the RDC and the private Developer;
10. The Partnership Agreement provides that \$3,750,000 be loaned to the private Developer by the RDC using proceeds which may be obtained by bond indebtedness of the Town, and which will or may be general obligation debt;
11. The Partnership Agreement provides that the \$3,750,000 loaned to the private Developer by the RDC, interest free, subordinated and unsecured, will be used for development of private facilities, including the hotel;
12. The Partnership Agreement provides that \$5,200,000 will be granted to the private Developer by the RDC using proceeds obtained by bonded indebtedness of the Town, which will or may be general obligation debt "together with other funds (if any) of the Town identified by the Town for such purpose;" Partnership Agreement, Para 11, at 7;
13. The Partnership Agreement provides that the \$5,200,000 granted to the private developer will be used to develop public buildings, including a conference center and a garage, which will benefit substantially the private developer, give little or no benefit to the public as they are not needed by the Town or recommended by or listed as a priority in the Town's Comprehensive Plan or Vision Plan;
14. The existence of a partnership including the Town and the RDC with a private Developer creates impermissible conflicts of interest between the partnership and the Town, obligated by law to regulate the boutique hotel project that is the subject of the partnership;
15. The Partnership Agreement requires the Town and the RDC to spend monies and to incur potential liabilities that could or would drain and prevent tax monies from being spent on infrastructure improvements and other greater priorities, including those stated as greater priorities in the Town's Comprehensive Plan and Vision Plan;
16. The Partnership Agreement requires the Town and the RDC to use tax-dollars collected from certain businesses to finance the creation and operation of businesses that will compete directly with the businesses from which those tax dollars were collected;

17. The Partnership Agreement provides that the Manager who would operate the private hotel and condominiums is the same as the Manager who would operate the public convention center and garage, and that the public convention center and garage would be operated in certain respects for the benefit of the private hotel and condominiums, thereby creating conflicts of interest and comingling of functions, property, costs and profits among private and public parties; and
18. There is no effective remedy for the RDC and the Town if the Developer does not repay the \$3,750,000 loan.

B. The Partnership Agreement and all agreements attached thereto are unlawful, invalid and void ab initio for many reasons, including but not limited to the following:

1. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a Redevelopment Plan and the Redevelopment Project that are the subjects of the Partnership Agreement;
2. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
3. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540 , in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
4. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
5. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist as a legal entity;

6. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has not approved the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
7. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
8. The RDC did not validly have officers at the time the Partnership Agreement was signed by the Chairman of the RDC;
9. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
10. Upon information and belief, Defendant Town of Summerville (not the RDC) selected Defendant Applegate & Co. as the Redeveloper through a seemingly competitive bid process for the boutique hotel project but as a result of anti-competitive collusion;
11. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
12. The Town's Purchasing Ordinance did not authorize the use of an RFP method of procurement; therefore, the award of the development contract to Defendant Applegate and all contracts and agreements that emanated from the unauthorized RFP and award were and are ultra vires, illegal, invalid and void ab initio;
13. The Town accepted a non-responsive bid from Defendant Applegate and failed to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate, thereby depriving the Town, the Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition;
14. The Town failed to promulgate an ordinance authorizing and regarding Requests for Proposals and, despite that failure, issued a Request for Proposal regarding the Hotel project;
15. The Town violated its procurement laws;
16. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases, continue to

be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract; and

17. The RDC has refused and failed to allow inspection and copies of records of the RDC.

C. The Defendants have violated the Community Development Law in numerous respects, including but not limited to the following:

1. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;
2. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
3. The RDC has not prepared or caused to be prepared, and has not recommended, Redevelopment Plans for a Redevelopment Project to the Town of Summerville; instead, the Town has prepared Redevelopment Plans, and the RDC has purported to adopt and implement the Town's Redevelopment Plans and Project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
4. The RDC has not entered into contracts "in accordance with the Redevelopment Plan" created by the RDC as required by S.C. Code Section 31-10-90(6) and other provisions of the Community Development Act;
5. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project not to be maintained to contrive a false claim that the area was "blighted" or a "conservation area," in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;



6. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;
7. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by the Secretary or the Assistant Secretary of the RDC;
8. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment Commission, as required by SC Code Section 31-10-30(a);
9. Required public notice was not published by the RDC before the RDC met and conducted business;
10. The RDC did not follow the proper procedures for creating a Redevelopment Plan, as defined by S.C. Code Section 31-10-20(15);
11. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;
12. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
13. Upon information and belief, the RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
14. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the Redevelopment Plan as hereinafter prescribed," as required by S.C. Code Section 31-10-100(b), because the RDC has not created a Redevelopment Plan as required by the Community Development Law that could be approved by the Town;

15. The RDC has not created a Redevelopment Plan as required by the Community Development Law that contains any of the requirements in S.C. Code Section 31-10-100(c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;
16. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100(d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
17. The RDC violated all of the provisions of SC Code Section 31-10-100( e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the-[Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
18. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a Redevelopment Plan to the Town;
19. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a Redevelopment Plan and having obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);
20. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the Redevelopment Plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the Redevelopment Plan by the Town and after public notice and award as specified in subsection ( c) of this section"; the RDC has not created a Redevelopment Plan, has not obtained the Town's approval of a Redevelopment Plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and ( c);
21. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the

Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;

22. The Commission and the Corporation have not adopted rules of organizational procedure; kept a record of its resolutions, findings and determinations; and treated those resolutions, findings and determinations as a public record; and

23. The RDC wrongfully declared the site of the proposed hotel project to be a "blighted area" or a "conservation area," as defined in section 31-10-20 of the Community Development Law.

