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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Judge Steven DeBerry, IV, Circuit Court Judge

Circuit Court Case No. 2022-CP-07-01195

Appellate Case No. 2025-001618

Beaufort County, South Carolina,

Respondent,

v.

Adams Outdoor Advertising Limited Partnership,

Appellant.

RECORD ON APPEAL

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² Pursuant to the lower court’s order entered October 24, 2024 (R. pp. 12-17), the pages of this deposition transcript included in the publicly filed Record on Appeal are redacted, and quotations of said transcript in any other matter in the Record will be redacted in the publicly filed version of the same. Copies of materials containing or constituting portions of said transcript will be submitted without redactions to the Court via means established by the Court.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-0701195

Beaufort County

Adams Outdoor Advertising Limited Partnership

PLAINTIFF(S)

Elizabeth Mitchum and Rex Allen Hodges, Jr.

DEFENDANT(S)

Submitted by: Court

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ Statement of Judgment by the Court: Defendants Motion to Dismiss Mitchum and Hodges individually, is granted. The Amended Complaint's allegations in support of the requested declarations and injunctions rest solely on purported acts or omissions by Adams. The Amended Complaint fails to assert facts which would support any theory of liability as to Mitchum or Hodges individually, as they were merely employees and/or agents of Adams and are not owners, principals, nor board members.

Defendant's Motion to Stay this action pending the appeal of Beaufort County v. Adams Outdoor Advertising Limited Partnership and Bo Hodges, Appellate Case No. 2022-000681 is denied. The underlying appeal involved a criminal court Magistrate court case filed by Beaufort County convicting Adams and Hodges and was overturned by Hon. Marvin Dukes. It is on Appeal to the Court of Appeals. The Circuit Court can adjudicate this matter regardless of the Court of Appeals ruling.

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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.

	2142	2/19/2023
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: Beaufort County South Carolina VS Adams Outdoor Advertising Limited Partnership , defendant, et al

Case Number: 2022CP0701195

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-02-20 11:15:23 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-07-01195

**ORDER ON DEFENDANT'S MOTION
FOR PROTECTIVE ORDER**

This matter is before the Court on Defendant Adams Outdoor Advertising Limited Partnership's ("Defendant") Motion for Protective Order filed on May 29, 2024 relating to the deposition of Richard Zecchino, Defendant's Rule 30(b)(6) designee. Based on representations of counsel at the hearing on August 13, 2024, this matter is resolved.

AND IT IS SO ORDERED.

Robert Bonds, Presiding Judge



Beaufort Common Pleas

Case Caption: Beaufort County South Carolina VS Adams Outdoor Advertising
Limited Partnership , defendant, et al
Case Number: 2022CP0701195
Type: Order/Protection from Discovery

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-08-15 12:08:51 page 2 of 2

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-07-01195

**ORDER REGARDING AREAS OR
TOPICS OF EXAMINATION FOR
DEFENDANT'S RECONVENED
DEPOSITION OF ERIC GREENWAY**

On August 20, 2024, this Court entered its Order Granting Defendant's Motion to Reconvene Eric Greenway's Deposition and to Compel Discovery. Pursuant thereto, the attorneys for Defendant and Eric Greenway were to confer and agree upon a list of permissible deposition topics for the reconvened deposition of Mr. Greenway and submit said list to the Court, with the understanding that if no agreement could be reached, the Court would decide on the appropriate topics and questions to be covered and compel Mr. Greenway to answer those questions. Defendant's counsel sent Mr. Greenway's counsel a list of proposed deposition topics, but an agreement could not be reached on the same, and as a result this Court scheduled an in-camera hearing on the matter for October 23, 2024.

After the Court scheduled this hearing, Greenway's defense counsel was able to confer with the South Carolina Attorney General's Office to ascertain their position on the use of Greenway's testimony in the event this Court compelled him to testify. Given certain assurances provided by the State as summarized herein, Mr. Greenway's counsel felt comfortable allowing Mr. Greenway to answer questions concerning certain topics and thereafter, Defendant and Mr. Greenway conferred and have now submitted their agreed-upon deposition topics, understanding that the Court will compel Mr. Greenway to answer questions related to those specific topics

subject to certain parameters. The Court has reviewed the suggested topics, agrees that those topics, which are set forth herein below, are appropriate for the reconvened deposition of Mr. Greenway that is to occur. Accordingly, this Court hereby directs Mr. Greenway to substantively answer such questions put to him related to these topics, to the best of his ability, without invoking the Fifth Amendment privilege against self-incrimination, subject to the parameters of conduct for the resumed deposition as set forth below.

MATTERS FOR EXAMINATION

The matters or topics on which Defendant may examine Mr. Greenway, and on which Mr. Greenway is required to testify, per this Court's Order, are as follows:

1. Knowledge concerning covenants, restrictions, leases, or encumbrances existing on or burdening the parcel formerly owned by Michael Kling which contains Adams' sign at issue in the County's second cause of action, which formerly bore Parcel ID No. R100-020-000-0047-0000 ("Kling Parcel") and the larger Port Royal Island battlefield (which is comprised in part by the Kling parcel) prior to or after the conveyance to the County. For reference, after consolidation, the battlefield parcel now bears Parcel ID No. R100-020-000-0165-0000 ("County Property").
2. Knowledge of any past and present use of the County Property, and any intended use of said property in the future by the County.
3. Knowledge of any research performed by the County which revealed or referenced any leases on or uses of the County Property that existed prior to the County's acquisition.
4. Involvement with and knowledge of the County's attempted termination of Adams' lease at issue in the County's second cause of action, including the decision-making process to attempt termination.
5. Off-premises signs and/or billboard signs owned or operated by persons other than Adams, including the County's treatment of those third parties, and the County's administration and enforcement of the CDC against those third parties.
6. Knowledge of any enforcement action taken by the County against any other person or entity that related to the operation, repair, or maintenance of off-premises signs and/or billboard signs.
7. Any disparate treatment by the County of Adams as compared to any other owner or operator of an off-premises sign or billboard sign.

8. Communications with George Trask, Graham Trask, any person or entity that acted for or worked with one or both of them, or any other owner of the parcel located at 3492 Trask Parkway, Beaufort, SC 29906 (Parcel ID No. R100 025 000 012A 0000) relating to the off-premises sign located on said parcel. Excluded from this topic are questions relating to attempted or actual procurement of said parcel by the County.

9. Knowledge of any maintenance, repairs, alterations, and/ or improvements to, and permits or approvals issued by the County for or relating to, the off-premises sign located on the parcel of land bearing Parcel ID Number R100 025 000 012A 0000 and address of 3492 Trask Parkway Beaufort, SC 29906

10. Involvement with and knowledge of the County's decision to pursue this civil action against Adams, as well as the process leading up to said decision.

11. Responsibilities and obligations as they related to administration and enforcement of the CDC, as well as decisions thereunder relating to permits, notices of violations, and citations for signs.

12. Knowledge of the County's processes or procedures relating to regulation of signs that are, or are located adjacent to a right-of-way that is, under the purview or jurisdiction of the South Carolina Department of Transportation.

13. As they relate to Adams and its signs within the County, communications and activities by the County following the July 2021 Magistrate's trial of the County's citations against Adams, including, but not limited to, news releases or website posts by the County mentioning Adams.

14. Knowledge concerning the basis or bases of the County's claims for damages, sanctions, and monetary relief claimed in this lawsuit, including all facts, information, sources of authority, documents, and communications relating to and/or supporting the same.

15. Any discussions, meetings, or other communications (verbal, written, or otherwise) wherein Adams' lease at issue and/or this lawsuit were referenced, mentioned, and/or discussed. Excluded from this topic are matters protected by attorney-client privilege and questions relating to the County's procurement activities or process.

To the best of his knowledge and ability, the Court directs that Eric Greenway, during the reconvened deposition, shall in good faith substantively answer and truthfully answer questions asked of him which fall within the foregoing topics, again subject to the guidelines and instructions set forth below. The Court does not believe that allowing the questioning of Mr. Greenway on these limited topics should negatively impact or prejudice him—but the Court deems it necessary to set certain parameters for the conduct of this resumed deposition and for the use of the

information obtained from Mr. Greenway in order to protect his constitutional rights. The Court is sensitive to the fact that Mr. Greenway remains under criminal investigation, and his counsel has advised the South Carolina Attorney General's Office that the Court may require him to answer certain questions under oath related to topics that are not reasonably related to the ongoing criminal investigation.

The Court respects Mr. Greenway's right to appropriately invoke his Fifth Amendment privileges, subject to the Court's Order to answer questions on the agreed upon topics, and understands that the South Carolina Attorney General's Office has agreed that if Mr. Greenway answers questions pursuant to an Order of this Court, Mr. Greenway's good faith compliance with this Court's directives should not result in a waiver of his right to appropriately assert the privilege in the future after the deposition that is to be reconvened in this case; the Court also understands that the Attorney General's Office has indicated to Mr. Greenway's counsel that it will not seek to obtain or review a copy of any transcripts of Greenway's compelled deposition testimony (i.e., testimony given in response to or as a result of an Order of this Court).

The Court therefore directs that any testimony of Mr. Greenway compelled by an Order of the Court (such as this Order and the Order entered in this case on August 20, 2024): (1) will not operate as a waiver of Mr. Greenway's attorney-client privilege; (2) cannot be used by any law enforcement entity either directly, indirectly or derivatively in any subsequent prosecution of Mr. Greenway, excepting a prosecution for perjury or false statements related to the testimony so compelled; and (3) shall be treated as confidential and shall be viewed only by counsel for Mr. Greenway and by counsel who have appeared in this action for one of the parties to this action. Outside of this litigation, and subject to the limitations herein, no further use or dissemination of the transcript of Mr. Greenway's deposition will be permitted absent further Order of this Court.

The Parties to this action are directed that if they intend to attach any portion of a transcript of the reconvened deposition of Mr. Greenway to any pleading, the transcript will be filed under seal and any discussion of that transcript must be redacted in any public filing absent an Order of this Court.¹

The Court further directs that if Mr. Greenway or his attorney(s) sincerely believe that a question asked during the reconvened deposition is not included in any of the foregoing topics and/or is a question which he or they have reasonable cause to believe will subject him to prosecution as it is directly or indirectly related to procurement matters, Mr. Greenway's attorney(s) may object to the question on that basis and/or direct that Mr. Greenway not answer the question as posed, and the deposing party's counsel and Mr. Greenway's counsel must work in good faith to modify the question to alleviate such concerns. If an agreement cannot be reached on the permissibility of a question or modified question, they shall complete the remainder of the deposition, leaving it open for this Court to decide on the permissibility of specific disputed questions that remain in dispute.

Additionally, the Court acknowledges that the rules regarding objections on the bases of attorney-client and work product privileges still apply, and that Plaintiff Beaufort County may raise those privileges, or objections on those grounds, as applicable and available, during the deposition in relation to the time period when Mr. Greenway was employed by Beaufort County.

AND IT IS SO ORDERED!

[Judicial Signature Page Follows]

¹ A copy of any filing or paper in this case that references or discusses a portion of the transcript may be submitted with the unredacted text only to the Court and to counsel of record for the parties to this action via email or by other means established by the Court.



Beaufort Common Pleas

Case Caption: Beaufort County South Carolina VS Adams Outdoor Advertising Limited Partnership , defendant, et al

Case Number: 2022CP0701195

Type: Order/Other

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-10-24 08:35:23 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0701195

Beaufort County South Carolina
PLAINTIFF(S)

Adams Outdoor Advertising Limited Partnership
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration, the Court respectfully grants summary judgment as to the contract between the parties and terminates this agreement at the end of the current term based on Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199 (1994).

The Court respectfully denies all the remaining matters as genuine issues of material fact exist as relates to each issue. If Beaufort County wishes to propose a more detailed order, the Court will consider it.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2025 .

Scott D Bergthold for Beaufort County South Carolina

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.



Beaufort Common Pleas

Case Caption: Beaufort County South Carolina VS Adams Outdoor Advertising Limited Partnership , defendant, et al

Case Number: 2022CP0701195

Type: Order/Electronic Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2025-06-25 13:56:27 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	Case No.: 2022-CP-07-01195
	)	
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP	)	
	)	
Defendant.	)	
	)	
_____	)	

The Plaintiff, Beaufort County, South Carolina, and Defendant, Adams Outdoor Advertising Limited Partnership, requests the Court to reconsider the Order dated June 25, 2025 and in the Beaufort County Clerk of Court's office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of June 25, 2025 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motions are therefore DENIED.

AND IT IS SO ORDERED.

Dated: _____

H. Steven DeBerry, IV
Judge, Twelfth Judicial Circuit



Beaufort Common Pleas

Case Caption: Beaufort County South Carolina VS Adams Outdoor Advertising Limited Partnership , defendant, et al

Case Number: 2022CP0701195

Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2025-07-14 09:05:50 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO. 2022-CP-07-_____
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT FOR DECLARATORY
	)	AND INJUNCTIVE RELIEF
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP,	)	
ELIZABETH “LIZ” MITCHUM,	)	
and REX ALLEN “BO” HODGES, JR.	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendants.	)	
_____	)	

Plaintiff Beaufort County (“County”) submits this Complaint for Declaratory and Injunctive Relief against Defendants Adams Outdoor Advertising Limited Partnership (“Adams”), Elizabeth (“Liz”) Mitchum, and Rex Allen (“Bo”) Hodges, Jr.

Adams is a billboard company with multiple billboards in Beaufort County. In April 2021, Adams unlawfully rebuilt two of its old, dilapidated billboards without the required authorization from Beaufort County, contrary to a stop work order, and in violation of Beaufort County Community Development Code (“CDC”). CDC § 5.6.50(B)(4)(b) requires the removal of both reconstructed billboards, at Adams’s expense. Adams disputes and opposes the forthcoming removal of the billboards.

In December 2020, the County acquired land where Adams was leasing space, on a year-to-year basis, for a billboard. In April 2021, the County notified Adams in writing that the lease would be terminated as of October 1, 2021. The lease gave Adams 30 days after termination to remove its billboard from the land. Adams refused to remove the billboard.

On Count 1, the County seeks a declaration that Adams unlawfully rebuilt the two billboard signs, that the County is authorized to disconnect electric service and remove the signs at Adams's expense, and that the County may dispose of the signs in its sole discretion. The County also seeks an injunction prohibiting Adams from impeding the removal and disposal of the signs and ordering Adams to pay the County for the expenses of removal and disposal.

On Count 2, the County seeks a declaration that Adams's lease on County property terminated on October 1, 2021, that the sign materials and displays on the property no longer belong to Adams because Adams failed to remove them within thirty (30) days thereafter, and that the County is authorized to disconnect electric service and remove and dispose of all sign materials in the County's sole discretion. The County also seeks an injunction prohibiting Defendants from impeding the removal and disposal of the sign.

PARTIES

1. Plaintiff Beaufort County, South Carolina, is a duly organized political subdivision of the State of South Carolina.
2. Defendant Adams Outdoor Advertising Limited Partnership operates billboards in Beaufort County, South Carolina.
3. Defendant Liz Mitchum is Adams's general manager in the region that includes Beaufort County. (Ex. 17, September 29, 2021 Letter from Richard Zecchino.)
4. As general manager, Liz Mitchum acts on Adams's behalf and implements its policies.
5. On information and belief, Liz Mitchum is domiciled in Beaufort County, South Carolina.
6. Defendant Bo Hodges is Adams's real estate manager in the region that includes Beaufort County. (Ex. 6 at 121, July 14, 2021 Mag. Ct. Transcript 121:10-11.)

7. Bo Hodges is the individual at Adams who deals with permitting issues in the region that includes Beaufort County. (Ex. 6 at 132, July 14, 2021 Mag. Ct. Transcript 132:19-20.)

8. On information and belief, Bo Hodges is domiciled in Beaufort County, South Carolina.

9. As a real estate manager who handles permitting issues in the region that includes Beaufort County, Bo Hodges acts on Adams's behalf and implements its policies.

JURISDICTION, VENUE, AND STANDING

10. Jurisdiction for this suit is conferred on the Court in part by S.C. Const. Art. V, § 1. The Court has the power to issue declaratory judgments pursuant to SCRCP 57 and S.C. Code Ann. § 15-53-10—15-53-140, and the power to issue injunctions pursuant to SCRCP 65.

11. The County has standing for declaratory and injunctive relief due to a violation of its community development code. *See* S.C. Code Ann. § 6-29-950 (providing that when land is used in violation of a zoning ordinance, a county “may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding . . . to correct or abate the violation”).

12. The County also may sue for declaratory and injunctive relief to vindicate its property rights and to remove the billboard by which Adams is continually trespassing upon County land.

13. Jurisdiction and venue are proper in this Court.

FACTS

Adams unlawfully rebuilds two billboards near 3589 Trask Parkway.

14. Beaufort County Community Development Code § 5.6.50(B) restricts the kind of work that may be done to an existing billboard. (Ex. 1 at 1.)

15. Section 5.6.50(B)(2) prohibits any work on a sign “so as to improve the structural integrity of the billboard” structure. (Ex. 1 at 1.)

16. Subsection (B)(2) also states, in part: “Any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation.” (Ex. 1 at 1.)

17. Section 5.6.50(B)(3) states: “Extension, enlargement, **replacement, rebuilding**, adding lights to an un-illuminated sign, changing the height of the sign above ground, **or re-erection of the sign are prohibited.**” (Ex. 1 at 1 (emphasis added).)

18. Section 5.6.50(B)(4) states that if a sign suffers damage beyond normal wear, it cannot be repaired without “[r]eceiving written notice from the Code Enforcement Department authorizing the repair work.” (Ex. 1 at 1, § 5.6.50(B)(4)(b).)

19. Any sign repaired without written authorization from the Code Enforcement Department “shall be removed by the County, and the costs and expenses of such removal shall be paid by that person or entity making the unauthorized repairs.” CDC § 5.6.50(B)(4)(b).

20. In late January and mid-February, 2021, Defendant Bo Hodges signed two applications to the South Carolina Department of Transportation (“SCDOT”) on Adams’s behalf concerning two billboards (SCDOT permit numbers 06-07-740766 and 06-07-740884) located near 3589 Trask Parkway (Highway 21) in Beaufort County. (Exs. 2, 3.)

21. The application for permit number 06-07-740766 (“740766”) showed that Adams was proposing to replace all four of the sign’s existing 35’ structural poles. (Ex. 2, 740766 Application and pictures.)

22. Similarly, the application for permit number 06-07-740884 (“740884”) showed that Adams was proposing to replace six of the sign’s existing 35’ structural poles. (Ex. 3, 740884 Application and pictures.)

23. On April 6, 2021, Bo Hodges emailed Audra Antonacci-Ogden of the Beaufort County Code Enforcement Department and enclosed copies of work approval from SCDOT. (Ex. 4, April 6 & 7 emails.)
24. The next day, Ms. Antonacci-Ogden informed Hodges that the County zoning department would need to give approval before any repairs could be made. She told Hodges that he would need to speak with Hilary Austin, the County Zoning Administrator. (Ex. 4 at 1.)
25. Hodges forwarded this correspondence to Ms. Austin. (Ex. 5, April 7 emails.)
26. Ms. Austin emailed Hodges and stated that she would make a decision after Hodges submitted pictures showing the current state of the signs. (*Id.*)
27. Hodges had no further correspondence with Ms. Austin. (*See* Ex. 6 at 147, July 14, 2021 Mag. Ct. Transcript 147:12-13 (Hodges: “I was not asking for approval. I didn’t need it.”).)
28. The Beaufort County Code Enforcement Department did not give Adams approval, written or otherwise, to rebuild either of the two billboards near 3589 Trask Parkway.
29. On Saturday, April 10, 2021, County Administrator Eric Greenway drove past 3589 Trask Parkway and observed the two signs being completely rebuilt.
30. Adams disassembled the two billboards, removed poles—i.e., the structural supports—that were rotten and splitting, and rebuilt the billboards on newly installed poles. (*See* Ex. 7 at 8, 11, 14 (photographs showing new poles installed at sign location, and pile of old poles); Ex. 8 at 9-18 (photographs showing rotten poles and new poles installed in front of original sign); Ex. 6, Tr. 156:14-19 (Hodges admitting that new poles are parts of the structure).)
31. Greenway stopped and asked the on-site construction superintendent for a copy of any paperwork showing that the County had authorized the construction and for a copy of his

business license to do work in the County, but the supervisor could not produce either. (Ex., Tr. 104:16-105:2.)

32. Greenway's attempt to get Adams's agent "to stop the work failed repeatedly," as did his attempted phone calls to Defendants Bo Hodges and Liz Mitchum. (Ex. 9 at 3.)

33. Greenway emailed Hodges and other Adams employees that evening and again informed Adams that the rebuild must cease because Beaufort County had issued no approvals for Adams to conduct the work, and that the rebuild of the signs violated the Community Development Code. (Ex. 9 at 3.)

34. Greenway's April 10, 2021 email also explicitly ordered Adams "to immediately cease and desist from any additional work on these two sites" until there was a chance to discuss the matter and determine a proper course for further action. (Ex. 9 at 3.)

35. On April 11, 2021, Adams Vice President and General Counsel Richard Zecchino emailed Greenway stating that Adams would proceed with the work anyway, citing approval Adams received from SCDOT. (Ex. 9 at 1-2.)

36. On Monday, April 12, the County Code Enforcement Director executed a separate stop work order prohibiting Adams from doing any further work and/or repairs on two signs located near 3589 Trask Parkway in Beaufort County. (Ex. 10, Stop work order.)

37. On April 12, the County also issued summonses to Adams and to Bo Hodges for two violations of CDC § 5.6.50(E)¹. (Ex. 11, Summonses.)

38. On July 23, a Beaufort County Magistrate Judge found Adams and Hodges guilty of the two violations of the CDC. (Ex. 13, Magistrate Court's verdict.)

39. The Magistrate Court found:

¹ In July 2021, CDC § 5.6.50 was amended and subpart (E) was recodified as subpart (B). (Compare Ex. 12 (version in effect in April 2021) with Ex. 1.)

The communication between the parties (Defendant Hodges, other employees of Adams Outdoor Advertising, and administrative staff of Beaufort County) which began with Defendant Hodges' email to Ms. Antonacci on April 6, 2021, and continued until Mr. Zecchino's email to Mr. Greenway on the morning of April 11, 2021, clearly show that the Defendants received actual notice of the violation and had actual knowledge of the location of the violation.

(Ex. 13 at 4.)

40. The Magistrate Court further stated:

The South Carolina Code in Section 57-25-22 states as follows with respect to outdoor advertising: "Nothing in this article abrogates or affects the provisions of a lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this article." The Beaufort County Code clearly prohibits restoration of signs that have become structurally unsound. It states that any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign and it prohibits "replacement, rebuilding, ... or re-erection of a sign." The code does allow for repairs to damage in excess of normal wear, but only upon notification to the Code Enforcement Department of the damage and upon receipt of written notice from the Code Enforcement Department authorizing the repairs.

It is clear that the Defendants had actual notice of the requirement that the county approve any work undertaken by them to the signs in question and that the Defendants chose to perform the work in spite of their failure to obtain the proper approvals from Beaufort County.

I therefore find the Defendants guilty of the two violations of the Beaufort County Development Code Section 5.6.50E.

(Ex. 13 at 5.)

41. Adams appealed from the magistrate court's rulings and sentence to the Beaufort County Court of Common Pleas.

42. On April 22, 2022, this Court (Dukes, J.) reversed the verdict "on technical grounds" on the basis of the rule of lenity as applied to criminal cases, and stated that his ruling "should not be construed as a vindication or approval" of Adams's reconstruction of the two billboards. (Ex. 14 at 2 n.1, Case No. 2021-CP-01507, Order on Appeal.)

43. The Court of Common Pleas ruling does not undermine any of the facts as found by the Magistrate Court, including that Adams's reconstruction of the two billboards violated the

prohibitions of the CDC and that Adams and its employees had actual notice of the violation of law that they were committing.

**Adams refuses to remove its billboard from land owned by the County
after its sign lease is terminated.**

44. In a separate area of the County, on December 30, 2020, the County acquired parcel # R100-020-000-0165-0000.

45. Adams operated a billboard on parcel # R100-020-000-0165-000 pursuant to Lease No. 40133 between Adams (and its predecessor) and the former landowner. (Ex. 15, Sign Lease.)

46. The lease provided that after the original three year term, that lease would:

continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

(Ex. 15.)

47. With regard to disposition of the sign, the lease stated:

All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

(Ex. 15.)

48. On April 1, 2021, the County provided written notice of termination to Adams, informing Adams that Lease No. 40133 would be terminated as of October 1, 2021. (Ex. 16 at 1, April 1, 2021 Letter to Liz Mitchum.)

49. The April 1 letter also told Adams that it would "have thirty (30) days after the termination date to remove the billboard from the property." (Ex. 16 at 1.)

50. On September 29, 2021 (two days before the lease would expire), Richard Zecchino, Vice President and General Counsel for Adams responded to the County's April 1 letter. (Ex. 17, September 29, 2021 Letter from Richard Zecchino.)

51. Zecchino argued that the lease could be terminated only by the lessee (Adams) because the lease refers to "termination by Lessee to Lessor." (Ex. 17 at 1.) Zecchino asserted that the lease would automatically renew on October 1 and would "continue doing so into the future unless and until Adams" decides otherwise. (*Id.*)

52. On December 1, 2021, the County sent Adams a letter rejecting its claim to have a unilateral perpetual right of renewal. (Ex. 18, December 1, 2021 Letter to Richard Zecchino.)

53. The County cited *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-103 (1994), in which the South Carolina Supreme Court held that a contract that appears to confer an indefinite right of renewal must be construed as terminable at will by either party upon reasonable notice. (Ex. 18.)

54. Adams did not remove the sign materials and displays from the County's property within 30 days after termination of the sign lease.

55. The County seeks to remove and dispose of the sign materials and displays that Adams left on the County's property. The County contends that those items no longer belong to Adams because Adams failed to remove them from the County's property in the time allowed by the lease.

56. There is a bona fide dispute between the County and Adams as to the continued existence, at their present locations, of all three Adams billboards discussed above.

**COUNT ONE:
DECLARATORY JUDGMENT AND INJUNCTION
AGAINST VIOLATIONS OF COMMUNITY DEVELOPMENT CODE**

57. The County realleges each fact set forth in the previous paragraphs of this complaint and incorporates them herein by reference.

58. Under CDC § 5.6.50(B)(2), “Any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation. Costs and expenses of such removal shall be paid by the owner of such sign.”

59. If commercial off-premises signs suffer “damage in excess of normal wear,” they cannot be repaired without written authorization from the Beaufort County Code Enforcement Department. CDC § 5.6.50(B)(4)(a).

60. Any sign repaired without written authorization from the Code Enforcement Department “shall be removed by the County, and the costs and expenses of such removal shall be paid by that person or entity making the unauthorized repairs.” CDC § 5.6.50(B)(4)(b).

61. The CDC provides that, “In addition to all other remedies and penalties outlined in this Article, the County Attorney may institute an action or proceeding for injunction or mandamus or other appropriate action or proceeding to prevent, abate, or correct a violation of this Development Code” CDC § 9.5.20(C). (Ex. 18.)

62. The County seeks and is entitled to the following declarations:

- a. That in April 2021, Adams replaced the poles for its two billboards near 3589 Trask Parkway, and rebuilt those billboards, contrary to prohibitions in CDC § 5.6.50(B).
- b. That under CDC § 5.6.50(B)(2), Adams’s replacing of the poles and other structural components of its two billboards near 3589 Trask Parkway is deemed an

abandonment of the billboards, so the Beaufort County sign permits for those two billboards are void and the billboards shall be removed without compensation to Adams.

- c. That under CDC § 5.6.50(B)(4), because Adams did not receive written authorization from the Beaufort County Code Enforcement Department for rebuilding its two billboards near 3589 Trask Parkway, Beaufort County is authorized to disconnect electric service to the two billboards and to remove the billboards.
- d. That Beaufort County is authorized to dispose of the billboards, including all sign materials and displays, in the County's sole discretion.

63. The County seeks and is entitled to an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the two billboards near 3589 Trask Parkway.

64. The County seeks and is entitled to an order that Adams Outdoor Advertising Limited Partnership shall, under CDC § 5.6.50(B)(4)(b), pay the costs and expenses of removing and disposing of the two billboards near 3589 Trask Parkway.

**COUNT TWO:
DECLARATORY JUDGMENT AND INJUNCTION AGAINST SIGN ON COUNTY
LAND AFTER LEASE TERMINATION**

65. The County realleges each fact set forth in the previous paragraphs of this complaint and incorporates them herein by reference.

66. The County seeks and is entitled to the following declarations:

- a. That Lease No. 40133, under which Adams operated a billboard on County land terminated on October 1, 2021.
- b. That the sign materials and displays left behind on the County's land no longer belong to Adams because Adams failed to remove them within thirty (30) days after termination of Lease No. 40133.
- c. That Beaufort County is authorized to disconnect electric service to the sign and to remove and dispose of all sign materials and displays in the County's sole discretion.

67. The County also seeks and is entitled to an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the sign that Adams left behind on Beaufort County's land.

RELIEF REQUESTED

68. On Count One of the Complaint, Beaufort County respectfully requests this Court to find and issue declaratory relief, as follows:

- a. That in April 2021, Adams replaced the poles for its two billboards near 3589 Trask Parkway, and rebuilt those billboards, contrary to prohibitions in CDC § 5.6.50(B).
- b. That under CDC § 5.6.50(B)(2), Adams's replacing of the poles and other structural components of its two billboards near 3589 Trask Parkway is deemed an abandonment of the billboards, so the Beaufort County sign permits for those two billboards are void and the billboards shall be removed without compensation to Adams.

- c. That under CDC § 5.6.50(B)(4), because Adams did not receive written authorization from the Beaufort County Code Enforcement Department for rebuilding its two billboards near 3589 Trask Parkway, Beaufort County is authorized to disconnect electric service to the two billboards and to remove the billboards.
- d. That Beaufort County is authorized to dispose of the billboards, including all sign materials and displays, in the County's sole discretion.

69. On Count One of the Complaint, Beaufort County respectfully requests this Court to issue an injunction against Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the two billboards near 3589 Trask Parkway.

70. On Count One of the Complaint, Beaufort County respectfully requests this Court to issue an order that Adams Outdoor Advertising Limited Partnership shall, under CDC § 5.6.50(B)(4)(b), pay the costs and expenses of removing and disposing of the two billboards near 3589 Trask Parkway.

71. On Count Two of the Complaint, Beaufort County respectfully requests this Court to find and issue declaratory relief, as follows:

- a. That Lease No. 40133, under which Adams operated a billboard on land acquired by Beaufort County, terminated on October 1, 2021.

- b. That the sign materials and displays left behind on the County's land no longer belong to Adams because Adams failed to remove them within thirty (30) days after termination of Lease No. 40133.
- c. That Beaufort County is authorized to disconnect electric service and remove and dispose of all sign materials and displays in the County's sole discretion.

72. On Count Two of the Complaint, Beaufort County respectfully requests this Court to issue an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the sign that Adams left behind on Beaufort County's land.

73. Beaufort County further requests an order taxing all costs to Defendants, and providing such other relief, including but not limited to attorney fees, sanctions, damages, and other monetary relief against Defendants, as this Court deems just and proper.

Date: June 29, 2022

Respectfully submitted,

/s/ Brittany Ward

Brittany Ward (SC BAR #103966)
Office of the Beaufort County Attorney
102 Industrial Village, Bldg. 2
P.O. Drawer 1228
Beaufort, South Carolina 29906
(843) 255-2059
(843) 255-9414 (fax)
Email: bward@bcgov.net

Attorney for Plaintiff Beaufort County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
BEAUFORT COUNTY, South Carolina	)	CIVIL ACTION NO: 2022-CP-07-01195
Plaintiff	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP, ELIZABETH	)	
"Liz" MITCHUM, AND REX ALLEN "Bo"	)	
Hodges, Jr.	)	
Defendants.	)	
	)	
	)	

The undersigned hereby certifies that she has served the foregoing Summons and Complaint for Declaratory and Injunctive Relief upon Adams Outdoor Advertising Limited Partnership by certified mail on this 25 of July, 2022 addressed to the following:

7021 1970 0001 2113 9299
 CT Corporations as Registered Agent
 for Adams Outdoor Advertising, LP
 2 Office Part Ct, Ste 103
 Columbia, South Carolina 29223

By: s/Brittany Ward
 Brittany Ward (Bar#103966)
 Beaufort County Legal Department
 100 Ribaut Road
 P. O. Drawer 1228
 Beaufort, SC 29901-1228
 Attorney for Beaufort County

July 25, 2022
 Beaufort, South Carolina

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X <u>Lee Culler</u> ☐ Agent ☐ Addressee	
1. Article Addressed to: <u>Ct Corporations; Agent for</u> <u>Adams Outdoor Advertising LP</u> <u>2 Office Park Ct Ste 103</u> <u>Columbia, SC 29223</u>		B. Received by (Printed Name) <u>8-1-02</u> C. Date of Delivery	
2. Article Number (Transfer from service label) <u>7021 1970 0001 2113 9299</u>		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)			
9590 9402 6706 1060 7979 13			
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO. 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED SUMMONS
	)	
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP,	)	
ELIZABETH "LIZ" MITCHUM,	)	
and REX ALLEN "BO" HODGES, JR.	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendants.	)	
	)	

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended Complaint on the subscribers at their office at 102 Industrial Village, Bldg. 2, P.O. Drawer 1228 Beaufort, South Carolina 29906, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint, or to otherwise responsively plead to the Amended Complaint, or to otherwise appear and defend, within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Date: August 31, 2022

/s/ Brittany Ward
 Brittany Ward (SC BAR #103966)
 Office of the Beaufort County Attorney
 102 Industrial Village, Bldg. 2
 P.O. Drawer 1228
 Beaufort, South Carolina 29906
 (843) 255-2059
 (843) 255-9414 (fax)
 Email: bward@bcgov.net
 Attorney for Plaintiff Beaufort County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO. 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	FIRST AMENDED COMPLAINT FOR
	)	DECLARATORY AND INJUNCTIVE
ADAMS OUTDOOR ADVERTISING	)	RELIEF
LIMITED PARTNERSHIP,	)	
ELIZABETH “LIZ” MITCHUM,	)	
and REX ALLEN “BO” HODGES, JR.	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendants.	)	

INTRODUCTION

Plaintiff Beaufort County (“County”) submits, under Rule 15(a), SCRCP, this First Amended Complaint for Declaratory and Injunctive Relief against Defendants Adams Outdoor Advertising Limited Partnership (“Adams”), Elizabeth (“Liz”) Mitchum, and Rex Allen (“Bo”) Hodges, Jr.

Adams is a billboard company operating in Beaufort County. In April 2021, Adams unlawfully rebuilt two of its old, dilapidated billboards without the required authorization from Beaufort County, contrary to a stop work order, and in violation of the County’s Community Development Code (“CDC”). CDC § 5.6.50(B)(4)(b) requires the removal of both reconstructed billboards, at Adams’s expense. Adams opposes their removal.

In December 2020, the County acquired land where Adams was leasing space, on a year-to-year basis, for a billboard. In April 2021, pursuant to the terms of the lease, the County notified Adams in writing that the lease would be terminated as of October 1, 2021. The lease gave Adams 30 days after that date to remove its billboard from the land. Adams refused.

On Count 1, the County seeks a declaration that Adams unlawfully rebuilt the two billboards, that the County is authorized to disconnect electric service and remove the signs at Adams's expense, and that the County may dispose of the signs in its sole discretion. The County also seeks an injunction prohibiting Defendants from impeding the removal and disposal of the signs, and an order requiring Adams to pay the County for the expenses of removal and disposal.

On Count 2, the County seeks a declaration that Adams's lease on County property terminated on October 1, 2021, that the sign materials and displays on the property no longer belong to Adams because Adams failed to remove them within thirty (30) days thereafter, and that the County is authorized to disconnect electric service and remove and dispose of all sign materials in the County's sole discretion. The County also seeks an injunction prohibiting Defendants from impeding the removal and disposal of the sign.

PARTIES

1. Plaintiff Beaufort County, South Carolina, is a duly organized political subdivision of the State of South Carolina.
2. Defendant Adams Outdoor Advertising Limited Partnership maintains and leases billboards in Beaufort County, South Carolina.
3. Defendant Liz Mitchum is Adams's general manager in the region that includes Beaufort County. (Ex. 17, September 29, 2021 Letter from Adams (Richard Zecchino).)
4. As general manager, Liz Mitchum acts on Adams's behalf and implements its policies.
5. On information and belief, Liz Mitchum is domiciled in Beaufort County, South Carolina.
6. Defendant Bo Hodges is Adams's real estate manager in the region that includes Beaufort County. (Ex. 6 at 121, July 14, 2021 Mag. Ct. Transcript 121:10-11.)

7. Bo Hodges is the individual at Adams who deals with permitting issues in the region that includes Beaufort County. (Ex. 6 at 132, July 14, 2021 Mag. Ct. Transcript 132:19-20.)

8. On information and belief, Bo Hodges is domiciled in Beaufort County, South Carolina.

9. As the real estate manager for the region, Bo Hodges acts on Adams's behalf and implements its policies.

JURISDICTION, VENUE, AND STANDING

10. Jurisdiction for this suit is conferred on the Court in part by S.C. Const. Art. V, § 1. The Court has the power to issue declaratory judgments pursuant to SCRCP 57 and S.C. Code Ann. § 15-53-10—15-53-140, and the power to issue injunctions under SCRCP 65.

11. The County has standing for declaratory and injunctive relief due to a violation of its community development code. *See* S.C. Code Ann. § 6-29-950 (providing that when land is used in violation of a zoning ordinance, a county “may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding . . . to correct or abate the violation”).

12. The County also may sue for declaratory and injunctive relief to vindicate its property rights and to remove the billboard by which Adams is continually trespassing upon County land.

13. Jurisdiction and venue are proper in this Court.

FACTS

Adams unlawfully rebuilds two billboards near 3589 Trask Parkway.

14. Beaufort County Community Development Code § 5.6.50(B) restricts the kind of work that may be done to an existing billboard. (Ex. 1 at 1.)

15. Section 5.6.50(B)(2) prohibits any work on a sign “so as to improve the structural integrity of the billboard” structure. (Ex. 1 at 1.)

16. Subsection (B)(2) also states, in part: “Any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation.” (Ex. 1 at 1.)

17. Section 5.6.50(B)(3) states: “Extension, enlargement, **replacement, rebuilding**, adding lights to an un-illuminated sign, changing the height of the sign above ground, **or re-erection of the sign are prohibited.**” (Ex. 1 at 1 (emphasis added).)

18. Section 5.6.50(B)(4) states that if a sign suffers damage beyond normal wear, it cannot be repaired without “[r]eceiving written notice from the Code Enforcement Department authorizing the repair work.” (Ex. 1 at 1, § 5.6.50(B)(4)(b).)

19. Any sign repaired without written authorization from the Code Enforcement Department “shall be removed by the County, and the costs and expenses of such removal shall be paid by that person or entity making the unauthorized repairs.” CDC § 5.6.50(B)(4)(b).

20. In late January and mid-February, 2021, Defendant Bo Hodges signed two applications to the South Carolina Department of Transportation (“SCDOT”) on Adams’s behalf concerning two billboards (SCDOT permit numbers 06-07-740766 and 06-07-740884) located near 3589 Trask Parkway (Highway 21) in Beaufort County. (Exs. 2, 3.)

21. The application for permit number 06-07-740766 (“740766”) showed that Adams was proposing to replace all four of the sign’s existing 35’ structural poles. (Ex. 2, 740766 Application and pictures.)

22. Similarly, the application for permit number 06-07-740884 (“740884”) showed that Adams was proposing to replace six of the sign’s existing 35’ structural poles. (Ex. 3, 740884 Application and pictures.)

23. On April 6, 2021, Bo Hodges emailed Audra Antonacci-Ogden of the Beaufort County Code Enforcement Department and enclosed copies of SCDOT's approvals. (Ex. 4, April 6 & 7 emails.)

24. The next day, Ms. Antonacci-Ogden informed Hodges that the County zoning department would need to give approval before any repairs could be made. She told Hodges that he would need to speak with Hilary Austin, the County Zoning Administrator. (Ex. 4 at 1.)

25. Hodges forwarded this correspondence to Ms. Austin. (Ex. 5, April 7 emails.)

26. Ms. Austin emailed Hodges and stated that she would make a decision after Hodges submitted pictures showing the current state of the signs. (*Id.*)

27. Hodges did not submit the requested pictures to Ms. Austin, and had no further correspondence with Ms. Austin. (*See* Ex. 6 at 147, July 14, 2021 Mag. Ct. Transcript 147:12-13 (Hodges: "I was not asking for approval. I didn't need it.").)

28. The Beaufort County Code Enforcement Department did not give Adams approval, written or otherwise, to rebuild either of the two billboards near 3589 Trask Parkway.

29. On Saturday, April 10, 2021, County Administrator Eric Greenway drove past 3589 Trask Parkway and observed the two signs being completely rebuilt.

30. Adams disassembled the two billboards, removed the poles—i.e., the structural supports—that were rotted and splitting, and rebuilt the billboards on newly installed poles. (*See* Ex. 7 at 8, 11, 14 (photographs showing new poles installed at sign location, and pile of old poles); Ex. 8 at 9-18 (photographs showing rotten poles and new poles installed in front of original sign); Ex. 6, Tr. 156:14-19 (Hodges admitting that new poles are parts of the structure).)

31. Greenway stopped and asked the on-site construction superintendent for a copy of any paperwork showing that the County had authorized the ongoing construction work, and for a

copy of the superintendent's business license to do work in the County, but the supervisor could not produce either document. (Ex. 6, Tr. 104:16-105:2.)