D. The Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 in numerous respects, including but not limited to the following:

1. Plaintiff Faye Croft was not provided adequate or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
2. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
3. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project; and
4. The Town violated S.C. Code Sec. 6-29-530 by failing to notice and hold a public hearing on the amendment and update of the Comprehensive Plan.

E. The Defendants have violated the Town's ordinances in numerous respects, including but not limited to the following:

1. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article." (Emphasis added.)

2. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed form, required as a prerequisite to the BAR's considering the boutique hotel project; and
3. The Town has issued an RFP and awarded a contract based on that RFP, in violation of state and Town procurement laws, including but not limited to the Summerville Purchasing Ordinance Sec. 2-320 - Sec. 2-326.

F. Defendants BAR and Planning Commission have exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection, free speech and other provisions of the United States and South Carolina Constitutions, resulting in the BAR and the Planning Commission not performing their fiduciary duties to safeguard the public interests, in numerous respects, including but not limited to, the following:

1. In violation of Town Ordinance, Sec 32-182(b), the BAR failed to publicly notice that people had a right to speak at BAR meetings about demolitions being considered by the BAR regarding the Hotel project, and to let people speak at BAR meetings regarding those demolitions;
2. As stated in Faye P. Croft, et al. v. Town of Summerville, et al., Appellate Case No.: 2015-002199 PTW No.: 7754.001;

3. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
4. The BAR restricted what opponents of the Hotel project were allowed to say; the BAR limited public comments to design elements only; discussion of environmental, feasibility and traffic comments was delivered in the second BAR meeting about the boutique hotel project despite the Chairman's admonitions; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
5. The BAR threatened opponents of the project with removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
6. BAR members wined and dined with the Mayor at the Mayor's home and otherwise engaged in impermissible conflicts of interest;
7. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
8. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
9. The BAR failed to have and to publish clear and adequate procedures;
10. The public has not been allowed an opportunity to examine BAR minutes and to listen to BAR recordings to verify their scope and content;
11. The BAR has failed to inform members of the public of the BAR's rights to lower the height and to reduce the scale and mass of the

boutique hotel project, and to deny the developers a permit for the boutique hotel project;

12. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
13. The BAR has not informed the public of its right to appeal BAR decisions;
14. The BAR misled the public;
15. The BAR prevented the public from speaking at its meetings;
16. The BAR held secret, unlawful meetings with developer Applegate at which BAR business was discussed and decided;
17. Members of the BAR have direct and indirect conflicts of interest;
18. Members of the Planning Commission have direct and indirect conflicts of interest;
19. The Planning Commission refused and failed to consider errors in the Vision Plan before making recommendations about the Vision Plan and amending the Comprehensive Plan;
20. Members of the Planning Commission made false statements and misled the public before making recommendations about the Vision Plan and amending the Comprehensive Plan;
21. Members of the BAR and of the Planning Commission have failed to do research, to avoid conflicts of interest and the appearance of impropriety and to maintain independence necessary to make sound and reasonable decisions in the public interest;
22. The Town and members of the Planning Commission and the BAR have pressured and retaliated against members of the Planning Commission and the BAR; and
23. Meetings of the Planning Commission and BAR are shams.

G. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so deficient as to be meaningless, invalid and unlawful;

H. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest; and

I. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings.

### **III. CAUSES OF ACTION**

#### **FOR A FIRST CAUSE OF ACTION**

#### **VIOLATIONS OF SOUTH CAROLINA CONSTITUTION**

231. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

232. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, violate and will continue to violate provisions of the South Carolina Constitution, including but not limited to Article I §§ 2, 3, 8, 13, 22, and 23, Article VIII and Article X §§ 5, 11, 13 and 14 in numerous respects, including but not limited to the following:

- A. They allow and require the spending of public funds for private purposes and for the primary benefit of private parties;
- B. They allow and require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation;
- C. They allow and require that the Town of Summerville become a joint owner in a company, association, or corporation;
- D. Plaintiffs have been deprived of liberty and property without due process of law;
- E. Plaintiffs have been deprived of liberty and property without the equal protection of the laws;

- F. Plaintiffs have been deprived of private liberty and property rights without due notice and an opportunity to be heard; contrary to statutes, ordinances and regulations; and not by a mode of procedure prescribed by the General Assembly;
- G. Plaintiffs' private property has been taken and will be taken for private uses without the consent of the owner and without just compensation;
- H. Plaintiffs' rights to freedom of speech and assembly have been violated;
- I. Plaintiffs' rights to petition the government or any department thereof for a redress of grievances have been violated;
- J. The Town's new noise ordinance is unconstitutional;
- K. The state law limiting the ability to contest rezoning is unconstitutional;
- L. The Town sent Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call;
- M. The Town falsely accused a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- N. A Town Councilman warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- O. The actions of the governmental Defendants described in Paragraphs 224-225 above are unconstitutional.