32. Greenway's attempts to get Adams's on-site agent "to stop the work failed repeatedly," as did his attempted phone calls to Defendants Bo Hodges and Liz Mitchum to get them to stop the work. (Ex. 9 at 3.)

33. That evening, Greenway also emailed Hodges and other Adams employees, including defendant Mitchum, and again informed Adams that the rebuilding work must cease because Beaufort County had not issued any approval for Adams to do the work, and that the rebuild of the signs violated the Community Development Code. (Ex. 9 at 1, 3.)

34. Greenway's April 10, 2021 email also explicitly ordered Adams, including Hodges and Mitchum, "to immediately cease and desist from any additional work on these two sites" until there was a chance to discuss the matter and determine a proper course for further action. (Ex. 9 at 3.)

35. Defendant Bo Hodges knew that the billboard reconstruction work was being conducted without approval from Beaufort County, but he allowed the construction work to proceed nonetheless.

36. Defendant Liz Mitchum likewise allowed the billboard reconstruction work to proceed, even though Beaufort County had not authorized the construction work.

37. On April 11, 2021, Adams Vice President and General Counsel Richard Zecchino emailed Greenway stating that Adams would proceed with the work anyway, citing approval Adams received from SCDOT. (Ex. 9 at 1-2.)

38. Zecchino's April 11 email stated that "Adams intends to complete the work approved by SCDOT today." (Ex. 9 at 2.)

39. Zecchino's email also stated: "Should you take any action to attempt to prohibit Adams from doing what it is legally entitled to do with respect to this work, all you will be doing is inviting a lawsuit by Adams against the County." (*Id.*)

40. On Monday, April 12, the County Code Enforcement Director executed a separate stop work order prohibiting Adams from doing any further work and/or repairs on two signs located near 3589 Trask Parkway in Beaufort County. (Ex. 10, Stop Work Order.)

41. On April 12, the County also issued summonses to Adams and to Bo Hodges for their two violations of CDC § 5.6.50(E)¹. (Ex. 11, Summonses / Citations.)

42. On July 14, 2021, Beaufort County Magistrate Nancy Sadler conducted a trial on the two citations. Adams and Hodges were represented by counsel, presented exhibits and witness testimony, and cross-examined County staff. (Ex. 6, Magistrate Court Transcript.)

43. On July 23, the Magistrate Court found Adams and Hodges guilty of the two violations of the CDC. (Ex. 13, Magistrate Court's Verdict.)

44. The Magistrate Court found:

The communication between the parties (Defendant Hodges, other employees of Adams Outdoor Advertising, and administrative staff of Beaufort County) which began with Defendant Hodges' email to Ms. Antonacci on April 6, 2021, and continued until Mr. Zecchino's email to Mr. Greenway on the morning of April 11, 2021, clearly show that the Defendants received actual notice of the violation and had actual knowledge of the location of the violation.

(Ex. 13 at 4.)

45. The Magistrate Court further stated:

The South Carolina Code in Section 57-25-22 states as follows with respect to outdoor advertising: "Nothing in this article abrogates or affects the provisions of a lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this article." The Beaufort County Code clearly prohibits restoration

¹ In July 2021, CDC § 5.6.50 was amended and subpart (E) was recodified as subpart (B). (Compare Ex. 12 (version in effect in April 2021) with Ex. 1.)

of signs that have become structurally unsound. It states that any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign and it prohibits “replacement, rebuilding, ... or re-erection of a sign.” The code does allow for repairs to damage in excess of normal wear, but only upon notification to the Code Enforcement Department of the damage and upon receipt of written notice from the Code Enforcement Department authorizing the repairs.

It is clear that the Defendants had actual notice of the requirement that the county approve any work undertaken by them to the signs in question and that the Defendants chose to perform the work in spite of their failure to obtain the proper approvals from Beaufort County.

I therefore find the Defendants guilty of the two violations of the Beaufort County Development Code Section 5.6.50E.

(Ex. 13 at 5.)

46. Adams and Hodges appealed from the magistrate court’s rulings and sentence to the Beaufort County Court of Common Pleas.

47. On April 22, 2022, this Court (Dukes, J.) reversed the verdict “on technical grounds” on the basis of the rule of lenity as applied to criminal cases, and stated that his ruling “should not be construed as a vindication or approval” of Adams’s reconstruction of the two billboards. (Ex. 14 at 2 n.1, Case No. 2021-CP-01507, Order on Appeal.)

48. The Court of Common Pleas ruling does not undermine *any* of the facts as found by the Magistrate Court, including that Adams’s reconstruction of the two billboards violated the prohibitions of the CDC and that Adams and its employees had actual notice of the violation of law that they were committing.

**Adams refuses to remove its billboard from land owned by the County
after its sign lease is terminated.**

49. In a separate area of the County, on December 30, 2020, the County acquired parcel # R100-020-000-0165-0000.

50. Adams operated a billboard on parcel # R100-020-000-0165-000 pursuant to Lease No. 40133 between Adams (and its predecessor) and the former landowner. (Ex. 15, Sign Lease.)

51. The lease provided that after the original three year term, that lease would:

continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

(Ex. 15.)

52. With regard to disposition of the sign, the lease stated:

All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

(Ex. 15.)

53. On April 1, 2021, the County provided written notice of termination to Adams and Defendant Liz Mitchum, informing them that Lease No. 40133 would be terminated as of October 1, 2021. (Ex. 16 at 1, April 1, 2021 Letter to Liz Mitchum.)

54. The April 1 letter also told Adams and Defendant Mitchum, its general manager, that Adams would "have thirty (30) days after the termination date to remove the billboard from the property." (Ex. 16 at 1.)

55. On September 29, 2021 (two days before the lease expired), Richard Zecchino, Vice President and General Counsel for Adams responded to the County's April 1 letter, copying Mitchum, Adams' general manager. (Ex. 17, September 29, 2021 Letter from Richard Zecchino.)

56. Adams argued that the lease could be terminated only by the lessee (Adams) because the lease refers to "termination by Lessee to Lessor." (Ex. 17 at 1.) Adams asserted that the lease would automatically renew on October 1 and would "continue doing so into the future unless and until Adams" decides otherwise. (*Id.*)

57. On December 1, 2021, the County sent Adams a letter rejecting its claim to have a unilateral perpetual right of renewal. (Ex. 18, December 1, 2021 Letter to Adams.)

58. The County cited *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-103 (1994), in which the South Carolina Supreme Court held that a contract that appears to confer an indefinite right of renewal must be construed as terminable at will by either party upon reasonable notice. (Ex. 18.)

59. Adams did not remove the sign materials and displays from the County's property within 30 days after termination of the sign lease.

60. Defendants Hodges and Mitchum likewise have failed to remove the Adams sign materials and displays from the County's property after the lease was terminated effective October 1, 2021.

61. The County seeks to remove and dispose of the sign materials and displays that Adams and its employees including its general manager Mitchum and real estate manager Hodges, have left on the County's property. The County contends that those items no longer belong to Adams because Adams, through its agents Mitchum and Hodges, have failed to remove them from the County's property in the time allowed by the lease.

62. There is a bona fide dispute between the County and Adams as to the continued existence, at their present locations, of all three Adams billboards discussed above.

63. Upon information and belief, Defendants Hodges and Mitchum also dispute the County's right to remove the three Adams billboards discussed above.

64. Upon information and belief, Defendants Hodges and Mitchum, based upon their failure to remove the billboard on County land, and their roles in authorizing and/or causing the illegal reconstruction of the two billboards on Trask Parkway, will take steps to impede the County from removing and disposing of the three Adams billboards discussed above.

**COUNT ONE:
DECLARATORY JUDGMENT AND INJUNCTION
AGAINST VIOLATIONS OF COMMUNITY DEVELOPMENT CODE**

65. The County realleges each fact set forth in the previous paragraphs of this complaint and incorporates them herein by reference.

66. Under CDC § 5.6.50(B)(2), “Any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation. Costs and expenses of such removal shall be paid by the owner of such sign.”

67. If commercial off-premises signs suffer “damage in excess of normal wear,” they cannot be repaired without written authorization from the Beaufort County Code Enforcement Department. CDC § 5.6.50(B)(4)(a).

68. Any sign repaired without written authorization from the Code Enforcement Department “shall be removed by the County, and the costs and expenses of such removal shall be paid by that person or entity making the unauthorized repairs.” CDC § 5.6.50(B)(4)(b).

69. The CDC provides that, “In addition to all other remedies and penalties outlined in this Article, the County Attorney may institute an action or proceeding for injunction or mandamus or other appropriate action or proceeding to prevent, abate, or correct a violation of this Development Code” CDC § 9.5.20(C). (Ex. 19.)

70. The County seeks and is entitled to the following declarations:

- a. That in April 2021, Adams replaced the poles for its two billboards near 3589 Trask Parkway, and rebuilt those billboards, contrary to prohibitions in CDC § 5.6.50(B).
- b. That under CDC § 5.6.50(B)(2), Adams’s replacing of the poles and other structural components of its two billboards near 3589 Trask Parkway is deemed an

abandonment of the billboards, so the Beaufort County sign permits for those two billboards are void and the billboards shall be removed without compensation to Adams.

- c. That under CDC § 5.6.50(B)(4), because Adams did not receive written authorization from the Beaufort County Code Enforcement Department for rebuilding its two billboards near 3589 Trask Parkway, Beaufort County is authorized to disconnect electric service to the two billboards and to remove the billboards.
- d. That Beaufort County is authorized to dispose of the billboards, including all sign materials and displays, in the County's sole discretion.

71. The County seeks and is entitled to an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the two billboards near 3589 Trask Parkway.

72. The County seeks and is entitled to an order that Adams Outdoor Advertising Limited Partnership shall, under CDC § 5.6.50(B)(4)(b), pay the costs and expenses of removing and disposing of the two billboards near 3589 Trask Parkway.

**COUNT TWO:
DECLARATORY JUDGMENT AND INJUNCTION AGAINST SIGN ON COUNTY
LAND AFTER LEASE TERMINATION**

73. The County realleges each fact set forth in the previous paragraphs of this complaint and incorporates them herein by reference.

74. The County seeks and is entitled to the following declarations:

- a. That Lease No. 40133, under which Adams operated a billboard on County land terminated on October 1, 2021.
- b. That the sign materials and displays left behind on the County's land no longer belong to Adams because Adams failed to remove them within thirty (30) days after termination of Lease No. 40133.
- c. That Beaufort County is authorized to disconnect electric service to the sign and to remove and dispose of all sign materials and displays in the County's sole discretion.

75. The County also seeks and is entitled to an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the sign that Adams left behind on Beaufort County's land.

RELIEF REQUESTED

76. On Count One of the Complaint, Beaufort County respectfully requests this Court to find and issue declaratory relief, as follows:

- a. That Defendant Mitchum, as Adams's general manager in Beaufort County, and Defendant Hodges, as Adams's real estate manager in Beaufort County, are Adams's agents with regard to its billboards in the County.
- b. That in April 2021, Adams replaced the poles for its two billboards near 3589 Trask Parkway, and rebuilt those billboards, contrary to prohibitions in CDC § 5.6.50(B).
- c. That under CDC § 5.6.50(B)(2), Adams's replacing of the poles and other structural components of its two billboards near 3589 Trask Parkway is deemed an

abandonment of the billboards, so the Beaufort County sign permits for those two billboards are void and the billboards shall be removed without compensation to Adams.

- d. That under CDC § 5.6.50(B)(4), because Adams did not receive written authorization from the Beaufort County Code Enforcement Department for rebuilding its two billboards near 3589 Trask Parkway, Beaufort County is authorized to disconnect electric service to the two billboards and to remove the billboards.
- e. That Beaufort County is authorized to dispose of the billboards, including all sign materials and displays, in the County's sole discretion.

77. On Count One of the Complaint, Beaufort County respectfully requests this Court to issue an injunction against Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the two billboards near 3589 Trask Parkway.

78. On Count One of the Complaint, Beaufort County respectfully requests this Court to issue an order that Adams Outdoor Advertising Limited Partnership shall, under CDC § 5.6.50(B)(4)(b), pay the costs and expenses of removing and disposing of the two billboards near 3589 Trask Parkway.

79. On Count Two of the Complaint, Beaufort County respectfully requests this Court to find and issue declaratory relief, as follows:

- a. That Defendant Mitchum, as Adams's general manager in Beaufort County, and Defendant Hodges, as Adams's real estate manager in Beaufort County, are Adams's agents with regard to its billboards in the County.
- b. That Lease No. 40133, under which Adams operated a billboard on land acquired by Beaufort County, terminated on October 1, 2021.
- c. That the sign materials and displays left behind on the County's land no longer belong to Adams because Adams failed to remove them within thirty (30) days after termination of Lease No. 40133.
- d. That Beaufort County is authorized to disconnect electric service and remove and dispose of all sign materials and displays in the County's sole discretion.

80. On Count Two of the Complaint, Beaufort County respectfully requests this Court to issue an injunction against Defendants Adams Outdoor Advertising Limited Partnership, Liz Mitchum, Bo Hodges, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, that prohibits them from impeding the County's removal and disposal of the sign that Adams left behind on Beaufort County's land.

81. Beaufort County further requests an order taxing all costs to Defendants, and providing such other relief, including but not limited to attorney fees, sanctions, damages, and other monetary relief against Defendants, as this Court deems just and proper.

Date: August 31, 2022

Respectfully submitted,

/s/ Brittany Ward
Brittany Ward (SC BAR #103966)
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P.O. Drawer 1228

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Attorney for Plaintiff Beaufort County

Complaint Exhibits Attached and Incorporated By Reference

- Ex. 1, Community Development Code (“CDC”) § 5.6.50
- Ex. 2, 740766 Application and pictures
- Ex. 3, 740884 Application and pictures
- Ex. 4, April 6 & 7 emails
- Ex. 5, April 7 emails
- Ex. 6, July 14, 2021 Mag. Ct. Transcript
- Ex. 7, Photos for Sign 74065/70091 (on East side of Trask Pkwy)
- Ex. 8, Photos for Sign 7036/74062 (on West side of Trask Pkwy)
- Ex. 9, April 10 & 11 emails
- Ex. 10, Stop work order
- Ex. 11, Summonses
- Ex. 12 CDC § 5.6.50 (version in effect in April 2021)
- Ex. 13, Magistrate Court’s verdict
- Ex. 14, Case No. 2021-CP-01507, Order on Appeal
- Ex. 15, Sign Lease
- Ex. 16, April 1, 2021 Letter to Adams / Liz Mitchum
- Ex. 17, September 29, 2021 Letter from Adams / Richard Zecchino
- Ex. 18, December 1, 2021 Letter to Adams / Richard Zecchino
- Ex. 19, CDC Division 9.5

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-07-01195

**DEFENDANT ADAMS OUTDOOR
ADVERTISING LIMITED
PARTNERSHIP'S AMENDED ANSWER
TO AMENDED COMPLAINT AND
COUNTERCLAIMS**

Defendant Adams Outdoor Advertising Limited Partnership ("Adams"), by and through its undersigned counsel, hereby amends its Answer to the Amended Complaint of Plaintiff Beaufort County, South Carolina ("Plaintiff" or "County") and asserts counterclaims against Plaintiff as follows:

FOR A FIRST DEFENSE

1. Adams denies each and every allegation contained in the Amended Complaint not specifically admitted hereinafter, and demands strict and competent proof of each such allegation.
2. The allegations of the Amended Complaint's first introductory paragraph contain Plaintiff's description of the nature of the case to which no response is required. To the extent a response is deemed required, Adams denies the allegations of the first introductory paragraph.
3. Answering the allegations of the Amended Complaint's second introductory paragraph, Adams admits that it is a company engaged in the outdoor advertising business, and that it owns and operates outdoor advertising signs and conducts business in Beaufort County, South Carolina, and that it disputes and opposes the removal of the signs. Adams denies the remaining allegations of the second introductory paragraph.

4. Answering the allegations of the Amended Complaint's third introductory paragraph, Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the County's acquisition of land in December of 2020 and therefore denies such allegations at this time. With respect to the remaining allegations contained in the Amended Complaint's third introductory paragraph, Adams craves reference to the lease, notification, and other documents identified therein, and denies any allegations inconsistent therewith.

5. The allegations of the fourth and fifth introductory paragraphs of the Amended Complaint contain Plaintiff's description of the nature of the case and call for conclusions of law to which no response is required. To the extent that a response is deemed required, Adams denies the allegations contained in the fourth and fifth introductory paragraphs of the Amended Complaint.

6. Upon information and belief, Adams admits the allegations of paragraph 1 of the Amended Complaint.

7. Responding to the allegations of paragraph 2 of the Amended Complaint, Adams admits that it is a company engaged in the outdoor advertising business, admits that it owns and operates outdoor advertising signs and conducts business operations in Beaufort County, South Carolina, and denies any remaining allegations contained in paragraph 2 of the Amended Complaint.

8. Responding to the allegations of paragraph 3 of the Amended Complaint, Adams denies that Elizabeth "Liz" Mitchum ("Mitchum") is a Defendant or party to this action, pursuant to this Court's Order entered February 21, 2023, which dismissed her from this case. Further responding, Adams admits the allegations therein alleging that Defendant Elizabeth "Liz"

Mitchum (“Mitchum”) is employed by Adams as the General Manager of its region or market that includes Beaufort County, South Carolina, and as to any remaining allegations contained in paragraph 3 craves reference to the cited Exhibit and denies any allegations inconsistent therewith. Further responding to paragraph 3, due to the Court’s February 21, 2023 Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record.

9. Responding to the allegations of paragraph 4 of the Amended Complaint, Adams admits that Mitchum, when acting within the scope of her employment as general manager for Adams, acts on behalf of Adams. Any remaining allegations of paragraph 4 are denied. Further responding to paragraph 4, due to the Court’s February 21, 2023 Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record.

10. Upon information and belief, Adams admits the allegations of paragraph 5 of the Amended Complaint. Further responding to paragraph 5, due to the Court’s February 21, 2023 Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record.

11. Responding to the allegations of paragraph 6 of the Amended Complaint, Adams denies that Rex Allen “Bo” Hodges (“Hodges”) is a Defendant or party to this action, pursuant to this Court’s Order entered February 21, 2023, which dismissed him from this case. Further responding, Adams denies the allegations of paragraph 6 of the Amended Complaint, and as to the Exhibit cited therein, craves reference thereto and denies any allegations of paragraph 6 inconsistent therewith. Further responding to paragraph 6, due to the Court’s February 21, 2023

Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record

12. Adams denies the allegations contained in paragraph 7 of the Amended Complaint. Further responding, as to the Exhibit cited therein, Adams craves reference thereto and denies any allegations of paragraph 7 inconsistent therewith. Due to the Court's February 21, 2023 Order, Adams asserts that the allegations contained in paragraph 7 of the Amended Complaint are irrelevant to the claims and defenses of this action and should be stricken from the record.

13. Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Complaint and therefore denies the same. Further responding to paragraph 8, due to the Court's February 21, 2023 Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record.

14. Adams denies the allegations of paragraph 9 of the Amended Complaint. Further responding to paragraph 9, due to the Court's February 21, 2023 Order, Adams asserts that the allegations contained therein are irrelevant to the claims and defenses of this action and should be stricken from the record.

15. The allegations of paragraph 10 of the Amended Complaint call for conclusions of law to which no response is required. To the extent a response is deemed necessary, Adams denies the allegations of paragraph 10 of the Amended Complaint.

16. Adams denies the allegations of paragraphs 11 and 12 of the Amended Complaint.

17. The allegations of paragraph 13 of the Amended Complaint call for conclusions of law to which no response is required. To the extent a response is deemed necessary, Adams denies the allegations of paragraph 13 of the Amended Complaint.

18. Adams expressly denies the allegations of the inflammatory bolded subheading that appears after paragraph 13 of the Amended Complaint.

19. As to the allegations of paragraphs 14, 15, 16, 17, 18 and 19 of the Amended Complaint, Adams craves reference to the identified provisions of the Beaufort County Community Development Code (“CDC”) in effect at the time of the actions and occurrences upon which this case is premised and denies any allegations inconsistent therewith. Further responding to the allegations of paragraphs 14, 15, 16, 17, and 18, Adams craves reference to the cited document, filed twice by Plaintiff as Exhibit 1, and denies any allegations inconsistent therewith.

20. Responding to the allegations of paragraphs 20, 21, and 22 of the Amended Complaint, Adams craves reference to the cited documents, each filed multiple times by Plaintiff, as Exhibit 2 and 6o, and Exhibit 3 and 6p, and denies any allegations of paragraphs 20, 21, and 22 inconsistent therewith.

21. Responding to the allegations of paragraphs 23 and 24 of the Amended Complaint, Adams craves reference to the cited document, filed multiple times by Plaintiff as Exhibit 4 and 6j, and denies any allegations of paragraphs 23 and 24 of the Amended Complaint inconsistent therewith, and asserts that the allegations of paragraph 24 relating to the County requiring repair approval from its Zoning Department conflicts with the allegations contained in paragraphs 18 and 19 of the Amended Complaint.

22. Responding to the allegations of paragraphs 25 and 26 of the Amended Complaint, Adams craves reference to the cited document, filed multiple times by Plaintiff as Exhibit 5 and 6n, and denies any allegations of paragraphs 25 and 26 of the Amended Complaint inconsistent therewith.

23. Adams denies the allegations of paragraph 27 of the Amended Complaint. Further responding, Adams craves reference to the cited Exhibit and denies any allegations of paragraph 27 of the Amended Complaint inconsistent therewith.

24. The allegations of paragraph 28 of the Amended Complaint, relating to approval by the County's Code Enforcement Department, are vague, ambiguous, and conflict with separate allegations in the Amended Complaint stating that the Zoning Department was the County entity required to give approval, as well as provisions of the CDC stating that the "Director" is the person required to give approval. As such, Adams denies the allegations of paragraph 28 of the Amended Complaint.

25. Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Amended Complaint and therefore deny the same at this time.

26. Adams denies the allegations of paragraph 30 of the Amended Complaint. Further responding, Adams craves reference to the cited documents, filed by Plaintiff as Exhibits 6, 7 (and separately in whole or in part as 6a and 6c), and 8 (and separately in whole or in part as 6b and 6d), and denies any allegations of paragraph 30 inconsistent therewith.

27. Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Amended Complaint and therefore denies the same at this time. Further responding, Adams craves reference to the cited Exhibit and denies any allegations of paragraph 31 inconsistent therewith.

28. Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Amended Complaint and therefore denies the same

at this time. Further responding, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 9 and 6e, and denies any allegations of paragraph 32 inconsistent therewith.

29. As to the allegations of paragraph 33 of the Amended Complaint, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 9 and 6e, and denies any allegations inconsistent therewith.

30. As to the allegations of paragraph 34 of the Amended Complaint, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 9 and 6e, and denies any allegations inconsistent therewith, and further asserts that the CDC does not allow email communications to serve as any type of notice, cease and desist, or stop work order.

31. The allegations of paragraphs 35 and 36 of the Amended Complaint are vague and ambiguous as to the billboard(s) being repaired, and therefore those allegations are denied. Adams denies any remaining allegations of paragraphs 35 and 36 of the Amended Complaint.

32. As to the allegations of paragraph 37 of the Amended Complaint, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 9 and 6e, and denies any allegations inconsistent therewith, and further asserts that the CDC does not allow email communications to serve as any type of notice, cease and desist, or stop work order.

33. Answering the allegations of paragraphs 38 and 39 of the Amended Complaint, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 9 and 6e, and denies any allegations inconsistent therewith.

34. Responding to the allegations of paragraph 40 of the Amended Complaint, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 10 and 6f, and denies any allegations inconsistent therewith.

35. Responding to the allegations of paragraph 41 and footnote 1 of the Amended Complaint, Adams denies that Adams or Hodges violated the CDC, and as to any remaining allegations, craves reference to the CDC provisions in effect at the time of the actions and occurrences upon which this case is premised and the cited documents, each filed twice by Plaintiff, as Exhibit 1, and Exhibit 12 and 6g, and denies any allegations of paragraph 41 and footnote 1 inconsistent therewith, and asserts that the County only issued one copy of the summonses.

36. Answering the allegations of paragraph 42 of the Amended Complaint, Adams craves reference to the identified exhibit and denies any allegations inconsistent therewith.

37. Responding to the allegations of paragraphs 43, 44, and 45 of the Amended Complaint, Adams craves reference to the identified exhibit and denies any allegations of paragraphs 43, 44, and 45 inconsistent therewith.

38. Adams admits only so much of the allegations of paragraph 46 of the Amended Complaint as alleges Adams and Hodges successfully appealed the improper rulings, verdict, and sentence of Beaufort County Magistrate Nancy D. Sadler to the Beaufort County Court of Common Pleas, which was assigned Case No. 2021-CP-07-01507, and denies any remaining allegations of paragraph 46.

39. Responding to the allegations of paragraph 47 of the Amended Complaint, Adams only admits so much of the allegations of paragraph 47 of the Amended Complaint stating that this Court entered an Order on Appeal on April 22, 2022 (“Circuit Court Order”), reversing the rulings, verdict, and sentence of the Beaufort County Magistrate on the basis that the County violated the CDC’s provisions governing the issuance of criminal charges and that the County was not permitted to issue the citations to Adams and Hodges, denies that the Circuit Court Order was

based on technical grounds or on the rule of lenity, and as to any remaining allegations of paragraph 47 craves reference to the cited exhibit and denies any allegations inconsistent therewith, and asserts that the Court of Common Pleas found Adams and Hodges not guilty of the alleged violations.

40. Adams admits so much of the allegations of paragraph 48 of the Amended Complaint as alleging that the Circuit Court Order relied upon the Magistrate's findings of fact to reverse the Magistrate's rulings and hold that Adams and Hodges were not guilty of the alleged violations, specifically those findings that the County failed to issue the prerequisite notice required under the CDC and that the County failed to properly fill out and/or execute the criminal citation summonses at issue, asserts that the allegations of paragraph 48 do not recite issues of fact, and as to any remaining allegations of paragraph 48, craves reference to the rulings of the relevant courts and denies any allegations inconsistent therewith.

41. Adams expressly denies the allegations of the inflammatory bolded subheading that appears after paragraph 48 of the Amended Complaint.

42. Adams is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 of the Amended Complaint and therefore denies the same.

43. Responding to paragraphs 50, 51, and 52 of the Amended Complaint, the allegations therein as to the real property at issue are vague and ambiguous, however Adams admits so much of the allegations of paragraphs 50, 51, and 52 stating that Adams owns and operates an outdoor advertising sign on the real property it believes to be at issue, and as to any remaining allegations of paragraphs 50, 51, and 52 of the Amended Complaint, craves reference to the identified exhibit and denies any allegations inconsistent therewith.

44. Responding to the allegations of paragraphs 53 and 54 of the Amended Complaint, Adams craves reference to the identified exhibit and denies any allegations of paragraphs 53 and 54 of the Amended Complaint inconsistent therewith.

45. Responding to the allegations of paragraphs 55 and 56 of the Amended Complaint, Adams denies that the lease at issue was to expire on October 1, 2021, and as to any remaining allegations, craves reference to the identified exhibit and denies any allegations of paragraphs 55 and 56 of the Amended Complaint inconsistent therewith.

46. Responding to the allegations of paragraph 57 of the Amended Complaint, Adams craves reference to the identified exhibit and denies any allegations inconsistent therewith.

47. Responding to the allegations of paragraph 58 of the Amended Complaint, the allegations as to rights of renewal and South Carolina common law call for conclusions of law to which no response is required. To the extent a response is deemed required, those allegations are denied. As to any remaining allegations, Adams craves reference to the identified exhibit and denies any allegations of paragraph 58 inconsistent therewith.

48. The allegations of paragraph 59 of the Amended Complaint are vague and ambiguous as to the materials, displays, items, property, and lease at issue; however, Adams admits so much of the allegations therein stating that Adams owns and operates an outdoor advertising sign, together with ancillary materials, on the real property it believes to be at issue, and denies any remaining allegations of paragraph 59 of the Amended Complaint.

49. Answering the allegations of paragraph 60 Amended Complaint, Adams denies that the lease at issue was terminated, and thus denies that there was any need to remove the outdoor advertising sign, together with ancillary materials, on the real property it believes to be at issue, and denies any remaining allegations of paragraph 60.

50. The allegations of paragraph 61 of the Amended Complaint are vague and ambiguous as to the materials, displays, items, property, and lease at issue; however, Adams admits so much of the allegations therein stating that Adams owns and validly operates an outdoor advertising sign, together with ancillary materials, on the real property it believes to be at issue, and denies any remaining allegations of paragraph 61 of the Amended Complaint.

51. Adams denies the allegations of paragraph 62 of the Amended Complaint. Further responding, Adams asserts that it is lawfully operating all three signs at issue pursuant to the Circuit Court Order and its leasehold rights under the lease at issue.

52. Because Mitchum and Hodges are no longer parties to this action, pursuant to the Court's February 21, 2023 Order, the allegations of paragraph 63 of the Amended Complaint are irrelevant and should be stricken from the record. Subject to and without waiving the foregoing, further responding to paragraph 63, as the general managers and real estate managers employed by Adams are not responsible for removing Adams' outdoor advertising signs, such allegations are denied. Upon information and belief, Adams denies any remaining allegations of paragraph 63 of the Amended Complaint.

53. Because Mitchum and Hodges are no longer parties to this action, pursuant to the Court's February 21, 2023 Order, the allegations of paragraph 64 of the Amended Complaint are irrelevant and should be stricken from the record. Subject to and without waiving the foregoing, further responding to the allegations of paragraph 64 of the Amended Complaint, Adams denies that it or its agents illegally reconstructed a billboard(s), asserts that the general managers and real estate managers employed by Adams are not responsible for removing Adams' outdoor advertising signs and denies any allegations to that effect, and is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to potential future actions by Mitchum or

Hodges and therefore denies the same. Adams denies any remaining allegations of paragraph 64 of the Amended Complaint.

AS TO COUNT ONE
(DECLARATORY JUDGMENT AND INJUNCTION AGAINST
VIOLATIONS OF COMMUNITY DEVELOPMENT CODE)

54. As to the allegations of the heading of Count One of the Amended Complaint, Adams denies that it has violated the County's CDC.

55. In response to paragraph 65 of the Amended Complaint, Adams restates and incorporates herein by reference its responses of the proceeding paragraphs as if set forth verbatim herein.

56. In response to paragraphs 66, 67, 68, and 69 of the Amended Complaint, Adams craves reference to the identified CDC provisions and denies any allegations inconsistent therewith. Further responding to the allegations of paragraph 69, Adams craves reference to the cited document, filed separately by Plaintiff as Exhibit 19 and 6l, and denies allegations inconsistent therewith.

57. Adams denies the allegations contained in paragraph 70 of the Amended Complaint, including its subparagraphs a., b., c., and d., and denies that the County is entitled to the relief and/or declarations requested in paragraph 70 of the Amended Complaint, including its subparagraphs a., b., c., and d.

58. Adams denies the allegations of paragraphs 71 and 72 of the Amended Complaint and denies that the County is entitled to the relief requested in paragraphs 71 and 72 of the Amended Complaint. Further responding, because Mitchum and Hodges are no longer parties to this action, pursuant to the Court's February 21, 2023 Order, the allegations of paragraph 71 of the Amended Complaint relating to Mitchum and Hodges, and seeking relief against those individuals, are irrelevant and improper and should be stricken from the record.

AS TO COUNT TWO
**(DECLARATORY JUDGMENT AND INJUNCTION AGAINST SIGN
ON COUNTY LAND AFTER LEASE TERMINATION)**

59. As to the allegations of the heading of Count Two of the Amended Complaint, Adams denies that the lease at issue was terminated, and asserts that an injunction cannot be obtained against a sign.

60. In response to paragraph 73 of the Amended Complaint, Adams restates and incorporates herein by reference its responses of the proceeding paragraphs as if set forth verbatim herein.

61. Adams denies the allegations of paragraph 74 of the Amended Complaint, including its subparagraphs a., b., and c., and denies that the County is entitled to the relief and/or declarations requested in paragraph 74 of the Amended Complaint, including its subparagraphs a., b., and c.

62. Adams denies the allegations of paragraph 75 of the Amended Complaint and denies that the County is entitled to the relief requested in paragraph 75 of the Amended Complaint. Further responding, because Mitchum and Hodges are no longer parties to this action, pursuant to the Court's February 21, 2023 Order, the allegations of paragraph 75 of the Amended Complaint relating to Mitchum and Hodges, and seeking relief against those individuals, are irrelevant and improper and should be stricken from the record.

63. Adams denies the allegations of paragraphs 76, 77, 78, 79, 80, and 81 of the Amended Complaint, including all of their subparagraphs, and denies that the County is entitled to the relief requested in paragraphs 76, 77, 78, 79, 80, and 81, including all of their subparagraphs, or otherwise. Further responding, Adams asserts that this action is barred by the doctrines of Res Judicata and collateral estoppel. Additionally, because Mitchum and Hodges are no longer parties to this action, pursuant to the Court's February 21, 2023 Order, any and all allegations of

paragraphs 76, 77, 78, 79, 80, and 81 of the Amended Complaint, including all of their subparagraphs, which relate to Mitchum and Hodges and/or seek relief against those individuals, are irrelevant and improper and should be stricken from the record.

FOR A SECOND DEFENSE
(Failure to State a Claim)

64. The Amended Complaint, and each and every allegation therein, fails to state a claim against Adams upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE
(Waiver and Estoppel)

65. Plaintiff's claims against Adams are barred by the doctrines of waiver and estoppel.

FOR A FOURTH DEFENSE
(Res Judicata)

66. Plaintiff's claims against Adams are barred by the doctrine of res judicata.

FOR A FIFTH DEFENSE
(Failure to Exhaust Administrative Remedies)

67. All claims set forth against Adams in the Amended Complaint arise out of alleged violations of the County's CDC. The County has failed to exhaust its administrative remedies as to those alleged violations under the CDC. Significantly, there is currently an appeal, filed by the County, pending before the South Carolina Court of Appeals. The County is therefore barred from maintaining this action.

FOR A SIXTH DEFENSE
(Mootness)

68. Plaintiff's claims against Adams, the existence of which are strictly denied, are moot due to this Court's determination in a prior Order that Adams did not commit violations of the CDC, said Order being determinative of Plaintiff's claims alleged against Adams.

FOR A SEVENTH DEFENSE
(Rule 12(b)(8))

69. The Amended Complaint against Adams should be dismissed with prejudice pursuant to Rule 12(b)(8), SCRCP, as another action is currently pending between the same parties for the same claim(s).

FOR AN EIGHTH DEFENSE
(Unclean Hands)

70. The County is barred from pursuing this action by its unclean hands. The County knowingly and maliciously maintained the instant action in the face of pending litigation it previously initiated arising from the same facts and with full knowledge that it had filed an appeal of that action to the Court of Appeals. The County's inequitable actions are intended to harass and have resulted in unwarranted and increased expenses and attorneys' fees incurred by Adams in defending multiple actions.

FOR A NINTH DEFENSE
(Standing)

71. The County lacks standing to maintain this action based upon its failure to previously pursue a declaratory judgment or injunctive relief as provided for in its own CDC, and therefore the Amended Complaint should be dismissed pursuant to Rules 12(b)(1) and 17, SCRCP.

FOR A TENTH DEFENSE
(Offset/Beneficial Use)

72. Any damages sustained by the County, the existence of such damages being expressly denied, should be offset against the rent paid under the lease at issue to the County and the County's predecessor in interest by Adams.

FOR AN ELEVENTH DEFENSE
(Laches)

73. The County's Amended Complaint is barred by the doctrine of laches.

FOR A TWELFTH DEFENSE
(Unjust Enrichment)

74. Plaintiff's claims are barred by the doctrine of unjust enrichment.

FOR A THIRTEENTH DEFENSE
(Failure to Provide Notice)

75. The County's claims alleged in the Amended Complaint are barred based upon the County's failure to provide the CDC's required notice to Adams of the alleged violations of the CDC. This Court relied upon the County's failure to comply with the CDC's provisions in its decision reversing the Magistrate Court's rulings.

FOR A FOURTEENTH DEFENSE
(Failure to Join Necessary Parties)

76. Plaintiff has failed to name necessary parties of interest to this action and the Amended Complaint should therefore be dismissed pursuant to Rules 12(b)(7) and 19, SCRPC.

FOR A FIFTEENTH DEFENSE
(Material Breach of Contract by Plaintiff)

77. Plaintiff's claims alleged against Adams are barred due to Plaintiff's material breach(es) of the lease agreement at issue.

FOR A SIXTEENTH DEFENSE
(Recovery of Attorneys' Fees and Costs)

78. With regard to the County's claims for declaratory judgment(s), Adams is entitled to an award of costs as may seem equitable and just pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq.* Furthermore, Adams intends to recover its attorneys' fees incurred IN this action pursuant to S.C. Code Ann. § 15-77-300, and, to the extent Plaintiff's claims have been asserted in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10, *et seq.* (the "Act"), recover its attorneys' fees and costs as provided by the Act.

FOR A SEVENTEENTH DEFENSE
(No Damages)

79. While the existence of any cause of action alleged in the Amended Complaint is strictly denied, Plaintiff has not suffered any damages due to any causes of action alleged in the Amended Complaint.

FOR AN EIGHTEENTH DEFENSE
(Failure to Mitigate Damages)

80. Plaintiff has failed to mitigate its alleged damages, the existence of which is specifically denied.

FOR A NINETEENTH DEFENSE
(Ripeness)

81. As an alternative defense to its assertion that the County's claims should be dismissed entirely, Adams asserts that the claims alleged in the Amended Complaint would not be ripe for adjudication until the Court of Appeals rules upon the County's pending appeal in the separate action.

FOR A TWENTIETH DEFENSE
(Reservation of Right to Add Defenses)

82. Adams reserves the right to allege additional defenses and additional facts and circumstances in support of its defenses as additional facts become available through discovery.

FOR A TWENTY-FIRST DEFENSE AND BY WAY OF COUNTERCLAIMS

Defendant Adams Outdoor Advertising Limited Partnership ("Adams" or "Defendant"), by and through its undersigned counsel, by way of counterclaims against Plaintiff Beaufort County, South Carolina ("County" or "Plaintiff"), alleges and avers the following:

INTRODUCTION

1. Adams asserts counterclaims against the County asserting facial challenges to the constitutionality of certain provisions of its Community Development Code ("CDC") and

challenging the manner in which the County has applied the same. Adams seeks, among other things, declaratory relief, injunctive relief, and money damages based on the deprivation, under color of law, of rights guaranteed to Adams by the United States Constitution, the South Carolina Constitution, and 42 U.S.C. § 1983.

PARTIES, JURISDICTION, AND VENUE

2. Adams is a limited partnership organized and existing under the laws of the State of Minnesota and is authorized to do business in the State of South Carolina.

3. Upon information and belief, the County is a political and governmental subdivision duly organized and existing pursuant to the laws of the State of South Carolina.

4. Any and all actions taken by the County, including those by its officials on the County's behalf, such as the County Administrator, Zoning Administrator, and Code Enforcement Department Director, as detailed herein, were taken under the color of law for purposes of 42 U.S.C. § 1983.

5. This Court has personal jurisdiction over the parties hereto, has subject matter jurisdiction over this action, and venue is proper in this forum as the real property at issue is located, and the most substantial part of the acts and omissions alleged occurred, in Beaufort County, South Carolina.

FACTUAL BACKGROUND

6. Adams restates, realleges, and incorporates herein by reference the preceding paragraphs of this pleading as though set forth herein verbatim.

7. At all relevant times, Adams has been engaged in all aspects of the outdoor advertising business, including but not limited to the sale/lease of space on its outdoor advertising displays, and the securing of real property and property rights (through outright ownership and

lease) for use as locations for outdoor advertising, both within and outside the County and the State of South Carolina.

8. Adams and third-parties who wish to convey messages to others through the use of billboard space enjoy the right to engage in, attempt to engage in, and actually engage in, speech which is protected by Article 1, § 2 of the South Carolina Constitution and the First and Fourteenth Amendments of the United States Constitution—including but not limited to—political speech, social speech, public service speech, other forms of noncommercial speech, and commercial speech, both within and outside the County and the State of South Carolina.

9. The County regulates signs within the County, including outdoor advertising signs owned or operated by Adams, through provisions of its CDC, specifically Division 5.6, *et seq.*, relating to Sign Standards, and Section 7.2.40, relating to Sign Permit Procedures (collectively, the “Sign Code”).

10. On July 26, 2021, the County amended CDC Division 5.6 and Section 7.2.40, as well as parts of Article 10. The regulations of off-premises sign maintenance, mainly at issue here, were relabeled as § 5.6.50.B. in the “Current Sign Code” (defined as the relevant CDC provisions existing after the County’s adoption of amendments on July 26, 2021), but remain the same as those in § 5.6.50.E. of the “Former Sign Code” (CDC provisions existing prior to adoption of text amendments on July 26, 2021). *See* Amd. Compl. Ex. 12 (Former Sign Code § 5.6.50); Amd. Compl. Ex. 1 (Current Sign Code § 5.6.50).

***SCDOT Authorizes Adams’ Sign Repair Work
Without the County’s Approval***

11. Generally, outdoor advertising displays can be damaged by any winds that approach or exceed thirty-five miles per hour in speed, but typically do not become destroyed or inoperable from one such event unless winds are at the top of or above tropical storm force levels.

12. Over time, due to strong winds from one and/or multiple storms, as well as other natural forces, two of Adams' nonconforming sign structures located within the County became damaged to such an extent that they had to be repaired.

13. These outdoor advertising structures each contain two faces, or sides; are located on separate parcels of real property adjacent to US-21/Trask Parkway, which are approx. 0.5 and 0.6 miles north of Parris Island Gateway, respectively; and the signs were previously assigned permit numbers 06-07-740884 and 06-07-740766, respectively (collectively, the "Signs"), by the South Carolina Department of Transportation ("SCDOT").