232. The Community Development Law, and all other statutes, ordinances, regulations, rules and customs in South Carolina, violate the South Carolina Constitution to the extent that they:

- A. Allow or require the spending of public funds for private purposes or for the primary benefit of private parties;
- B. Allow or require the pledging or loaning of the credit of the Town of Summerville and/or the State of South Carolina for the benefit of an individual, company, association or corporation; and/or



- C. Allow or require that the Town of Summerville become a joint owner in a company, association, or corporation.

233. As a direct and proximate result of the Defendants' actions and entering into and implementing the above-referenced agreements, the Plaintiffs have been damaged and will continue to be damaged in numerous respects, including, but not limited to, by being deprived of the rights stated above; having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; and suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A SECOND CAUSE OF ACTION**

##### **ULTRA VIRES; VOID AB INITIO**

234. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

235. The Public-Private Partnership Agreement and other agreements referenced herein among and between the Town, the RDC and Applegate & Co., and other agreements and actions referenced herein, are ultra vires, invalid and void ab initio.

236. As a direct and proximate result of the Defendants entering into and implementing the above-referenced invalid agreements, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A THIRD CAUSE OF ACTION**

## **VIOLATIONS OF SOUTH CAROLINA COMMUNITY DEVELOPMENT LAW**

237. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

238. Actions by the Defendants referenced herein violate provisions of the South Carolina Community Development Law.

239. As a direct and proximate result of the Defendants violating the South Carolina Community Development Law, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

### **FOR A FOURTH CAUSE OF ACTION**

#### **VIOLATIONS OF SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994**

240. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

241. Actions by the Defendants referenced herein violate provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

242. As a direct and proximate result of the Defendants violating the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

### **FOR A FIFTH CAUSE OF ACTION**

## **VIOLATIONS OF SOUTH CAROLINA FREEDOM OF INFORMATION ACT**

243. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

244. By their actions referenced herein the Defendants have violated, and continue to violate, sometimes willfully and knowingly, provisions of S.C. Code Ann. § 30-4-10 *et seq.*, in numerous respects, including but not limited to the following:

- A. Failing and refusing to disclose and produce the fiscal impact and the cost-benefit analysis of the Hotel project required by S.C. Code Ann. § 30-4-55;
- B. Giving no notice or inadequate notice of meetings of public bodies;
- C. Excessive and unjustified use of executive sessions;
- D. Failing to provide minutes of meetings within a reasonable time;
- E. Failing to create and implement a FOIA research and copying cost-charging formula that is fair and not for profit;
- F. Failing without justification to produce documents for inspection and copies of documents;
- G. Holding secret "workshops" and meetings for the purpose of evading public knowledge, viewing and hearing of, and participation in, meetings required to be open to the public;
- H. Making and implementing procedures for meetings in violation of the general laws of South Carolina with regard to freedom of information, in violation of Section 5-7-520(c);
- I. Failing to adopt rules of organizational procedure for the RDC and to keep a public record of its resolutions, findings and determinations, as required by S.C. Code Ann. § 6-29-360(B);
- J. Denying public access to meetings, meeting minutes and meeting agendas;
- K. Charging excessive reproduction fees, for the purpose and with the effect of discouraging production of documents;

- L. Refusing to identify redacted information and withheld documents in response to FOIA requests denied;
- M. Failing to respond within 15 working days, or at all, to FOIA requests;
- N. Polling of Town Council members during executive sessions to determine their vote or how they would vote, resulting in quick and prearranged votes following executive sessions;
- O. Removing RDC records prior to public inspection of those records;
- P. Failure and refusal to allow inspection of public records and requiring, instead, that a written FOIA request be submitted followed by a fifteen-day delay in answering the FOIA request and the requirement that excessive and unjustified costs be charged for copies of documents that should be allowed to be inspected without charge or delay;
- Q. Holding a secret, non-public meeting of all BAR members on February 2, 2017, without having provided prior notice or an agenda of the meeting, allowing the public to attend the meeting, or proper minutes of the meeting;
- R. Holding secret, non-public meetings of the Master Plan Advisory Committee without having provided prior notice or an agenda of the meetings, allowing the public to attend the meetings, or minutes of the meetings; and
- S. Writing and approving minutes of meetings containing false and erroneous statements and that are incomplete.

245. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 30-4-10, *et seq.*, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A SIXTH CAUSE OF ACTION**

#### **VIOLATIONS OF S.C. CODE ANN. § 6-1-730**

246. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

247. Actions by the Defendants referenced herein violate S.C. Code Ann. § 6-1-730.

248. As a direct and proximate result of the Defendants violating S.C. Code Ann. § 6-1-570, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above

**FOR A SEVENTH CAUSE OF ACTION**  
**VIOLATIONS OF STATE AND TOWN PROCUREMENT LAWS**

249. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

250. The Town of Summerville violated S.C. Code Sec. 11-35-5 by failing to adopt procedures embodying sound principles of appropriately competitive procurement by means of the Request for Proposal method.

251. The Town of Summerville violated its own Purchasing Ordinance by using a procurement method, the Request for Proposal method, that was not authorized in the Purchasing Ordinance.

252. Because the use of the RFP method of procurement was not authorized in the Purchasing Ordinance, the PPPA, dated as of July 9, 2014, is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

253. The Town's acceptance of a non-responsive bid from Applegate & Co. violated Section 2-323(c) (12) of its Purchasing Ordinance and Sec 2-323 (c)(8) of its Purchasing Ordinance, which states "The invitation for bids shall set for the evaluation criteria to be used.

No criteria may be used in the bid evaluation that is not set forth in the invitation for bids."

(Emphasis added.)

254. The Town's failure to have rejected the proposal submitted by Applegate & Co. because it was non-responsive to the RFP violated Section 2-323(c)(8), (c) (12) of the Town's Purchasing Ordinance; S.C. Code Ann. Sec. 11-35-1520(13); and Regulation 19-445.2070(A) thereunder.

255. By depriving itself, the Plaintiffs and other citizens and taxpayers, as well as other bidders, of the benefits of free and open competition, the Town violated Sections 2-321(e), 2-322(c), 2323(c) (12) and (17) of Summerville's Purchasing Ordinance which require competitive procurement.

256. Because the Town's acceptance of Applegate's non-responsive proposal violated Summerville's Purchasing Ordinance, the PPPA is contrary to the Purchasing Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

257. The anti-competitive, collusive, bid-rigging and/or fraudulent conduct described above violates Summerville's Purchasing Ordinance Section 2-321(e), Section 2-322 and subsection (c) thereof, and Section 2-323(c) (17) which require competitive procurement.

258. Because the anti-competitive conduct described above violates Summerville's Purchasing Ordinance, the PPPA is contrary to the Ordinance, illegal, invalid, *ultra vires* and void *ab initio*.

259. As a direct and proximate result of the Defendants violations described above, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes, for an improper purpose; by suffering nominal and

actual damages, as proven at trial; and by having to incur additional harm and losses, as described herein.

**FOR AN EIGHTH CAUSE OF ACTION**  
**VIOLATIONS OF SUMMERVILLE'S**  
**ORDINANCES, RULES, REGULATIONS AND CUSTOMS**

260. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

261. Actions by the Defendants referenced herein violate ordinances, rules, regulations and customs of the Town of Summerville, including but not limited to the Summerville Historic Preservation Ordinance, Article IV, Sec. 32-171, *et. seq.*; the Summerville Planning Commission Ordinance, Article II, Sec. 20-31, *et. seq.*; and the Summerville Tree Protection Ordinance, Article VIII, Sec. 32-324.

262. As a direct and proximate result of the Defendants violating ordinances, rules, regulations and customs of the Town of Summerville, the Plaintiffs have been damaged and will continue to be damaged by having to pay and risking having to pay additional and unlawful taxes; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR AN NINTH CAUSE OF ACTION**  
**VIOLATIONS OF FIRST AMENDMENT RIGHTS**

263. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

264. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, the Plaintiffs and other taxpayers and members of the public, of their rights of free association, to petition for redress of grievances, and of speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a "done deal," against which public opposition would be worthless and futile, when the project is unlawful;
- B. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- C. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging excessively for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- D. The BAR gave the developer much more time to promote than the BAR gave to Summerville residents to oppose the boutique hotel project; members of the public were restricted to 3 minutes but the developer was given more than 30 minutes to speak; citizens opposing the project, but not the developer and others supporting the project, were rudely interrupted, prohibited from continuing to speak after 3 minutes and told by the BAR that their time to speak was expired and was repetitive;
- E. The BAR restricted what opponents of the project were allowed to say; the BAR limited public comments to design elements only; comments about architectural context (e.g., the project is totally unrelated to the surrounding buildings), an important consideration in the conceptual state, were dismissed by the BAR Chairman;
- F. The BAR intimidated opponents of the project with threats of removal from the BAR's proceeding by the police, who, project opponents were told by the BAR, were standing at the back of the BAR meeting room available to remove BAR opponents upon request by the BAR Chairman;
- G. As described in the First Cause of Action above;



- H. Sending Plaintiff Hutson an intimidating letter falsely accusing him of having painted his house contrary to law and requiring him to provide information to and attend a meeting of the BAR, based on nothing more than false hearsay in an anonymous telephone call and after a Town inspection had determined there was insufficient evidence of a violation;
- I. Falsely accusing a Town citizen residing next to the homes of two Plaintiffs of violating Town code laws, and obtaining by abusive intimidating demands entry into that citizen's home without a warrant or just cause;
- J. Warning a Town resident that whoever sues the Town may be counter-sued back by the Town; and
- K. Committing the acts described in Paragraphs 229-230 above.