14. In January and February of 2021, Adams applied to SCDOT for approval to repair each of the Signs, pursuant to S.C. Code Ann. Regs. 63-350.C.(4).

15. Adams applied using SCDOT's form application for the same. Copies of those applications are attached to the Amended Complaint as Exs. 2 and 6o (duplicate), and Exs. 3 and 6p (duplicate), respectively.

16. S.C. Code Ann. Regs. 63-350 (the "State Regulation") prescribes maintenance standards for outdoor advertising signs that are controlled by the Highway Advertising Control Act, S.C. Code Ann. §§ 57-25-110, *et seq.* ("HACA").

17. The HACA governs "the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the rights-of-way of the interstate and federal-aid primary systems within" the State of South Carolina. S.C. Code Ann. § 57-25-130.

18. SCDOT has the authority to issue permits for the construction and maintenance of such signs. *See* S.C. Code Ann. §§ 57-25-110, *et seq.*

19. US-21/Trask Parkway, the road which the Signs are adjacent to, is maintained by SCDOT as an interstate or federal-aid primary system, as those terms are defined in the HACA.

20. Subpart C. of S.C. Code Ann. Regs. 63-350 sets forth maintenance requirements for nonconforming billboard signs controlled by the HACA.

21. As used therein, Chapter 63 of the South Carolina Code of Regulations defines “Department” as the South Carolina Department of Transportation.

22. S.C. Code Ann. Regs. 63-350.C.(4) provides:

In the event a nonconforming device is partially destroyed by wind or other natural forces including tornadoes, hurricanes, or other catastrophic occurrences, **the Department must determine whether to allow the sign to be rebuilt.** If the Department determines that the damage to the sign was greater than 50 percent of its replacement costs as determined by nationally recognized catalogues of vendors of construction and outdoor advertising materials as of the time of the damage, the sign must be dismantled at no cost to the Department and may not be erected again. A current issue of the catalogue or advertisement indicating materials to be replaced must be submitted with the request to rebuild. Salvage parts cannot be used to determine replacement value unless approved by the Department.

S.C. Code Ann. Regs. 63-350.C.(4) (emphasis added).

23. Pursuant to South Carolina statutory and regulatory law, SCDOT holds the authority to decide whether partially destroyed nonconforming outdoor advertising signs adjacent to interstate or federal-aid primary system may be rebuilt or repaired. See S.C. Code Ann. Regs. 63-350.C.(4), and S.C. Code Ann. § 57-25-110, et seq.

24. SCDOT approved Adams’ requests to repair the Sign assigned permit number 06-07-740766 by letter dated February 3, 2021, and the Sign assigned permit number 06-07-740884 by letter dated March 3, 2021. See **Exhibit 1** attached hereto (the “SCDOT Approvals”).

25. In issuing said approvals, SCDOT determined that the damage to the Signs was less than fifty percent (50%) of the replacement cost of the sign structure, in accordance with the objective criteria of S.C. Code Ann. Regs. 63-350.C.(4).

26. Most types of permit applications to SCDOT require submission of local approval for the requested work, and SCDOT will request proof of local permission if that is deemed

necessary based on the type of permit applied for. *See* Amd. Compl. Ex. 6 (“Mag. Tr.”) at 125:7 – 126:23. However, in the instant matter regarding repair work to the Signs, SCDOT determined that County approval of Adams’ work was not necessary. Mag. Tr. at 158:24 – 159:2.

Believing Its Authority Supersedes SCDOT’s, the County Embarks on a Years Long Journey to Punish Adams for Repairing Two Signs with SCDOT’s Approval

27. In early April of 2021, Adams e-mailed Audra Antonacci-Ogden, the County’s former Code Enforcement Department Director (“Code Enforcement Director”), notifying her of the repair work Adams would be performing on April 9, 2021 to the Signs pursuant to the SCDOT Approvals for the same, with copies of said approvals attached. *See* Amd. Compl. Ex. 4.

28. Contrary to the provisions of Former Sign Code § 5.6.50.E.,¹ which relates to maintenance and repair of Off-Premises Signs, the Code Enforcement Director, pursuant to advice of the former County Administrator, Eric Greenway (“Administrator”), advised Adams that the County’s Zoning and Development Administrator, Hillary Austin (“Zoning Administrator”), would have to review the sign repair work. *Id.*

29. Although the County’s approval was not required, Adams, after receiving the Code Enforcement Director’s email, notified the Zoning Administrator of its work via email as a courtesy. *See* Amd. Compl. Ex. 5. Adams even provided the Zoning Administrator with photos of the Signs previously sent to SCDOT in response to her request for the same. *See* **Exhibit 2** attached hereto.

30. In its emails with the Code Enforcement Director and the Zoning Administrator, Adams attached and provided copies of its applications to SCDOT to perform the repair work, the

¹ Herein, “Maintenance Ordinance” refers to both Former Sign Code § 5.6.50.E. and Current Sign Code § 5.6.50.B., as the provisions of each are the same. *Compare* Amd. Compl. Ex. 1 pp. 1-2, with Amd. Compl. Ex. 12 pp. 1-2.

SCDOT Approvals for the same, as well as copies of the Signs' permits. Amd. Compl. Exs. 4-5; Ex. 2.

31. Because SCDOT, the governing body, had approved the repairs to the Signs, and the County—in contravention of S.C. Code Ann. Regs. 63-350.C.(4) and the SCDOT Approvals—took the position that Adams needed to seek approvals from persons or entities not required under the CDC, Adams' contractor began the repair work on the Signs.

32. On the night of April 10, 2021, the Administrator emailed Adams, copying County officials, including the County Attorney and a Deputy County Attorney. The Administrator stated he drove by the Signs and witnessed the repair work being performed, alleging that the SCDOT Approvals for the repair work did not constitute proper authorization. *See* Amd. Compl. Ex. 9.

33. In that email, the Administrator arbitrarily characterized Adams' work as an unauthorized "complete rebuild" and "reconstruct[ion]," and ordered Adams to cease and desist from any additional work on the Signs. *Id.* Therein, the Administrator did not cite any regulation or ordinance which Adams was purportedly violating. *See id.*

34. The next morning, April 11, 2021, Adams' General Counsel, Richard Zecchino ("Zecchino"), replied to the Administrator's email, advising that SCDOT's determination to approve the work was controlling and constituted proper authorization for the work. *See id.*

35. Zecchino further advised that Adams intended to complete the SCDOT-approved work on the Signs that day, and indeed completed its work on April 11, 2021. *Id.*

36. Following this email exchange, the Code Enforcement Director issued a Stop Work Order, dated April 12, 2021. *See* Amd. Compl. Ex. 6f at p. 1 (the "Stop Work Order").

37. The Stop Work Order violates the CDC. Section 9.5.20 of the CDC only permits the issuance of a "Stop Order," which by CDC definition must be issued by the "County

Administrator or designee or County Attorney[.]” CDC § 9.5.20.A. (see **Exhibit 3** attached hereto at p. 5).² Because there is no indication that the Code Enforcement Director is the County Administrator’s designee (or the County Attorney), she did not have authority to issue such an order. See Amd. Compl. Ex. 6f.

38. The County included a copy of CDC § 5.6.50 therewith, which sets forth regulations of Off-Premises Signs. See Amd. Compl. Ex. 6f at pp. 2-3.

39. The Stop Work Order is addressed to the wrong entity, Adams Outdoor Advertising, Inc., and states therein:

It has been determined that to [sic] pursuant to Beaufort County Ordinance- 5.6.50 Off-Premises Sign Standards E. Maintenance Standards for Off-Premises Signs, the required Beaufort County approval was not granted for the work and/or repairs to billboards 7036/74062 and 74065/70091 located on Trask Parkway in Beaufort County. Accordingly, it is hereby ordered that the Owner and/or agent shall cease and desist from any further activity on these sites.

Id. at p. 1.

40. The Stop Work Order is not specific as to the provision of the CDC which Adams allegedly violated, as Section 5.6.50.E. addresses numerous maintenance and repair related issues.

41. Indeed, maintenance and repair of off-premises signs performed under subparts 1. and 2. of CDC § 5.6.50.E. do not require the approval of the County or any person or entity within the County. Thus, the Stop Work Order is vague and conflicts with the cited CDC zoning regulation.

42. Under CDC § 5.6.50.E., the appropriate authority for approving OPS work varies depending on the type of work and the subsection placed at issue thereby. The Stop Work Order

² This exhibit is Defendants’ Ex. 3 from the Magistrate’s trial that was included in the Magistrate’s Return filed with the Circuit Court, containing a copy of CDC Division 9.

does not identify the person or entity that determined that proper approval was not granted for the work and/or repairs. *See* Amd. Compl. Ex. 6f.

43. The Stop Work Order does not adequately identify the off-premises Signs at issue, nor the location of the same. Additionally, Adams did not perform any repair work to one of the sign faces, or sides, referenced in the order, referred to as number 74062. *See id.*

44. Because the Stop Work Order does not define “Owner,” nor the “sites” in question, it is not clear who must cease and desist from further activity, and which property is the subject of the order. *See id.*

45. On the same date of the Stop Work Order, April 12, 2021, the County issued two Uniform Ordinance Summons’ to Adams, presumably one for each Sign, for alleged violation(s) of CDC § 5.6.50.E.

46. These documents directed Bo Hodges (“Hodges”), a former Real Estate Manager at Adams, to appear for hearings on May 5, 2021 before the Beaufort County Magistrate. *See* Amd. Compl. Ex. 6f at p. 4 (the “Citations”). The trial date for the alleged violations was later rescheduled to July 14, 2021.

47. As with the Stop Work Order, the Citations do not comply with the CDC and are invalid. Prior to issuing such a citation, CDC § 9.4.40 requires that the Code Enforcement Department deliver, via U.S. Mail or hand delivery, a written warning notice to any person believed to be in violation of the CDC. CDC § 9.4.40 (*see* Ex. 3 pp. 3-4).

48. The County cannot issue a citation unless such a warning notice has been given under Section 9.4.40 and subsequently not heeded. CDC § 9.4.50.B. provides, in part:

[I]f the person(s) to whom a warning notice has been given in accordance with Section 9.4.40 (Notice of Violation), fails to remove or abate the violation in the time specified in the notice, the Code Enforcement Department shall fill out and sign, as the complainant, a Uniform Summons Ticket in the appropriate court of

Beaufort County.

CDC § 9.4.50.B. (Ex. 3 p. 4).

49. The County did not deliver, via U.S. Mail, hand delivery, or other means, any warning notice to Adams of any purported violation as required by CDC § 9.4.40. *See* Amd. Compl. Ex. 14, Order on Appeal, Case No. 2021-CP-07-01507 (April 22, 2022), at pp. 6, 7.³

50. Stop orders or stop work orders do not qualify as a predicate warning notice under the CDC. Moreover, the Citations list the alleged violations as occurring on April 10, 2021, two days before the Stop Work Order's issuance. Lastly, Adams never violated the Stop Work Order, as its work was completed the day before its issuance.

51. Because Adams did not receive the warning notice required by the CDC, the Citations are void and unenforceable, as they do not comply with the County's CDC. Indeed, this Court previously agreed.

There is no evidence to disturb the magistrate's finding of noncompliance by the County in this case with respect to the Notice of Violation requirements. . . . Sections 9.4.40 and 9.4.50 specify the enforcement procedure necessary to pursue prosecution – the County must first issue a warning notice and then a citation ticket in order to prosecute for a conviction and remedy. . . . In this case, the County failed to provide a Notice of Violation; thus, Appellants could not be charged with violations of the CDC.

Amd. Compl. Ex. 14 at pp. 8, 9-10, 11.

52. In addition, the Citations did not contain all information required by the CDC, as they do not set forth the address or legal description of the land on which the alleged violation occurred, and do not describe the nature of the purported violation. *See* Amd. Compl. Ex. 10 p. 4; CDC §§ 9.4.50.B.2.-3 (Ex. 3 p. 4). The Magistrate concurred. Amd. Compl. Ex. 13 p. 4; *see also* Amd. Compl. Ex. 14 at p. 11 (“The magistrate found that the ‘Summonses did not comply with

³ This case concerned Adams' appeal of the Magistrate's guilty verdict, in which this Court reversed, holding that Adams was not guilty of any CDC violation. *Id.* at p. 11.

the provisions of Section 9.4.50B[.]’ There is no evidence in the record to disturb this finding. . . . [T]he Verdict is reversed on the ground that the County failed to properly issue the Uniform Summons Tickets to Appellants.”).

53. Both the Stop Work Order and the Citations are void and unenforceable, as they are in conflict with South Carolina law, seek to preempt a state agency’s decision, are vague and ambiguous, and are based upon an unconstitutional County ordinance, CDC § 5.6.50.E.4.c., with which they nonetheless do not comply.

54. Subsection 4.c. of the Maintenance Ordinance seeks to regulate repair standards for off-premises signs that are partially destroyed by wind or other natural forces. *See* Former Sign Code § 5.6.50.E.4.c. (Amd. Compl. Ex. 12); New Sign Code § 5.6.50.B.4.c. (Amd. Compl. Ex. 1).

55. Specifically, Section 5.6.50.E.4.c. (now 5.6.50.B.4.c.) provides:

If a sign is partially destroyed by wind or other natural forces, the Director must determine whether to allow the sign to be rebuilt. If the Director determines that the damage to the sign was greater than 50 percent of its replacement cost as of the time of the damage, the sign must be consistent with all current requirements of this chapter.

Id. (*see* Amd. Compl. Exs. 1, 12). The text of the CDC defines the “Director” as the Director of the defunct, non-existent Community Development Department. *See* CDC § 7.5.60 (*see* **Exhibit 4** attached hereto); CDC § 10.1.40 (defining “Director”) (*see* Amd. Compl. Ex. 6m); Mag. Tr. (Amd. Compl. Ex. 6) at 101:11-16, 103:1-5.

56. Under the Maintenance Ordinance, any structural or other substantive maintenance to an off-premises sign renders the permit for such sign void, and the sign must be removed at the sign owner’s cost. *See* Former Sign Code § 5.6.50.E.2. (Amd. Compl. Ex. 12); New Sign Code § 5.6.50.B.2. (Amd. Compl. Ex. 1).

57. Under both the Former and Current Sign Code, outdoor advertising signs and off-premises signs are prohibited. *See* Former and Current Sign Code §§ 5.6.20, 5.6.50.A.

58. Nonconforming signs, such as the Signs, are legal if they pre-exist relevant regulations, even though they do not conform to the same.

59. The Maintenance Ordinance is unconstitutional in that it gives the County official unbridled discretion to determine whether to allow a sign to be repaired, and whether legally nonconforming outdoor advertising signs may continue in existence.

60. Indeed, the Zoning Administrator, who the County apparently believes is a substitute for the Director, advised she would make the (unnecessary) decision regarding repairs based solely on a photo of each sign. *See* Ex. 2.

61. There is a history of bias and animosity by the County toward Adams' signs, with its ultimate goal being the rapid elimination of such signs within the County.

62. Upon information and belief, the Administrator and/or other County officials provided a non-profit group, Sea Island Corridor Coalition Inc. (the "Coalition"), with photos and videos of Adams' subject work on the Signs. On May 3, 2021, the Coalition sent out an email blast to its subscribers, which contained the headline "Adams Outdoor Illegally Re-Builds Two Billboards on Trask Parkway." A copy of the Coalition's email is attached hereto as **Exhibit 5**.

63. This supposed "news" update from the Coalition contains a multitude of factual inaccuracies, and a link to a video available on YouTube of Adams performing some of the work, which, upon information and belief, was recorded by the Administrator. *See* Ex. 5.

64. Historically, the County has repeatedly advised Adams that it would not be permitted to perform the type of work necessary to repair partially destroyed signs.

65. Prior to the events at issue, Adams worked for years requesting that the County

update its regulations to allow for repairs to prevent safety hazards. Even then, the County only revised the Maintenance Ordinance in October 2020 to allow for minor modifications to improve hurricane safety. See **Exhibit 6** attached hereto, County Ordinance 2020/45 adopting said text amendment.

66. The County and the Coalition claim that there is a link between Adams' performance of the repair work at issue, and the difficult process Adams faced in securing the hurricane frame/safety repair language in the CDC. However, they are completely separate matters and repairs to the Signs have no relation to "hurricane frame" installation.

67. In reality, the Stop Work Order and Citations are examples of the County's animosity towards Adams and the concerted efforts to phase Adams' operations out of existence.

68. Feeling the need to trumpet its use of public resources to obtain a guilty verdict at the trial in Magistrate's Court, the County published, and emailed its subscribers, a news release on July 29, 2021 proclaiming victory over Adams. See **Exhibit 7** attached hereto.

69. Upon information and belief, other persons found guilty of a CDC violation by the Magistrate are not similarly subject to public notice of the same via email blast and announcement on the homepage of the County's website.

70. After the Magistrate's Verdict and Notice of Sentence on the same, Adams appealed the rulings and verdict to this Court. The Magistrate's verdict was reversed and the sentence vacated, as the Court ruled that Adams was not guilty of any violation of the CDC. See Amd. Compl. Ex. 14 at p. 11.

71. The County took its shot at penalizing Adams over the SCDOT-approved sign repairs and missed. Refusing to accept defeat, though, the County, using taxpayer dollars, appealed that decision to the South Carolina Court of Appeals, which is currently pending.

72. The County did not issue a news release after the convictions were vacated, nor after it filed its appeal to the South Carolina Court of Appeals.

73. The only outcome if the County prevails in its appeal, which concerns alleged technical violations of a zoning ordinance, is the reinstatement of criminal fines totaling a meager \$2,175. See **Exhibit 8** attached hereto, copy of the Magistrate's Notice of Sentence. Notably, the County has not refunded Adams' payment of these fines, despite the Circuit Court vacating the Magistrate's sentence.

74. The County was not satisfied with forcing Adams to expend time and money in the defense and appeals of the criminal charges. In its dogged pursuit to punish Adams, it dragged Adams into additional litigation, initiating this civil action over the exact same set of circumstances more than fourteen months after the Citations were issued.

75. Even then, the County has continued to willfully disregard the prescriptive requirements of its CDC, as it never issued a notice of violation to Adams prior to filing this action alleging violations of the CDC, as required by CDC § 9.4.40.

When the Code Enforcement Department finds and **determines a violation of this Development Code exists, the Code Enforcement Department shall notify, in writing, the person violating the Code.** . . . The notice shall state the following: ... B. The nature of the violation, the provisions of this Development Code being violated, and the necessary action to remove or abate the violation; C. The date by which the violation should be removed or abated; and D. The penalty for failing to remove or abate the violation[.]

CDC §§ 9.4.40, 9.4.40.C.-D. (See Ex. 3 pp. 3-4).

76. The County alleges that it has determined that Adams violated its CDC. See, e.g., Amd. Compl. ¶¶ 33, 41. Yet the County did not issue the warning notice required under the CDC when such a determination is made. Additionally, Adams was not advised of the nature of the necessary action to remove or abate the purported violation, the date by which to do so, or any penalty for failing to do so.

***The County's Favorable Treatment of Other
Owners/Operators of Off-Premises Signs***

77. Conversely, the County freely allows other owners and operators of outdoor advertising displays, or off-premises signs, to construct and/or rebuild their signs without any repercussions.

78. As an example, a billboard was recently constructed without a permit in violation of the Sign Code on property bearing the address 3492 Trask Parkway, Beaufort, South Carolina, which is within the County's jurisdiction. Compare Exhibit 9 attached hereto (street view image of the property captured by Google in June 2023, showing the illegal sign); with Exhibit 10 attached hereto (street view image of the property captured by Google in May 2022, showing no sign on the property); see also Exhibit 11 attached hereto, images of the sign during and after construction (the "3492 Trask OPS").

79. The County's land records list the owner of the property on which the 3492 Trask OPS is located, which bears County Parcel ID Number R100 025 000 012A 0000, as George G. Trask, a member of the Trask family that is influential in Beaufort County.

80. Even though the owner/operator of the 3492 Trask OPS did not obtain any permission from the County to erect a new off-premises sign, or perform repairs to such a sign, and it is unknown if SCDOT has permitted the sign, the County has taken no enforcement action or otherwise pursued any remedies relating to the same.

81. Contrastingly, the County has waged a vendetta against Adams, as there appears to be no limits on the amount of public funds and resources it will expend in its quest to prosecute Adams for maintaining two signs with SCDOT's permission.

82. The County intentionally treats other owners and operators of off-premises signs more favorably than Adams, even going so far as failing to apply or enforce the Sign Code in order to allow other off-premises signs to be constructed and operated in violation of the same.

83. The CDC, including the Maintenance Ordinance, and the County's acts and omissions thereunder, including those of its agents and officials, constitute policies, customs, and/or practices of the County.

84. The County's prejudicial, disparate treatment of Adams is purposeful, irrational, and arbitrary. The County's Maintenance Ordinance, on its face and as applied to Adams, is not rationally related to a legitimate government interest and is abrogated by State regulation.