265. As a direct and proximate result of the Defendants violating the First Amendment rights of Plaintiffs, and others, those Plaintiffs have been damaged and will continue to be damaged by having their First Amendment rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A TENTH CAUSE OF ACTION**

#### **VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT**

266. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

267. Plaintiffs have liberty interests and property interests in the properties they own at or near the location of the boutique hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Defendants violated S.C. Code Ann. § 6-29-760(D) by rezoning the property of Defendant Croft as described above. S.C. Code Ann. § 6-29-760(D) and the new Town noise ordinance are arbitrary, unreasonable, capricious and irrational, and violate substantive due process, in violation of the United States Constitution. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs, and other taxpayers and members of the public, of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Orchestrating an “informational meeting” (not a public hearing) on November 12, 2013, at which Defendant Collins arranged for individuals, including those whose organizations receive monetary benefits from the Town, to speak for the project, and determined who would speak and when about the project, so as to maximize comments favorable to the project and minimize comments opposing the project, as described above;
- B. Pronouncing loudly, repeatedly and in error that the boutique hotel project is a “done deal,” against which public opposition would be worthless and futile, when the project is unlawful;
- C. Bullying, ridiculing, speaking loudly and cutting off statements by some of the Plaintiffs and other citizens in an intimidating manner;
- D. Trying to stop and prevent the Plaintiffs and other citizens from opposing the project by misleading them, shouting them down, keeping them uninformed, charging for Town responses to the Freedom of Information Act and conducting business in secret and non-transparently;
- E. Hosting and lobbying members of the BAR, whom the Mayor, with the approval of Town Council, appoints and can remove and replace, at his home where he serves them food and drinks, to curry favor with them and to influence and attempt to influence them to make decisions favorable to the boutique hotel project;

- F. Withholding information from the Plaintiffs and the public, including but not limited to charging citizens large sums of money to obtain information about the boutique hotel project pursuant to FOIA, while simultaneously signing a contract to pay the Developer up to \$400,000 to finance the costs of advancing the project about which citizens sought information pursuant to FOIA;
- G. Misleading Plaintiffs and the public, including but not limited to using misnomers; failing to provide timely, clear and understandable rules, notices of proposed zoning changes, scheduled meetings, hearings and other events and actions; and obfuscating the true nature of the project by calling it, first, an economic development project and, later, a "boutique hotel," both of which are misnomers;
- H. Pushing the project to fulfill a campaign promise to and for Defendant Collins' real estate developer friends and supporters, instead of following the priorities established by the Town's Comprehensive Plan or necessary to ensure the public health and safety;
- I. Violating numerous State Constitutional provisions and statutes, and numerous Town laws, ordinances and customs, as stated herein;
- J. Publishing or allowing to be published unauthorized, false and misleading statements in the newspaper about the availability of condominiums that have not been approved by the BAR and other governmental entities;
- K. Illegally using the Master Plan Advisory Committee to recommend, advise, help create and promote the Town's Master Plan or Vision Plan, which became the Town's new Comprehensive Plan and the RDC's Redevelopment Plan;
- L. Defendants have not complied with the provisions of the Community Development Law required before the RDC can enter into a contract or promote a redevelopment plan and the redevelopment project that are the subjects of the Partnership Agreement;
- M. The RDC was required but failed to publish a Request for Proposal; instead, the Town published the Request for Proposal;
- N. Defendants have not complied with the provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and with other applicable laws, ordinances, rules and regulations, including but not limited to having violated S.C. Code Ann. § 6-29-540 , in part because Defendants have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the

Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;

- O. The Agreements have not been signed by the Secretary of the RDC, as required by SC Code Section 31-10-90(14);
- P. When the Partnership Agreement and the contracts attached as exhibits thereto were signed, the Dorchester, LLC did not exist;
- Q. The Partnership Agreement was made before all regulatory approvals were given and which may never be given; in fact, the BAR has rejected the conceptual illustrations attached as Exhibit F to the Partnership Agreement, which is the only project allowed by and that is the subject matter of the Partnership Agreement;
- R. The RDC did not validly exist at the time the Partnership Agreement was signed by the RDC;
- S. The RDC did not validly have officers and by-laws at the time the Partnership Agreement was signed by the Chairman of the RDC;
- T. The agreements require the Town and the RDC to spend tax money in violation of S.C. Code Ann. § 6-1-530;
- U. Upon information and belief, Defendant Town of Summerville selected Defendant Applegate & Co. as the winning bid for the boutique hotel project as a result of anti-competitive collusion, bid-rigging and fraud;
- V. The Partnership between the Town, the RDC and Defendant Applegate & Co. was created as the result of illegal anti-competitive collusion between those parties and other Defendants with respect to the bidding pursuant to the RFP;
- W. The Town's failure to republish the Request for Proposal after receiving a non-responsive bid from Defendant Applegate & Co. deprived the Town, Plaintiffs and other taxpayers of Summerville of the benefits of free and open competition; and
- X. Essential terms of the agreements were missing at the time each respective agreement was executed, and in some cases, continue to be missing; the parties did not have a meeting of the minds by agreeing on essential terms of the contract.
- Y. The RDC has issued no Request for Proposals to redevelop the Town's property with the boutique hotel project, and the other requirements of S.C. Code Section 31-10-110, including the requirement to advertise for bids by public notice published once a week for two consecutive weeks, have not been followed; the RFP issued by the Town is not a valid substitute for the RFP required of the RDC by the Community Development Law; the RDC cannot participate in the project

until and unless the RDC has issued a valid RFP for the project and otherwise has complied with SC Code Section 31-10-110;

- Z. If a valid RFP was issued for the project, the RFP intentionally did not include a request for condominiums and, therefore, allowing condominiums would violate the RFP and the Community Development Law;
- AA. The RDC has not prepared or caused to be prepared, and has not recommended, redevelopment plans for a redevelopment project to the Town of Summerville; instead, the Town has prepared redevelopment plans, and the RDC has purported to adopt and implement the Town's redevelopment plans and project, in violation of SC Code Section 31-10-90(4) and other provisions of the Community Development Act;
- BB. The RDC has not entered into contracts "in accordance with the redevelopment plan" created by the RDC as required by SC Code Section 31-10-90(6) and other provisions of the Community Development Act;
- CC. The location of the boutique hotel project is not a blighted area or a conservation area within the meaning of the Community Development Law; Defendants deliberately caused, and conspired to cause, property owned by the Town at the location of the project to not be maintained to contrive a false claim that the area was blighted or a conservation area, in order to attempt to justify creating the RDC and the boutique hotel project as being necessary and permissible;
- DD. The officers and by-laws of the RDC have never been chosen or adopted by the RDC at a properly noticed meeting or at a valid meeting of the RDC;
- EE. The RDC has purported to enter into the Partnership Agreement and other agreements in an invalid manner, due to the agreements not being signed by anyone as the Secretary or the Assistant Secretary of the RDC;
- FF. The Town did not publish a notice of intent to consider passage of an ordinance to create a Redevelopment commission, as required by SC Code Section 31-10-30(a);
- GG. Required public notice was not published by the RDC before the RDC met and conducted business;
- HH. The RDC did not follow the proper procedures for creating a redevelopment plan, as defined by SC Code Section 31-10-20(15);
- II. The Defendants who are commissioners of the RDC have failed to exercise proper control and supervision over contracts signed for the RDC by Defendant Collins as chairman of the RDC; instead, the commissioners have unlawfully delegated "blank check" authority to Defendant Collins to negotiate the terms of and to

execute contracts for the RDC, in violation of the South Carolina Constitution and S.C. Code Ann. § 31-10-60, just as those commissioners gave Defendant Collins "blank check" authority to negotiate the terms and to execute contracts for the Town in Defendant Collin's capacity as Mayor of Summerville;

- JJ. Upon information and belief, the chairman and some commissioners of the RDC have direct or indirect interests in violation of SC Code Section 31-10-70;
- KK. The RDC has not made or caused to be made any surveys, studies or plans necessary to carry out the purposes of the Community Development Law or made or caused to be made a contract with anyone to make those surveys, studies or plans, as required by SC Code Section 31-10-90(9);
- LL. The RDC unlawfully has obligated itself in the Partnership Agreement to acquire property from the Town for the boutique hotel project, when the Town has not "approved the redevelopment plan as hereinafter prescribed," as required by SC Code Section 31-10-100(b), because the RDC has not created a redevelopment plan as required by the Community Development Law that could be approved by the Town;
- MM. The RDC has not created a redevelopment plan as required by the Community Development Law that contains any of the requirements in SC Code Section 31-10-100(c); instead, the Town hired third parties to create a "Vision Plan" and the RDC purported to adopt that "Vision Plan" as the Town's redevelopment plan;
- NN. The RDC did not hold a valid public hearing prior to its final adoption of the RDC's Redevelopment Plan, and did not properly notice that public hearing, in violation of SC Code Section 31-10-100(d); instead, the RDC purported to adopt the Town's "Vision Plan," in violation of the Community Development Law;
- OO. The RDC violated all of the provisions of SC Code Section 31-10-100( e), including but not limited to the RDC's not submitting to the Town a redevelopment plan; the RDC's not doing the following: "[p]rior to recommending a redevelopment plan to the [Town] for approval:" "utilize the local private planning, financing, and financial services to the greatest extent possible . . . ;" and the RDC's not considering whether adequate provision for traffic and vehicular parking had been made;
- PP. The Town did not "approve, amend or reject the redevelopment plan as submitted" to the Town by the RDC, as required by SC Code Section 31-10-100(f), because the RDC did not submit a redevelopment plan to the Town;
- QQ. The RDC has obligated itself in the Partnership Agreement to acquire property, has executed contracts and "has taken other actions necessary to carry out the" boutique hotel plan, without having first created a redevelopment plan and having

obtained Town approval of the RDC's development plan, in violation of SC Code Section 31-10-100(g);