FOR A FIRST COUNTERCLAIM
(Declaratory Judgment)

85. Adams restates, realleges, and incorporates herein by reference the preceding paragraphs of this pleading as though set forth herein verbatim.

86. This claim is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq.*, and involves an actual, justiciable dispute between Adams and the County concerning the rights and obligations of the parties in relation to repairs and maintenance of outdoor advertising displays, including Adams' signs specifically.

87. Section 57-25-220 of the HACA, titled "Rule of construction," provides that the Act does not "abrogate[] or affect[] the provisions of a lawful ordinance, regulation, or resolution which is more restrictive than the provisions of [the HACA]." S.C. Code Ann. § 57-25-220.

88. On facial comparison, the State Regulation imposes additional conditions and requirements not found in CDC § 5.6.50.E., making the state law more restrictive. *Compare* S.C. Code Ann. Regs. 63-350.C.(4), *with* Former Sign Code § 5.6.50.E.4.c. (Current Sign Code § 5.6.50.B.4.c.); *see also, e.g.*, S.C. Code Ann. Regs. 63-350.C.(8), D., E.

89. Adams asks this Honorable Court to enter a declaratory judgment as follows:

a. The provisions of the County's Maintenance Ordinance are not more restrictive than the State Regulation.

b. Pursuant to Section 57-25-220 of the HACA, the County's Maintenance Ordinance is abrogated by the HACA and the State Regulation promulgated thereunder.

c. Because the provisions of the Maintenance Ordinance are not more restrictive than those of the State Regulation, such that that the subject CDC provisions are abrogated, sign maintenance decisions under the State Regulation are controlling on those issues.

d. The County cannot overrule decisions made by SCDOT under the State Regulation as to maintenance of signs governed by the HACA.

e. As the State Regulation, and SCDOT's decisions thereunder, are authoritative and control over the Maintenance Ordinance and County decisions thereunder, the subject repair work to Adams' Signs performed with SCDOT's approval did not violate the CDC.

FOR A SECOND COUNTERCLAIM
(Facial Challenge to the Constitutionality of the Maintenance Ordinance as a Violation of South Carolina Law)

90. Adams restates, realleges, and incorporates herein by reference the preceding paragraphs of this pleading as though set forth herein verbatim.

91. As set forth hereinabove, South Carolina statutory and regulatory law dictate that SCDOT is the authoritative body in deciding whether damaged outdoor advertising displays adjacent to interstate or federal-aid primary system may be repaired. *See* S.C. Code Ann. Regs. 63-350C.(4), and S.C. Code Ann. § 57-25-110, *et seq.*

92. The Signs are adjacent to such a roadway, US-21/Trask Parkway.

93. S.C. Code Ann. Regs. 63-350.C.(4) provides:

In the event a nonconforming device is partially destroyed by wind or other natural forces including tornadoes, hurricanes, or other catastrophic occurrences, the Department must determine whether to allow the sign to be rebuilt. If the Department determines that the damage to the sign was greater than 50 percent of its replacement costs as determined by nationally recognized catalogues of vendors of construction and outdoor advertising materials as of the time of the damage, the sign must be dismantled at no cost to the Department and may not be erected again. A current issue of the catalogue or advertisement indicating materials to be replaced must be submitted with the request to rebuild. Salvage parts cannot be used to determine replacement value unless approved by the Department.

S.C. Code Ann. Regs. 63-350.C.(4) (emphasis added).

94. S.C. Code Ann. Regs. 63-350.C.(4) sets forth objective standards by which SCDOT is to determine whether to allow a partially destroyed outdoor advertising sign to be rebuilt or repaired.

95. SCDOT is an agency of the government of the State of South Carolina. See S.C. Code Ann. § 57-1-20.

96. The County's Repair Ordinance provides:

If a sign is partially destroyed by wind or other natural forces, the Director must determine whether to allow the sign to be rebuilt. If the Director determines that the damage to the sign was greater than 50 percent of its replacement cost as of the time of the damage, the sign must be consistent with all current requirements of this chapter.

CDC § 5.6.50.E.4.c.

97. Because the provisions of CDC § 5.6.50.E. are not more restrictive than those of the State Regulation, the subject CDC provisions are abrogated and sign maintenance decisions under the State Regulation are controlling on those issues.

98. The Maintenance Ordinance, on its face, is in conflict with South Carolina law, in that it attempts to vest power in a County official to determine whether to allow a damaged outdoor advertising sign to be repaired or maintained.

99. Subsection 4.c. of the Maintenance Ordinance requires the Director to form a subjective personal opinion, exercise judgment, or otherwise perform a subjective or ad hoc determination regarding whether damage to an outdoor advertising sign is greater than fifty percent (50%) of the sign's replacement value.

100. The Maintenance Ordinance requires that the Director, a non-existent position and person, form a subjective personal opinion, exercise judgment, or otherwise perform a subjective or ad hoc determination regarding whether to allow a damaged sign to be substantively repaired.

101. The remainder of the Sign Code does not provide any objective criteria by which to make such decisions.

102. On its face, the Maintenance Ordinance is in conflict with South Carolina law and therefore unconstitutional.

103. By conflicting with State law, the Maintenance Ordinance arbitrarily deprives, and/or attempts to deprive, Adams of its vested property rights.

104. By conflicting with State law, the Maintenance Ordinance is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' (and those similarly situated to Adams) vested property rights/interests without due process of law.

105. By conflicting with State law, the Maintenance Ordinance violates Adams' (and those similarly situated to Adams) civil rights.

FOR A THIRD COUNTERCLAIM
(Selective Enforcement)

106. Adams restates, realleges, and incorporates herein by reference the preceding paragraphs of this pleading as though set forth herein verbatim.

107. Adams' claims arise from and relate to the deprivation of its rights and interests by the County's policies and customs. The CDC, including the Maintenance Ordinance, and the

County's acts and omissions thereunder, including those of its agents and officials, constitute policies, customs, and/or practices of the County.

108. Pursuant to S.C. Code Ann. § 15-53-20, South Carolina courts have jurisdiction to declare rights, status, and other legal relations to any person, including those rights granted by the South Carolina Constitution. In addition, under S.C. Code Ann. § 15-53-120, South Carolina courts may grant further relief beyond a declaration of rights whenever necessary or proper.

109. The County has a duty to enact and enforce land use regulations and laws without discrimination.

110. By failing and refusing to equally apply and administer its CDC, including the Maintenance Ordinance, the County has unconstitutionally singled Adams out for adverse treatment and purposeful discrimination.

111. The County's selective, disparate enforcement and administration of the CDC's Maintenance Ordinance and Article 9, as detailed herein, is arbitrary, capricious, irrational, and/or malicious, does not bear a rational, reasonable, or substantial relation to any legitimate government interest, including, but not limited to, the purported public safety and aesthetic purposes of the Sign Code, and the intention "to encourage the voluntary correction of violations," as is the stated purpose of the CDC's Enforcement provisions, Article 9. CDC § 9.1.10 (*see* Ex. 3 p. 1).

112. Additionally, the County's failure and refusal to comply and act in accordance with its own CDC, and South Carolina and United States law, including, but not limited to, its failures to follow the CDC's mandates regarding notices of violations and citations or uniform ordinance summonses, while acting in compliance when alleged violations by others occur, is arbitrary, capricious and irrational, does not bear a rational, reasonable, or substantial relation to the public

health, safety, morals or general welfare, and constitutes an invalid exercise of the County's police powers and an abuse of power under color of state law in violation of Adams' constitutional rights.

113. Adams and its representatives were and are treated differently than others in like circumstances for illegitimate political and/or personal reasons and motives, including, but not limited to, personal animus, and political goodwill and power and/or economic incentives gained by harsher treatment of Adams and more favorable treatment of others, such as the Trask family.

114. The County's acts and omissions, including its vindictive pursuit of enforcement actions and penalties against Adams, in violation of and non-compliance with constitutional protections and the CDC, for approved repairs to its signs that improved the safety of the same, are not reasonably, rationally, or substantially related to any legitimate government interest.

115. The County has not treated or acted towards similarly situated owners and operators of signs in the same manner as Adams.

116. The County's deprivation of Adams' rights and interests constitutes a deliberate flouting of the CDC, the HACA, the State Regulation, and SCDOT's decisions thereunder, for illegitimate political and/or personal reasons and motives, and thus constitutes egregious governmental misconduct and a grave unfairness to Adams.

117. Even if the County acted with a rational basis, which is strictly denied, its purpose is merely a pre-text for an improper purpose, as alleged herein.

118. The County's failure and refusal to comply and act in accordance with its own CDC, and South Carolina and United States law, unconstitutionally discriminates against Adams.

119. Under the mandates of the CDC, a prescriptive code, the County was required but failed to issue a warning notice of violation prior to issuing the Citations, and was required but failed to include certain information on the Citations. The CDC is intended to be enforced in a

manner “to encourage the voluntary correction of violations[.]” CDC § 9.1.10 (*see* Ex. 3 p. 1). The County’s failure and refusal to comply and act in accordance with its own CDC, and failure and refusal to give notice of and encourage correction of any alleged violation by Adams, while acting in compliance when alleged violations by others occur, is not rationally related to any legitimate government interest.

120. The County continues to act in violation of the CDC and Adams’ constitutional rights, as it brought this litigation against Adams without complying with any of the prerequisite procedural requirements under the CDC.

121. Adams has a right to equal and fair treatment under the CDC and its Maintenance Ordinance. The County’s selective and arbitrary enforcement of the same against Adams in an effort to cease Adams’ operating outdoor advertising displays, while simultaneously allowing others to conduct such operations in violation of the County’s regulations without penalty or repercussion, is not rationally related to any legitimate government interest, including any traffic safety or aesthetic purposes of the Sign Code, and constitutes a violation and denial of Adams’ rights to equal protection under the United States and South Carolina Constitutions.

122. The Court should declare the County’s arbitrary and selective enforcement of its regulations and the associated purposeful discrimination against Adams, including, but not limited to, its prosecution of the Citations and its first cause of action in this case, to be in violation of Plaintiff’s rights afforded by the Equal Protection clauses of the South Carolina and United States Constitutions, and award all relief consistent therewith under 42 U.S.C. § 1983 and S.C. Code Ann. §§ 15-53-20, 15-53-120, including all actual, incidental, and consequential damages, including, but not limited to, litigation costs and expenses incurred in all litigation against the County relating to the signs at issue to defend and enforce its rights, pursuant to 42 U.S.C. § 1988.

FOR A FOURTH COUNTERCLAIM
**(“As Applied” Challenge to the Constitutionality of the Maintenance Ordinance
and/or the County’s Actions with Respect to Adams)**

123. Adams repeats, realleges, and incorporates herein by reference each and every allegation contained above as if fully set forth herein verbatim.

124. County officials, in ordering Adams to cease and desist from its repair work to the Signs without stated or actual justification, and in issuing the Stop Work Order and Citations for the same, are using unstructured, unlimited, and/or unbridled discretion in interpreting applying the CDC’s Maintenance Ordinance and Article 9 with respect to and against Adams.

125. As detailed herein, the County has exhibited a pattern of bias and hostility towards Adams, and its business interests and property rights, which has manifested itself in the manner in which the County has applied the CDC’s Maintenance Ordinance and Article 9 with respect to and against Adams.

126. The CDC, including the Maintenance Ordinance, and the County’s acts and omissions thereunder, including those of its agents and officials, constitute policies, customs, and/or practices of the County.

127. As applied by the County with respect to and against Adams, the Maintenance Ordinance is vague, ambiguous, and/or overbroad and does not provide fair notice to Adams of the conduct proscribed or when a permit or authorization is necessary.

128. The County’s interpretation and application of the CDC also deprived Adams of its right to procedural due process because the standards it applied to determine that an alleged violation of the Maintenance Ordinance occurred were so vague and meaningless that the County failed to provide Adams a reasonable opportunity to understand the standards by which sign repairs are approved (if such approval is necessary).

129. The County's acts and omissions as alleged herein, including its vindictive pursuit of enforcement actions and penalties against Adams, in violation of and non-compliance with constitutional protections and the CDC, are not rationally related to a legitimate government interest and deprived Adams of its due process and equal protection rights.

130. As applied by the County with respect to and against Adams, Article 9 of the CDC is vague, ambiguous, and/or overbroad and does not provide fair notice to Adams of the conduct proscribed or when or what type of enforcement action can or will be taken.

131. The County has used and is using unstructured, unlimited, and/or unbridled discretion in interpreting and applying the CDC's Maintenance Ordinance and Article 9 with respect to and against Adams.

132. The County's disparate treatment of Adams under the CDC's Maintenance Ordinance and Article 9 violates the South Carolina Constitution, including but not limited to Article 1, § 3.

133. The County's disparate treatment of Adams under the CDC's Maintenance Ordinance and Article 9 violates the United States Constitution, including but not limited to the Equal Protection Clause of the Fourteenth Amendment.

134. The County's disparate treatment of Adams under the CDC's Maintenance Ordinance and Article 9 is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' vested property interests without due process of law.

135. As applied by the County with respect to and against Adams, the CDC's Maintenance Ordinance and Article 9 impinges on freedoms guaranteed by the United States Constitution, including but not limited to the First and Fourteenth Amendments.

136. As applied by the County with respect to and against Adams, the CDC's Maintenance Ordinance and Article 9 impinges on freedoms guaranteed by the South Carolina Constitution, including but not limited to Article 1, § 2.

137. As applied by the County with respect to and against Adams, the CDC's Maintenance Ordinance and Article 9 violates Adams' civil rights.

138. As applied by the County with respect to and against Adams, the CDC's Maintenance Ordinance and Article 9 deprives Adams of its vested property rights.

139. As a direct and proximate result of the acts and omissions of the County and its officials as detailed throughout this pleading, Adams has suffered (and will continue to suffer) a significant detriment together with material financial damages.

140. As a direct and proximate result of the acts and omissions of the County and its officials as detailed throughout this pleading, Adams has suffered (and will continue to suffer) irreparable harm because, *inter alia*, it has been deprived of rights granted to it under the United States Constitution and South Carolina Constitution, including important and vested property rights and the right to engage in protected speech, and is subject to penalties and fines for any alleged violation of the Maintenance Ordinance.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff Beaufort County, South Carolina's Amended Complaint, Defendant Adams Outdoor Advertising Limited Partnership prays that the Amended Complaint be dismissed with prejudice; that judgment be rendered in favor of Adams against the County for all claims alleged in this action; that the Court enter the declaratory judgments as requested herein relating to the unconstitutionality of the Maintenance Ordinance and the County's administration of the same, the abrogation of the Maintenance Ordinance, and

the validity of Adams' repairs to its Signs; preliminarily and permanently enjoin the County and its agents and officials from enforcing the Maintenance Ordinance and from seeking or issuing any civil or criminal fines and/or penalties against Adams (or those similarly situated to Adams) for a past, present, or future purported violation thereof; and that Adams be awarded damages and its litigation costs and expenses, including attorneys' fees; and for such other and further relief as this Court may deem just and proper.

s/Evan P. Williams

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PARTNERSHIP*

December 8, 2023
Mt. Pleasant, South Carolina

State of South Carolina)
) Court of General Sessions
County of Beaufort) 2022CP0701195

Beaufort County SC)
)
 vs.) Transcript of Record
)
Adams Outdoor Advertising)
Limited Partnership, et al.)

December 14, 2022
Beaufort, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge

A P P E A R A N C E S:

Scott Dean Bergthold, Esq.
Attorney for the Plaintiff

Jeffrey S. Tibbals, Esq.
Attorney for the Defendant

Ellen S. Kolman
Transcriber

1 MR. BERGTHOLD: December -- let's just stick with that
2 one. That's the Port Royal billboard. They purchased the
3 property in December 30th, 2020.

4 THE COURT: Um-hum.

5 MR. BERGTHOLD: It was on a recurring annual lease.

6 THE COURT: Um-hum.

7 MR. BERGTHOLD: And pursuant to the lease, they
8 terminated in April of 2021. They said hey, this is your
9 annual renewal coming up on October 1st of 2021.

10 THE COURT: You're talking about the renewal for the
11 actual sign, correct?

12 MR. BERGTHOLD: For the actual sign.

13 THE COURT: Okay. Keep going.

14 MR. BERGTHOLD: That's right. Say we're the -- they said
15 we're the land owners --

16 THE COURT: Right.

17 MR. BERGTHOLD: -- and all these are exhibits attached
18 to --

19 THE COURT: Okay.

20 MR. BERGTHOLD: -- the amended complaint. There's about
21 400 pages attached.

22 THE COURT: Okay.

23 MR. BERGTHOLD: And they said we're not going to redo the
24 lease as of October 30 -- October 1st. You have 30 days to
25 take the billboard down and get it off our property.

1 THE COURT: Okay.

2 MR. BERGTHOLD: 30 days of October 1.

3 When they did not do that, sometime around November 1st,
4 the County sent them a letter and said -- well, first, Mr.
5 Zecchino who is the general counsel for Adams Outdoor in
6 Michigan. It's a Michigan-based corporation.

7 THE COURT: Okay.

8 MR. BERGTHOLD: Billboards around the country. They
9 wrote the County and said oh, by the way, this says only the
10 lessee has the ability to terminate the lease.

11 We wrote them back and said wrong. Here's the South
12 Carolina Court of Appeals published an opinion when it's a
13 year-to-year lease, there cannot be a one-sided ability to
14 terminate. So any side can terminate within 30 and give
15 reasonable notice.

16 So we gave seven months' notice that we're going to
17 terminate in October. You got 30 days to get your sign out of
18 our property --

19 THE COURT: Okay.

20 MR. BERGTHOLD: -- and then take it down. And the lease
21 provides for us to be able to take it down at Adams' expense.

22 THE COURT: Okay.

23 MR. BERGTHOLD: So basically, they told us in a letter
24 dated, I think, December 1st -- it's also attached to our
25 amended complaint, haven't seen it, we're not going to take it

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-07-01195

BEAUFORT COUNTY SOUTH CAROLINA,

PLAINTIFF,

vs.

ADAMS OUTDOOR ADVERTISING,

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE STEVEN H. DEBERRY

DATE: JUNE 10, 2025
TIME: N/A
LOCATION: SOUTH CAROLINA CIRCUIT COURT 14

TRANSCRIBED BY: AMANDA WATSON

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS

REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P R O C E E D I N G S

2 THE COURT: All right. So, we're here on 2022-CP-07-
3 01195, and that's Beaufort County versus Adams Outdoor --
4 Outdoor Advertising and others. There's cross summary
5 judgment motions; is that right?

6 MR. BERGTHOLD: Yes, Your Honor.

7 MR. WILLIAMS: Yes, Your Honor.

8 THE COURT: All right. Well, I mean, do we have
9 everybody we're looking for?

10 MR. WILLIAMS: Yes.

11 MR. BERGTHOLD: Yes, your honor. I believe so, on
12 behalf of Beaufort County.

13 THE COURT: All right. And is this a situation where
14 the Court's ruling will be dispositive of the case, or are
15 there other Defendants that would still remain, in any event?
16 Or, what is the situation as far as that goes?

17 MR. BERGTHOLD: Your Honor, I believe that the Court's
18 ruling would be dispositive of the case.

19 THE COURT: Okay.

20 MR. WILLIAMS: Correct, Your Honor. There were
21 originally two other Defendants named, but those were
22 dismissed. Those two individuals were dismissed, I think, I
23 believe in 2023. So, the only two parties left are the
24 county and Adams Outdoor.

1 no, you know -- your Jedi mind tricks have no power here,
2 sort of thing. And so, we pursued the civil action for an
3 injunctive remedy, and that's where we are today. So, in the
4 big picture, there are, sort of, four places in the county
5 where this cause of action, or in this lawsuit, touches on.

6 The first one are those two locations at 3589 Trask
7 Parkway. There's billboards on either sides of the road.
8 Those are the ones that in April of 2021, were illegally
9 rebuilt. Judge Sadler found they were rebuilt. Judge Dukes'
10 order, in the court of appeals opinion, didn't dispute any of
11 the facts found. They just said, because you didn't file the
12 warning procedures, we're going to vacate the criminal
13 convictions because it's a criminal case.

14 The other place in -- the next place in the county is,
15 late in 2020 the county acquired property to another
16 billboard at Port Royal Island battlefield. And when they
17 took over the Port Royal Island battlefield location they had
18 -- there were three billboards in three different parts of
19 that property that the county purchased. They did that as
20 part of a historic preservation project with the naval
21 defense and, you know, the federal government, and there's
22 some conservation easements and so on and so forth.

23 And there were three billboards, but one of them was
24 subject to the lease that we're here on today. It was a
25 lease at the Port Royal Island battlefield that purportedly

1 the ground and put brand new poles three feet in front of
2 them in new holes, and rebuild the sign structure, that
3 violates 5.6.5B2. And so, we've laid that out in some
4 detail.

5 And then, Your Honor, the -- the other argument that is
6 in this case -- so, I think on count one, we're entitled to
7 the order of what we asked for, which is a sign ordering them
8 to remove the newly and illegally reconstructed billboards.
9 And then on count two, which is the Trask Parkway sign, I'll
10 go to that now. Oh, that's the 34 -- sorry, the PRIB, the
11 Port Royal Island Battlefield Parkway sign. That's just a
12 matter of pure law.

13 Cable Colorado -- or Carolina Cable Network, the case
14 law is really clear. It says that you -- when you claim that
15 you have an indefinite right of renewal on a billboard or on
16 any kind of a lease or contract, that that is terminable at
17 will, that's the only way to interpret it. And the law that
18 we sent them on April 1st, 2021, about basically overstaying
19 their welcome past October 1st, 2021, on what is now
20 county-owned property and it has been county-owned property
21 for five years. It needs to get out. And they said, no.
22 Hence, here we are for injunctive relief.

23 And then, and this is the -- this is the case. I'll
24 throw it up on the screen. This is from page 25 of our
25 summary judgment brief. The case is Carolina Cable Network,

1 when a contract attempts to give one party an indefinite
2 right of renewal, the contract can only be construed as
3 terminable at will. When the contract is terminal at will,
4 reasonable notice from either party is all that is required
5 to terminate the agreement. So, that's what we did. We gave
6 them six months notice. We sent them a letter. Said, have
7 your stuff gone by October 1st. They said, no. So, here we
8 are, you know, four years later almost, trying to get the
9 relief that we're entitled to.

10 Now, they make an argument in their response that I read
11 from last -- late last week, Your Honor, and the argument is,
12 well, there's another provision that says, if the lessor, in
13 this case, the county, builds a structure, then -- if they
14 build a structure, then they can terminate -- they can give
15 notice to the lessee that they're going to terminate. And
16 therefore -- because there's one kind of express right of
17 termination of the lease that negates every other implied
18 right of termination.

19 There's just -- they cite no law for it, and there is no
20 law for it because, what gives the county the ability to
21 terminate this lease is the fact that it purports, on it's
22 face, under California -- or Carolina Cable Network, to give
23 the lessee, an indefinite right of renewal. And -- and
24 because that is what gives both parties the right to
25 terminate the contract at will upon reasonable notice, that's

1 totally independent from another provision that says if the
2 county happens to build a building, they can tell the lessee
3 they're going to terminate. So, I don't think there's any
4 legal merit in the, sort of, the one isolated argument
5 they're making concerning that.

6 And then finally, Your Honor, the last thing that
7 they're making, I think, is kind of the main -- I mean,
8 there's 27 different, just sort of, labels thrown out there
9 in terms of affirmative defenses, but the only one that I can
10 identify that has developed any record to it, or that they're
11 making any substantive or, you know, argument on it is, well,
12 there's this billboard out at 3592 Trask Parkway that we've
13 discovered in discovery, and we think the county should have
14 done something about that.

15 And we think the county didn't do something, because at
16 the time when we brought this to the county's attention, or
17 within the time that this was brought about, that it was
18 owned by the Trask family. And the argument is, the Trask
19 family is a prominent family in South Carolina and Beaufort,
20 particularly Beaufort County, and therefore it was unequal
21 treatment, and so on and so forth.

22 Now, the only testimony that they have about this is the
23 former county attorney, or County Administrator, rather, who
24 was fired a couple of years ago and was not speaking on
25 behalf of the county. And frankly, his testimony is pretty

1 on, granted that, we pursued the civil remedy, which is
2 independent, and in addition to a criminal remedy. And
3 therefore, we think we are entitled to that conclusion.

4 Now, as far as the remedy. We've asked for an order
5 authorizing us to take down the billboards at 3589 Trask
6 Parkway on either side of the road. And assessing the cost
7 under 5.6.5B2. It says that the cost for removal shall be
8 borne by the violator. We asked to assess that cost. They
9 came along in discovery, and they said, well, wait a second.
10 They filed a short, five-page brief on this.

11 They said, you didn't specify what the dollar amount
12 was. Well, no, we have to get the order, and then we'll go
13 out and get a current bid as of that date. And, you know,
14 and the Court could fashion a summary judgment order that
15 says, you know, within five days, go get a bid, give it to
16 the other side. If they think it's too high, they can go get
17 a qualified contractor to get another bid. I'm sure it would
18 be fine with them taking down the billboard at their expense,
19 rather than reimbursing our contractor to do it.

20 But that -- none of that is an impediment to the relief
21 that we are seeking in 5.6.5OB, because that could be
22 accounted for in the order which, likely either way, it would
23 be appealed, as I'm well aware.

24 And then the second thing, Your Honor, is we did ask for
25 attorneys' fees and awards and things like that. And sure,

1 they asked 30B6 witnesses, well, what is this all about? And
2 they said, well, we don't really know. And -- and what I
3 explained, and I'll explain again here again, real quickly,
4 if the Court were to issue an injunction. And we've been
5 involved, like, in the in the Greenville bistro case and
6 other cases where injunctions have been issued, and if it's
7 not followed, obviously, then you can bring a contempt case
8 and then -- and then get attorneys' fees to make the county
9 whole if they had to enforce an injunction remedy. We're not
10 at that stage yet, I get that. But, I just wanted the Court
11 to know why that reference to attorneys' fees and money was
12 in the complaint.

13 So, and I do have other things to say. I don't know
14 exactly what my learned, opposing counsel will say, Your
15 Honor, but I'll end it by saying we're entitled under the
16 clear terms of the CDC and the facts and record the case for
17 an order allowing us to remove the two billboards at 3589
18 Trask Parkway, which were illegally rebuilt in April of 2021.
19 We're also entitled to -- and that -- that Adams not
20 interfere with that and pay for the cost of that removal.

21 We're also entitled to an order that allows the county
22 to remove the billboard that's been trespassing, essentially,
23 on its land and overstaying its welcome under a lease that
24 was terminated on October 1st, or effective October 1st,
25 2021, under the clear case law in South Carolina. They

1 life is not authorized. And so, you know, it's contemplated
2 these are non-conforming uses, and that they'll eventually be
3 phased out. But, to the extent repairs are authorized by
4 SCDOT, and they were, they're properly made.

5 THE COURT: I'm sorry. I don't mean to interrupt. I'm
6 just trying to understand everybody's position.

7 MR. WILLIAMS: No, Your Honor. That's what I'm here
8 for, is to answer your questions and make the argument. It
9 makes sense to get into Adams' claim about abrogation, but
10 before we turn to that, I did, so I don't forget about, I did
11 want to address the county's second claim, because it is
12 pretty cut and dry.

13 You know, in December 2020, the county acquired a few
14 different parcels that have been consolidated, what's known
15 as the Port Royal Island Battlefield. One of those parcels
16 was encumbered, is encumbered by an existing lease. It was
17 entered into by Adams' predecessor and interest and the
18 former landowner. It's binding on the county as the
19 successor to the lessor.

20 In April 2021, the county attempted to terminate the
21 lease, and as Mr. Bergthold argued, the county's argument is
22 that the lease only gives the lessor -- or the, sorry, the
23 lessee, a unilateral right of termination, and therefore it
24 creates a perpetual right of renewal. And the county must
25 have an implied right, because a lease with the perpetual

1 right of renewal is -- is just unauthorized and inequitable.

2 I do want to open up the lease just so we can take a
3 look at that though. All right. So, this is the lease at
4 issue. There's no dispute about that. It's an older lease,
5 like I said. Adams' predecessor was Peterson Outdoor. This
6 is now on a year-to-year renewal. The key issue, the key
7 provision, Your Honor, is this fifth clause. They're not
8 numbered. Quote, in the event the property is improved by
9 the erection of buildings thereon by the lessor or at
10 lessor's direction, as evidenced by a building permit,
11 lessors shall have the right to cancel this agreement by
12 giving lessee 60 days advance written notice, together with
13 the abatement, a rebate of all unearned rent.

14 This completely negates the county's argument that Adams
15 has a perpetual right of renewal and there's a unilateral
16 right of termination. The lease has an express right of
17 termination for the lessor. The issue is, the county wants
18 to ignore the fact that they're willingly contracting away
19 its ability to exercise that right. When it purchased these
20 parcels that utilize funds from third parties, in exchange,
21 it conveyed those parties' perpetual easements, which
22 restrict -- place restrictions on the property. One of those
23 restriction -- one of those easements is a conservation
24 easement to the South Carolina Battle Ground Preservation
25 Trust. The other one was to the United States Department of

1 the Navy. We'll focus on this one.

2 In key part, the county has agreed that it cannot
3 conduct any construction or improvement on this parcel on the
4 lease premises. Doing so would violate this perpetual
5 easement that the county willingly entered into. It's
6 contracted away its right to build anything on a lease
7 premises, and as a result, it contracted away and doesn't
8 have its ability to terminate the lease.

9 The county's claim, therefore, asking it to find that it
10 can remove the sign, get it terminated, the lease, under a
11 theory that Adams has a perpetual right of termination is
12 just untenable, Your Honor, and fails as a matter of law.
13 The county is forever barred from being able to terminate the
14 lease, but it's on account of its own actions in conveying
15 these easements.

16 THE COURT: So, you're saying that that provision right
17 there says that they can't terminate the lease?

18 MR. WILLIAMS: This easement was recorded in December of
19 2020 as part of its purchase of the Port Royal Island
20 Battlefield parcels. This provision, these easements, and
21 this, you know, it's a conservation easement and a
22 restrictive easement, say the county cannot build anything on
23 the property. When you go back to the lease, the county,
24 under the lease is given an express right to terminate the
25 lease if it builds anything on the property.

1 The county was aware of the billboard, was aware of the
2 lease. The county could have taken the actions to preserve
3 their right to terminate the lease, you know. And these
4 restrictive easements, they're public -- public record. They
5 could have included a clause saying this has no impact on the
6 lease with Adams Outdoor, and the provisions therein, ability
7 to terminate the lease, but it didn't.

8 These conservation easements, restrictive easements
9 unequivocally state the county is not allowed to build
10 anything on this property that's been covered by this lease.
11 As a result, they've waived the express right to terminate
12 this lease. They don't have an implied right of
13 determination. They had an express right, which they waived,
14 willingly, by entering -- entering into these -- these
15 easements that completely bars their claim and their attempt
16 to terminate the lease.

17 THE COURT: Is that -- I mean, under what theory of law
18 do you derive that from?

19 MR. WILLIAMS: Contract theory, Your Honor. You know,
20 this lease is entered into in 1992, preceded the county's
21 purchase by 28 years. The county, you know, testimony bears
22 at the due diligence ---

23 THE COURT: Well, they're not trying to terminate the
24 lease in order to build something are they?

25 MR. WILLIAMS: No, Your Honor, quite the opposite. The

1 county is not able to build anything on the property.
2 They're contractually prohibited from building anything on
3 property, and because ---

4 THE COURT: (Indiscernible) ---

5 MR. WILLIAMS: Because -- I'm sorry, go ahead.

6 THE COURT: By way of the easement, right?

7 MR. WILLIAMS: Correct, Your Honor, yeah. And so ---

8 THE COURT: So, your argument is likewise, that they're
9 also precluded from terminating the billboard lease?

10 MR. WILLIAMS: Yes. Because their right of termination
11 -- and I don't know if you -- if it's too small to read.
12 But, the -- the provision I've highlighted right here, this
13 is the fifth paragraph of the lease. This gives the county
14 an express right to terminate the lease.

15 So, if the county had not executed that conservation
16 easement, the county could have said, Adams, we're going
17 to -- we're going to be constructing buildings on this
18 parcel, and we're going to terminate your lease as a result.
19 Because it says, in the event that property is improved by
20 the erection of buildings lessor can cancel this agreement,
21 this lease, by giving 60 days notice.

22 THE COURT: Okay. I understand.

23 MR. WILLIAMS: So, the county was aware of this lease.
24 Was well aware of the billboard. As part of the purchase, it
25 took funds from that Battleground Preservation Trust and from

1 the Department of the Navy, because it's a historic
2 Revolutionary War battlefield, in exchange for taking those
3 funds to buy the property, gave both of those parties these
4 easements restricting use of this property. And the
5 conservation easement, and that the restrictive easement to
6 the Navy says you're not allowed to build anything. Because
7 they're not allowed to build anything, they can no longer
8 attempt to terminate this lease, if that makes sense.

9 THE COURT: Yes, sir, I understand.

10 MR. WILLIAMS: Okay. All right. And, I know it has
11 been a long day for Your Honor -- still on your 9:30 docket,
12 I'm going to try to quickly get through -- move on to the
13 Adams' first game -- claim -- counter-claim. We're talking
14 about abrogation or preemption.

15 I hesitate to spend too much time on it, but the
16 county's brief spends a lot of time trying to claim the Adams
17 lack standing to make this claim because it only challenges a
18 singular sub part of the CDC maintenance ordinance. That's
19 not true. Adams is challenging the entire maintenance
20 ordinance, 5.6.50B. The argument that the magistrate ruled
21 on the preemption claim is quite simply false.

22 I mean, if you look back at that verdict, sure, she
23 quoted the state statute, but she made no comparison of the
24 county and the state regulation at issue. In fact she didn't
25 even cite, let alone talk about or quote, the state

1 the billboard or instructional sports is not more
2 restrictive. How -- it's -- it's (indiscernible). The thing
3 speaks for itself. The county gave approval for the repair
4 that Adams sought, which included six new structural supports
5 for each billboard. And the county's ordinance -- or the
6 state gave approval for that, and the county's ordinance,
7 under B2 flatly prohibits it.

8 And I think that when -- this is why I said you got to
9 look at the testimony citing and this should be resolved on
10 summary judgment, because when he points to the county --
11 Mr. -- the deposition and trial transcript testimony about
12 what the state approved, that if the state needs approval,
13 that they'll go ahead and do -- they'll ask the local for
14 approval. No they -- the documents show that they expect the
15 locals to do that. And this is in exhibit seven, and ---

16 THE COURT: I hate to interrupt you but, we've got --
17 we've got to get these people that have been waiting here
18 since 9:30 this morning, and we're way past the allotted time
19 for these matters.

20 MR. WILLIAMS: Your Honor, if I may?

21 THE COURT: Yes, sir.

22 MR. WILLIAMS: Summary judgment is appropriate on the
23 county's second claim. It waived its right to terminate the
24 lease. Not entitled to terminate the lease. The first
25 claim, it's barred. It's stopped, it's precluded. The court

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Beaufort

I, AMANDA WATSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in South Carolina Circuit Court 14, Beaufort, South Carolina, on the 10th day of June, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Amanda Watson

AMANDA WATSON, TRANSCRIBER

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP, ELIZABETH
“Liz” MITCHUM, and REX ALLEN “BO”
HODGES, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-07-01195

**DEFENDANTS’ NOTICE OF MOTION
AND MOTION TO STRIKE**

TO: PLAINTIFF BEAUFORT COUNTY, SOUTH CAROLINA AND ITS ATTORNEY,
BRITTANY WARD, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE THAT, Defendants Adams Outdoor Advertising Limited Partnership (“Adams”), Elizabeth “Liz” Mitchum (“Mitchum”), and Rex Allen “Bo” Hodges, Jr. (“Hodges”) (collectively, “Defendants”), pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, move to strike defects in Plaintiff Beaufort County, South Carolina’s (“Plaintiff” or “County”) Complaint.

Defendants respectfully request that this Court strike the Complaint’s superfluous and impertinent references to and/or quotations of exhibits not attached to or filed with the Complaint. Rule 10(c), SCRCP, states, in relevant part, “[a] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes **if a copy is attached to such pleading.**” Rule 10(c), SCRCP (emphasis added).

A trial court’s “grant of a motion to strike will not be reversed except for an abuse of discretion or error of law.” *Robinson v. Code*, 384 S.C. 582, 585, 682 S.E.2d 495, ___ (Ct. App. 2009) (internal citation omitted). The references to and/or quotations of the following exhibits not

attached to the Complaint, as contained in the specified paragraphs of the Complaint, are defects and should be stricken:

1. Complaint ¶ 3: Exhibit 17 (September 29, 2021 Letter from Richard Zecchino).¹
2. Complaint ¶ 6: Exhibit 6 (July 14, 2021 Mag. Ct. Transcript 121:10-11).
3. Complaint ¶ 7: Exhibit 6 (July 14, 2021 Mag. Ct. Transcript 132:19-20).
4. Complaint ¶ 14: Exhibit 1 at 1 (Beaufort County Community Development Code (“CDC”) § 5.6.50(B)).
5. Complaint ¶¶ 15 and 16: Exhibit 1 at 1 (CDC § 5.6.50(B)(2)).
6. Complaint ¶ 17: Exhibit 1 at 1 (CDC § 5.6.50(B)(3)).
7. Complaint ¶ 18; Exhibit 1 at 1 (CDC § 5.6.50(B)(4)(b)).
8. Complaint ¶ 20: Exhibits 2 and 3 (South Carolina Department of Transportation (“SCDOT”) permit numbers 06-07-740766 and 06-07-740884).
9. Complaint ¶ 21: Exhibit 2 (application and pictures for permit number 06-07-740766).
10. Complaint ¶ 22: Exhibit 3 (application and pictures for permit number 06-07-740884).
11. Complaint ¶¶ 23 and 24: Exhibit 4 (April 6 and 7, 2021 emails between Hodges and Audra Antonacci-Ogden of the Beaufort County Code Enforcement Department).
12. Complaint ¶¶ 25 and 26: Exhibit 5 (April 7 emails).
13. Complaint ¶ 27: Exhibit 6 (July 14, 2021 Mag. Ct. Transcript 147:12-13).

¹ The exhibit descriptions in parentheses herein are derived from the Complaint’s description of the same.

14. Complaint ¶ 30: Exhibit 6 (Tr. 156:14-19); Exhibit 7 at 8, 11, and 14 (photographs of sign location); Exhibit 8 at 9-18 (photographs of sign poles and sign).
15. Complaint ¶ 31: Unspecified Exhibit number (Tr. 104:16 – 105:2).
16. Complaint ¶ 32: Exhibit 9 at 3 (unspecified document).
17. Complaint ¶ 33: Exhibit 9 at 3 (assumed to be email from County Administrator Eric Greenway (“Greenway”), date not specified).
18. Complaint ¶ 34: Exhibit 9 at 3 (assumed to be Greenway’s April 10, 2021 email).
19. Complaint ¶ 35: Exhibit 9 at 1-2 (assumed to be April 11, 2021 email from Adams’ Vice President and General Counsel Richard Zecchino).
20. Complaint ¶ 36: Exhibit 10 (Stop work order executed by the County Code Enforcement Director on April 12).
21. Complaint ¶ 37: Exhibit 11 (Summonses issued April 12 by the County to Adams and Hodges for two alleged violations of CDC § 5.6.50(E)).
22. Complaint ¶ 37 n.1: Exhibit 1 (assumed to be CDC § 5.6.50 as amended in July 2021); Exhibit 12 (version of CDC § 5.6.50 in effect April 2021).
23. Complaint ¶ 38: Exhibit 13 (Magistrate’s Court’s verdict).
24. Complaint ¶ 39: Exhibit 13 at 4 (Magistrate’s Court’s verdict).
25. Complaint ¶ 40: Exhibit 13 at 5 (Magistrate’s Court’s verdict).
26. Complaint ¶ 42: Exhibit 14 at 2 n.1 (Order on Appeal, Case No. 2021-CP-01507).
27. Complaint ¶¶ 45, 46, and 47: Exhibit 15 (Sign Lease).
28. Complaint ¶¶ 48 and 49: Exhibit 16 at 1 (County’s April 1, 2021 Letter to Mitchum).
29. Complaint ¶ 50: Exhibit 17 (September 29, 2021 Letter from Richard Zecchino).

30. Complaint ¶ 51: Exhibit 17 at 1 (September 29, 2021 Letter from Richard Zecchino).

31. Complaint ¶¶ 52 and 53: Exhibit 18 (County's December 1, 2021 Letter to Richard Zecchino).

32. Complaint ¶ 61: Exhibit 18 (CDC § 9.5.20(C)).

WHEREFORE, Defendants respectfully request that this Court grant their Motion to Strike the Complaint's defects noted herein, which are immaterial and impertinent references to or quotations of exhibits that were not attached to or made a part of the Complaint, as they were not filed with the Court. This Motion is supported by the grounds set forth hereinabove, the pleadings in this case, South Carolina common law, the relevant South Carolina Rules of Civil Procedure, and such other matters as the Court may deem appropriate, including but not limited to, any memoranda in support of this Motion that may be filed. The undersigned hereby certifies and affirms, pursuant to Rule 11, SCRCF, that consultation with opposing counsel regarding the matters contained in this motion would serve no useful purpose and this dispositive motion does not require consultation prior to filing.

s/ Evan P. Williams

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OUTDOOR ADVERTISING LIMITED
PARTNERSHIP, ELIZABETH "LIZ" MITCHUM,
AND REX ALLEN "BO" HODGES, JR.*

August 18, 2022
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-07-01195

**DEFENDANT ADAMS OUTDOOR
ADVERTISING LIMITED
PARTNERSHIP'S NOTICE OF
MOTION AND MOTION FOR
PROTECTIVE ORDER**

TO: BRITTANY WARD AND SCOTT D. BERGTHOLD, ESQUIRES, ATTORNEYS FOR
THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT Defendant Adams Outdoor Advertising Limited Partnership ("Defendant" or "Adams"), by and through its undersigned counsel, pursuant to Rule 30(j), SCRCP, moves the Court for a Protective Order preventing Defendant's Rule 30(b)(6) designee, Richard Zecchino, from having to respond to certain questions posed in Defendant's 30(b)(6) deposition which violate the attorney client and work product privileges. The grounds for this motion are as follows:

Plaintiff Beaufort County, South Carolina ("Plaintiff") conducted the Rule 30(b)(6), SCRCP, deposition of Defendant on May 22, 2024. Defendant designated Richard Zecchino, its Chief Legal Officer and Vice President of Real Estate, to testify on its behalf. During the deposition, Plaintiff's counsel asked questions of Mr. Zecchino that impinged upon the protections afforded by attorney-client privilege and the attorney work product doctrine. The subject matter of these questions centered on Defendant's legal theories, arguments, and opinions regarding its claims and defenses, including Adams' legal interpretations of the lease at issue and South Carolina law regarding nonconforming uses and abrogation of local ordinances, as well as

Defendant's legal theories, strategies, and arguments underlying its challenges to the validity of certain ordinances in Defendant's Community Development Code.