- RR. The RDC has contracted for it to transfer real property to the Developer in violation of the requirements in SC Code Section 31-10-110(b) that any sale or transfer of real property to the Developer from the RDC be "in accordance with the redevelopment plan" and that any "sale, exchange, or other transfer, and any agreement relating thereto, be made only after the approval of the redevelopment plan by the Town and after public notice and award as specified in subsection (c) of this section"; the RDC has not created a redevelopment plan, has not obtained the Town's approval of a redevelopment plan and has not complied with any of the request for proposal and notice of request for proposal requirements of SC Code Section 31-10-110(b) and (c);
- SS. The Partnership Agreement requires that the Town issue bonds to generate proceeds to finance the boutique hotel project after passing those proceeds through the RDC; that scheme violates the intention and requirements of the Community Development Law that redevelopment pursuant to the Community Development Law be financed by bonds issued by the RDC in accordance with the requirements of the Community Development Law, including that the bonds be repaid and the expenses of a redevelopment project be paid only from the profits of the project financed by the RDC;
- TT. Plaintiff Faye Croft was not provided sufficient or required notice of the Town's intention to rezone property at the location where the boutique hotel project is intended to be built, in violation of SC Code Section 6-29-760;
- UU. Defendants have violated S.C. Code Ann. § 6-29-540, in part because the Town and the RDC have authorized new structures, public buildings and other facilities in the Partnership Agreement, and elsewhere, without the location, character and extent of the boutique hotel project having been submitted to the Town Planning Commission for review and comment as to the compatibility of the proposal with the Comprehensive Plan of the Town; and the Town Planning Commission has failed to review and comment on that compatibility;
- VV. Opponents of the boutique hotel project have not been allowed to participate in mediation or other good faith negotiations with the Defendants to attempt to resolve their differences regarding the boutique hotel project;
- WW. The Town and the RDC have failed to appear before the BAR as required by Sec. 32-176 of the Town of Summerville's ordinances, which states in part as follows:

"Sec. 32-176. - Meetings, rules and records.

All governmental agencies . . . shall be required to go before the board of architectural review in accordance with this article prior to initiating any changes covered by this article.” (Emphasis added.)

- XX.. The Developer, the RDC and the Town have never submitted an application to the BAR, including never having submitted the required completed application form, required as a prerequisite to the BAR’s considering the boutique hotel project;
- YY. Defendant BAR has exhibited bias in favor of the developer and the project and violated applicable laws, including State statutes; Town ordinances, rules, regulations and customs; due process, equal protection and other provisions of the United States and South Carolina Constitutions, resulting in the BAR not performing its duties to safeguard the public interests, in numerous respects, including but not limited to, the following:
- ZZ. BAR members wine and dine with the Mayor at the Mayor’s home and otherwise engaged in impermissible conflicts of interest;
- AAA. The BAR posted a sketch of the proposed design of the boutique hotel project only 24 hours in advance of meetings, publishing inadequate information and allowing insufficient time for the public to analyze and to be able to respond to the design at BAR meetings;
- BBB. The BAR did not require and did not publish applications of developers prior to allowing a developer to present a project to the BAR;
- CCC. The BAR failed to have and to publish clear and adequate procedures;
- DDD. The public has not been allowed an opportunity to examine BAR minutes timely to verify their scope and content and to correct any errors in those minutes;
- EEE. The BAR has failed to inform members of the public of the BAR’s rights to lower the height and to reduce the scale and mass of the boutique hotel project, and to deny the developers a permit for the boutique hotel project;
- FFF. BAR members do not understand and have not received sufficient training about their duties, options and rights; one BAR member incorrectly has informed the public that he believes the BAR has an obligation to approve the boutique hotel project eventually;
- GGG. The BAR has not informed the public of its right to appeal BAR decisions;
- HHH. Required notices were not provided to required parties, the public or the Plaintiffs, and, if they were provided, they were so insufficient and deficient as to be meaningless, invalid and unlawful;



- III. On information and belief, persons involved in the boutique hotel project may have impermissible conflicts of interest;
- JJJ. Various meetings, including alleged public hearings, regarding the boutique hotel project were invalid and sham proceedings;
- KKK. As described in the First Cause of Action above; and
- LLL. As described in Paragraphs 229-230 above.

268. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs, and others, and other actions described herein, those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes for an unlawful purpose; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR ELEVENTH CAUSE OF ACTION**  
**VIOLATIONS OF EQUAL PROTECTION**  
**RIGHTS UNDER THE FOURTEENTH AMENDMENT**

269. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

270. Plaintiffs have property and liberty interests in the properties they own at or near the location of the boutique Hotel project or in the Town of Summerville, and in keeping their taxes as low as possible. Actions by certain governmental Defendants referenced herein have

deprived, and will continue to deprive, Plaintiffs and other taxpayers and members of the public, of their rights to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to the following:

A. Giving Applegate & Co., Arthur F. Applegate and others insider information not provided to the Plaintiffs helping Defendants Applegate & Co., Arthur F. Applegate and others to advance the boutique hotel project to the detriment of the Defendants;

B. Giving Applegate & Co., Arthur F. Applegate and others more time and latitude to speak for the boutique hotel project that Defendants Croft, Croft Trust, Greene and Harbeson, and others, were given to speak against the boutique Hotel project;

C. Unreasonably discriminating against the Plaintiffs by giving Applegate & Co., Arthur F. Applegate and others more favorable treatments under the law than the Plaintiffs and others were given;

D. As described in the First Cause of Action above; and

E. As described in Paragraphs 229-230 above.

271. As a direct and proximate result of the Defendants' violations of the equal protection rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and

actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **FOR A TWELFTH CAUSE OF ACTION**

##### **TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AMENDMENT**

272. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

273. Plaintiffs have suffered and will suffer a taking of their private property without just compensation by, *inter alia*, rezoning, having the area on or near which their property is located declared to be a blighted or a conservation area, allowing construction noise to disturb the quiet enjoyment of their property and other actions by Defendants.

274. As a direct and proximate result of the Defendants' violations of the rights of Plaintiffs and others, and other actions described herein, the Plaintiffs have been damaged and will continue to be damaged by having their Fifth Amendment property and liberty rights infringed and threatened, and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay additional and unlawful taxes; suffering a reduction in the value of their properties and, in some cases, the ability to rent their properties; by suffering increased traffic, noise, flooding, obstructions of views, and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described above.

#### **IV. RELIEF REQUESTED**

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it authorized the spending of public funds, and spent public funds, for a privately-owned hotel project;
- (2) The Town of Summerville violated Article X, §§ 5 and 11 of the South Carolina Constitution when it entered into a contract indemnifying private interests against pecuniary losses;
- (3) The Town of Summerville expended public funds for private purposes and pledged the State's full faith and credit for private purposes in violation of the South Carolina Constitution, when it entered into and implemented the PPPA with Applegate;
- (4) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the Constitution of the State of South Carolina;
- (5) The entire Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, are and always have been ultra vires, unlawful, null and void ab initio, having no and never having had any force or effect;
- (6) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Community Development Law;
- (7) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (8) The content and previous manner of implementation of the Public-Private Partnership Agreement, each provision thereof, and all agreements attached thereto and associated therewith, violate procurement and other ordinances, rules, regulations and customs of the Town of Summerville;
- (9) The Request for Proposal published by the Town regarding the boutique hotel project, referenced above, violates state and Town procurement and other laws and, therefore, is null, void ab initio and unenforceable;
- (10) The award by the Town and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above, is illegal, null, void and unenforceable;
- (11) Defendants have violated the South Carolina Constitution;

- (12) Defendants have violated the United States Constitution;
- (13) Defendants have violated the South Carolina Freedom of Information Act;
- (14) Defendants have violated the Community Development Law;
- (15) Defendants have violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994;
- (16) Defendants have violated state and Town procurement laws; and
- (17) No blight or conservation area exists at the location of the Hotel project.

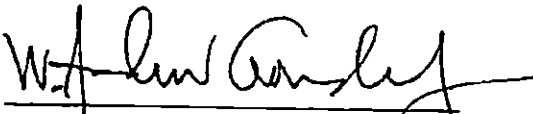
B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Implementing in any way, including paying, directly or indirectly, any money pursuant to, the Public-Private Partnership Agreement, any provision thereof, and any agreement attached thereto or associated therewith;
- (2) Implementing in any way, directly or indirectly, the award by the Town of Summerville and other Defendants of a contract in response to the Request for Proposal regarding the boutique hotel project, referenced above;
- (3) Violating the South Carolina Community Development Law;
- (4) Violating the South Carolina Government Comprehensive Planning Enabling Act of 1994;
- (5) Violating the South Carolina Freedom of Information Act;
- (6) Violating procurement and ordinances, rules, regulations and customs of the Town of Summerville applicable to development;
- (7) Violating the First Amendment rights of the Plaintiffs;
- (8) Violating the substantive and procedural due process rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution;

- (9) Violating the equal protection rights of the Plaintiffs guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution; and
  - (10) Any and all other such acts as this Court deems appropriate for injunctive relief.
- D. Grant a writ of mandamus requiring:
- (1) That the RDC allow the public to inspect all books and records of the RDC, as required by Sections 31-10-160 and 30-4-55 of the Code of Laws of South Carolina; and
  - (2) That the Town and all its subdivisions, agencies and organizations promulgate and implement rules and regulations as required by law, and otherwise to perform mandatory duties required by law;
- E. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, the Freedom of Information Act and any other applicable law; and
- F. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

  
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\_\_\_\_\_  
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**JURY TRIAL DEMANDED**