During the deposition, Defendant's counsel objected to and instructed Mr. Zecchino not to answer more than one question that invaded the attorney client and work product privileges. Consistent with its obligations under Rule 30(j), SCRCP, Defendant moves the Court for a Protective Order prohibiting a response to the questions at issue on the basis that they violate the attorney-client privilege and attorney work product protections. As of the date of this filing, the transcript of the subject deposition is not yet available, but said questions will be outlined in greater detail in the memorandum filed in support of this motion, at which time Defendant will be in receipt of the deposition transcript.

This Motion is supported by the South Carolina Rules of Civil Procedure, statutory and case law applicable hereto, a memorandum of law which will be submitted to the Court in advance of a hearing on the matter and any affidavits, exhibits, or other materials which may be presented to the Court. Defendant's counsel certifies that it communicated with opposing counsel during the subject deposition and attempted in good faith to resolve the matter contained in this motion, and that further consultation would serve no useful purpose.

s/Evan P. Williams

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May 29, 2024
Mt. Pleasant, South Carolina

*Attorneys for Defendant Adams Outdoor
Advertising Limited Partnership*

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-07-01195

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

Defendant Adams Outdoor Advertising Limited Partnership (hereinafter "Defendant" or "Adams"), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Protective Order, which was necessitated by Plaintiff Beaufort County's deposition of Defendant's Rule 30(b)(6), SCRCF, designated witness on May 22, 2024. During the deposition, Plaintiff's counsel asked questions that Defendant's counsel objected to on the basis of attorney-client privilege or attorney work product, instructed the witness not to answer on those grounds, or allowed the witness to refuse to answer on those grounds. As a result, Rule 30(j)(3), SCRCF, required that Adams file the instant motion for protective order within five (5) business days of the deposition in order to preserve its objections. To comply with the rule, and so that it did not waive its objections and subject itself to renewed deposition questioning on those topics, Adams timely filed the requisite motion.

The excerpts containing the relevant series of questions and objections and/or refusals to answer are located on the following pages and lines of the deposition transcript:

- page 92, lines 8-14;
- page 127, line 14 – page 128, line 9;
- page 153, line 17 – page 156, line 21;
- page 158, line 4 – page 161, line 5;
- page 163, line 1 – page 164, line 12;

- page 165, line 25 – page 166, line 8.
- page 205, line 20 – page 16, line 206.

See **Exhibit A** attached hereto. These questions clearly invade protections afforded to Adams. The subject matter centered on Adams' legal theories, arguments, and opinions regarding its claims and defenses, including Adams' legal interpretations of the lease at issue in the County's second claim, and South Carolina law (and, oddly enough, Michigan law)¹ regarding nonconforming uses and abrogation of local ordinances, as well as Adams' legal theories, strategies, and arguments underlying its challenges to the validity of certain regulations in Defendant's Community Development Code.

Adams' counsel conferred with the County's counsel on August 7, 2024, in an attempt to resolve this motion, asking that the County agree to withdraw its questions or stipulate that it would not reconvene the deposition. The County's counsel indicated he would discuss the matter with the County, but at the time of filing this memorandum, Adams' counsel has not received a response.

CONCLUSION

Adams filed this motion solely to preserve its attorney-client privilege and attorney work product protections, as required by Rule 30(j), SCRCF. To that end, Adams respectfully requests an order from this Court prohibiting the County from reconvening Adams' deposition and asking the questions that gave rise to this motion.

[SIGNATURE FOLLOWS]

¹ Although Defendant's counsel instructed the witness not to answer the question about Michigan's nonconforming use law because it was outside the scope of the 30(b)(6) topics, it likewise impinged on privilege and/or work product.

s/Evan P. Williams

Jeffrey S. Tibbals (S.C. Bar No. 72628)

jst@bybeetibbals.com

Evan P. Williams (S.C. Bar No. 101981)

ewilliams@bybeetibbals.com

Gaillard T. Dotterer, III (S.C. Bar No. 103620)

gdotterer@bybeetibbals.com

BYBEE & TIBBALS, LLC

880 Johnnie Dodds Blvd., Suite 2

Mt. Pleasant, SC 29464

843.881.1623

*Attorneys for Defendant Adams Outdoor
Advertising Limited Partnership*

August 9, 2024

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, South Carolina,

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-07-01195

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

TO: PLAINTIFF BEAUFORT COUNTY, SOUTH CAROLINA AND ITS ATTORNEYS OF
RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Defendant Adams Outdoor Advertising Limited Partnership ("Adams" or "Defendant"), by and through its undersigned counsel, respectfully moves this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for summary judgment in its favor against Plaintiff Beaufort County, South Carolina ("Plaintiff" or "County") as to all claims set forth in Plaintiff's Amended Complaint ("Am. Compl.") and all counterclaims set forth in Adams' Amended Answer and Counterclaims ("Countercl."). The grounds for this Motion are as follows:

1. In the instant matter, no triable issues of fact exist such that Adams must prevail as a matter of law against the County on all causes of action.
2. Adams is entitled to summary judgment on the County's first cause of action, seeking to remove and dispose of two of Adams' billboards on private property, on the following grounds:
 - a. The County's claim fails due to operation of res judicata and collateral estoppel.
 - b. The County's action violates the prohibition against double jeopardy.

- c. The doctrine of unclean hands bars the County from pursuing this claim.
 - d. The County lacks standing to bring its claim.
 - e. The County has failed to follow the predicate warning notice procedures set forth in its Community Development Code (“CDC”).
 - f. The County seeks to void permits that do not exist, and thus its claim is moot.
 - i. Alternatively, the County has failed to follow its permit revocation procedures in its CDC.
 - g. The CDC does not provide the County with a basis to seek its requested relief, and thus the claim is moot.
 - h. The County lacks jurisdiction and authority over the signs at issue.
 - i. The CDC provisions are abrogated and preempted by South Carolina regulatory and statutory law.
 - j. The County failed to make a predicate determination of degree of sign damage in accordance with Section 5.6.50 of the CDC.
3. The County’s second cause of action seeks to remove and dispose of one of Adams’ signs located on a parcel the County purchased in December 2020, with the County claiming it terminated the lease for the same. Adams is entitled to summary judgment on the County’s second cause of action on the following grounds:
- a. The County’s attempted termination of the subject lease is invalid and ineffective under the terms of said lease, as the restrictions on the property at issue prevent the County from terminating the lease.
 - b. The County’s claim is barred due to the County’s material breach(es) of the lease at issue.

c. The County failed to name necessary parties of interest to this action, meaning it should be dismissed.

4. While the existence of the County's causes of action is strictly denied, the County has waived the claims in its Amended Complaint for "attorney fees, sanctions, damages, and other monetary relief" and "an order taxing all costs" (Am. Compl. ¶ 81) because none of the foregoing were requested or even referenced in its March 18, 2025 motion for summary judgment.

5. While the existence of the County's causes of action is strictly denied, the County has not suffered any damages as a result of the same and it has no ability to seek or obtain any of the monetary relief it requests in its pleading, including, but not limited to, attorneys' fees. Without any basis for those requests, Adams is entitled to summary judgment on the same.

a. However, any damages sustained by the County, the existence of the same being expressly denied, must be offset against the rent paid by Adams under the lease at issue to the County and the County's predecessor in interest.

6. Adams is entitled to summary judgment on its first counterclaim, requesting a declaratory judgment as to the law and entity that controls requests to repair off-premises signs, based on the following grounds:

a. On facial comparison, the state regulation governing off-premises sign maintenance and repair (S.C. Code Ann. Regs. 63-350) (the "State Regulation") is more restrictive than, and therefore abrogates, the County's CDC regulations regarding the same topic (formerly CDC § 5.6.50.E, now § 5.6.50.B) (the "Maintenance Ordinance"). See Section 57-25-220 of the Highway Advertising Control Act (S.C. Code Ann. §§ 57-25-110, et seq.) ("HACA").

b. Even if examined on the merits, all of the County's remaining affirmative defenses asserted in its Reply are boilerplate and none can be established. There is no genuine issue of material fact on the County's remaining defenses, so summary judgment for Adams is proper.

WHEREFORE, no genuine dispute of material facts exists such that Adams should be awarded summary judgment on all of its counterclaims and the County's claims, with relief entered as requested in Adams' Amended Answer and Counterclaim, including an award of its attorneys' fees and costs incurred in all litigation against the County relating to the signs at issue pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, 15-77-300, and/or 15-36-10, *et seq.*, and 42 U.S.C. § 1988, with leave respectfully requested to file an affidavit and other necessary supporting information for the same within a reasonable time of this Court's ruling on the motion.

This Motion is supported by the grounds set forth herein, the pleadings, discovery, and other evidence in this case, the affidavit attached hereto as Exhibit A, the governing South Carolina Rules of Civil Procedure, statutory and common law, any memoranda in support of this Motion and exhibits, affidavits, or other materials attached thereto that will be filed prior to the hearing on the Motion, and such other matters as the Court deems appropriate. The undersigned hereby certifies and affirms, pursuant to Rule 11, SCRPC, that this dispositive motion does not require consultation prior to filing.

[Signature Follows]

Respectfully submitted,

s/Evan P. Williams

Jeffrey S. Tibbals (S.C. Bar No. 72628)

jst@bybeetibbals.com

Evan P. Williams (S.C. Bar No. 101981)

ewilliams@bybeetibbals.com

Gaillard T. Dotterer, III (S.C. Bar No. 103620)

gdotterer@bybeetibbals.com

BYBEE & TIBBALS, LLC

880 Johnnie Dodds Blvd., Suite 2

Mt. Pleasant, SC 29464

843.881.1623

*Attorneys for Defendant Adams Outdoor
Advertising Limited Partnership*

March 18, 2025

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO: 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff/Counterdefendant,	)	
	)	PLAINTIFF BEAUFORT COUNTY'S
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP,	)	
	)	
Defendant/Counterclaimant.	)	
	)	

TO: JEFFREY S. TIBBALS, EVAN P. WILLIAMS, AND GAILLARD T. DOTTERER III,
ESQUIRES, ATTORNEYS FOR THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE THAT Plaintiff Beaufort County, by and through counsel, pursuant to Rule 56(a), and Rule 56(b), SCRCF, moves the Court for summary judgment on Counts One and Two of its Amended Complaint, and for summary judgment in the County's favor on the counterclaims asserted in Defendant Adams Outdoor Advertising Limited Partnership's Amended Answer to Amended Complaint and Counterclaims. Summary judgment for the County is warranted because there is no genuine issue as to any material fact and the County is entitled to judgment as a matter of law.

The grounds for this motion are as follows:

Count One. The Beaufort County Community Development Code ("CDC") prohibits new billboards, and limits maintenance on existing billboards to "painting or refinishing the surface of the sign face or sign structure." (Compl. Ex. 1 at 1, CDC § 5.6.50(B)(2).) "Any structural or other substantive maintenance to a sign," like replacing old, rotting poles, "shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation." (*Id.*)

In April 2021, Adams ignored these provisions and instructions from County staff, and instead rebuilt two billboards near 3589 Trask Parkway. Adams drove brand *new* poles into the ground in *new* holes in front of where the billboards had stood for decades. Adams took the billboard faces off of their rotting poles and mounted the faces on those new poles. The County Administrator saw this work in progress and told Adams to stop, but Adams continued. By law, both billboards are deemed abandoned and shall be removed at Adams's expense. On Count One, the County seeks a declaration authorizing it to remove and dispose of the two billboards near 3589 Trask Parkway that Adams rebuilt in violation of the CDC, as well as an injunction prohibiting Adams from impeding the removal and disposal and requiring Adams to pay the actual costs and expenses of the removal and disposal. *See Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 866 S.E.2d 562 (2021) (holding a local government is entitled to injunctive relief if it shows an ordinance and a violation of that ordinance).

Summary judgment on this count is warranted.

Count Two. Adams uses a billboard located on County-owned property that was allowed there by a previous land owner on a year-to-year lease. The County notified Adams in writing on April 1, 2021 that the lease would be terminated as of October 1 that year. Adams had 30 days to remove the billboard, but it has refused to do so for years, claiming that it has an indefinite right of renewal. Adams is wrong. *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-03, 447 S.E.2d 199 (1994) ("Plainly, the contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs* [*v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)], this contract can only be construed as terminable at will. Where the contract is terminable at will, reasonable notice from either party is all that is required to terminate the agreement.").

On Count Two, the County seeks: a declaration that the lease terminated on October 1, 2021, that the sign materials and displays that Adams left on the County's land no longer belong to Adams, and that the County may remove and dispose of the sign materials and displays in the County's sole discretion; and an injunction prohibiting Adams from impeding the County's removal and disposal of the sign. The County is entitled to this relief as a matter of law.

Adams's Defenses and Counterclaims. Adams's defenses and counterclaims fail as a matter of law, and the County is entitled to summary judgment. Adams asserted 18 affirmative defenses, many of which are boilerplate and none that Adams can establish. *Cole v. S.C. Elec. & Gas, Inc.*, 3355 S.C. 183, 195, 584 S.E.2d 405 (Ct. App. 2003) ("It is well established that a party pleading an affirmative defense has the burden of proving it."). There is no genuine issue of material fact on Adams's defenses, so summary judgment for the County is proper.

Adams also asserts four counterclaims. The first two counterclaims contend that the South Carolina Highway Advertising Control Act ("HACA") and related SCDOT regulations forbid the County from enforcing local billboard repair authorization requirements in CDC § 5.6.50(B)(4)(c). Adams's claims are barred now because the magistrate court rejected its preemption arguments in 2021, and the ruling on that issue was undisturbed on review. Adams's counterclaims one and two also fail for lack of standing. Adams lodges its preemption claims against CDC § 5.6.50.(B)(4)(c)—which requires authorization from the County for a billboard to be repaired—but Adams does not challenge CDC § 5.6.50(B)(2), the provision that authorizes the County to *remove* the Count One billboards. In any event, the HACA does not abrogate a local ordinance that is more restrictive than state law, S.C. Code § 57-25-220, and the County's billboard regulations are plainly more restrictive, including because they prohibit what Adams did in replacing the structural supports of their nonconforming billboards.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO: 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff/Counterdefendant,	)	PLAINTIFF BEAUFORT COUNTY'S
	)	DESIGNATION OF EXHIBITS
v.	)	SUPPORTING COUNTY'S SUMMARY
	)	JUDGMENT MOTION AND OPPOSING
ADAMS OUTDOOR ADVERTISING	)	ADAMS OUTDOOR'S SUMMARY
LIMITED PARTNERSHIP,	)	JUDGMENT MOTION
	)	
Defendant/Counterclaimant.	)	
	)	

Plaintiff Beaufort County hereby serves Exhibits 20 through 28, attached hereto, in support of its summary judgment motion and in opposition to Adams Outdoor's summary judgment motion.

The County designates and relies on Exhibits 1 through 19 (served with amended complaint filed August 31, 2022) and Exhibits 20 through 28 (served May 30, 2025) in support of its motion and in opposition to Adams Outdoor's motion, as follows:

- Ex. 1, Community Development Code ("CDC") § 5.6.50
- Ex. 2, 740766 Application and pictures
- Ex. 3, 740884 Application and pictures
- Ex. 4, April 6, 2021 Hodges & Antonacci correspondence
- Ex. 5, April 7, 2021 Hodges & Austin correspondence
- Ex. 6, July 14, 2021 Magistrate Court Trial Transcript
- Ex. 7, Photos for Sign 74065/70091 (on East side of Trask Pkwy)
- Ex. 8, Photos for Sign 7036/74062 (on West side of Trask Pkwy)
- Ex. 9, April 10 & 11, 2021 Greenway & Zecchino correspondence
- Ex. 10, Stop work order, April 12, 2021
- Ex. 11, Ordinance Summonses 2434, 2436, April 12, 2021
- Ex. 12 CDC § 5.6.50 (version in effect in April 2021)

- Ex. 13, Magistrate Court's Verdict, July 23, 2021
- Ex. 14, Case No. 2021-CP-01507, Order on Appeal, April 22, 2022
- Ex. 15, Peterson Sign Lease, November 14, 1989
- Ex. 16, April 1, 2021 Letter, Greenway to Adams / Liz Mitchum, Terminating Sign Lease
- Ex. 17, September 29, 2021 Letter from Adams / Richard Zecchino to Greenway re: Lease
- Ex. 18, December 1, 2021 Letter Greenway to Adams / Richard Zecchino re: Lease
- Ex. 19, CDC Division 9.5
- Ex. 20, Title to Real Estate (Port Royal Island Battlefield), February 20, 2021
- Ex. 21, Adams's Responses to First Requests for Admission, January 11, 2023
- Ex. 22, Certified CDC Excerpts (§§ 5.6.10 et seq. re: Sign Standards; Article 9: Enforcement)
- Ex. 23, Certified public documents re: enforcement against 3492 Trask Parkway billboard
- Ex. 24, Deposition of Elizabeth Mitchum, November 29, 2023
- Ex. 25, March 1, 2021 Email with Rebuild Quote (Ex. 29 in Mitchum Deposition)
- Ex. 26, Deposition of Richard Armitage, November 29, 2023
- Ex. 27, Deposition of Adams Outdoor Advertising Limited Partnership, May 22, 2024 (Richard Joseph Zecchino, Jr., 30(b)(6) Designee)
- Ex. 28, City of Beaufort Ordinance 2025/09 re: Annexation of 3492 Trask Parkway

Date: May 30, 2025

Respectfully submitted,

/s/ Brian Hulbert

Brian Hulbert (SC BAR #68537)
Deputy County Attorney of Beaufort County
102 Industrial Village, Bldg. 2
P.O. Drawer 1228
Beaufort, South Carolina 29906
(843) 255-2054
(843) 255-9414 (fax)
Email: Brian.hulbert@bcgov.net

Scott D. Bergthold, Admitted Pro Hac Vice
Law Office of Scott D. Bergthold, P.L.L.C.
2290 Ogletree Ave., Suite 106
Chattanooga, TN 37421
(423) 899-3025 Phone
sbergthold@sdblawnfirm.com

*Attorneys for Plaintiff/Counterdefendant
Beaufort County*

***Via Overnight Mail***

September 29, 2021

Mr. Eric Greenway
Office of the Interim County Administrator
Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road
Post Office Drawer 1228
Beaufort, SC 29901-1228

Re: Billboard Lease on Property Identified as Parcel #R100-020-000-0047-0000

Dear Mr. Greenway:

I am a Vice President and General Counsel for Adams Outdoor Advertising ("Adams"). As you know, a predecessor in title to the County, Mr. Paul L. Trask, entered into a Lease Agreement with a predecessor of Adams (i.e., Peterson Outdoor) on October 1, 1989 (the "Lease"). I am in receipt of your letter dated April 1, 2021 regarding the Lease.

The County, as Assignee of the Lease, and the current "lessor" under the Lease, has no right to terminate the Lease at this time. I direct your attention to the following language in the Lease, which reads:

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written termination **by Lessee to Lessor**, served not less than thirty (30) days before the end of such term or additional year.

Pursuant to the clear and unambiguous bolded and underlined language above, the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams. And, as you might expect, Adams has no desire or intention to terminate the Lease at this time. Accordingly, as of October 1, 2021, the Lease has automatically extended for another year on the same terms, and will continue doing so into the future unless and until Adams—as the Lessee—decides to provide notice of termination.



Please be guided accordingly. If you have any questions regarding the above, please feel free to contact me directly.

Regards,

A handwritten signature in black ink, appearing to read 'RJZ', is positioned above the typed name and title.

Richard J. Zecchino
Vice President and General Counsel
Adams Outdoor Advertising
3801 Capital City Blvd.
Lansing, MI 48906

cc: Elizabeth Mitchum, General Manager
Jeff Tibbals, Esq.



CITY Beaufort
COUNTY Beaufort
ZONING _____

Post Office Box 738, US 601 North
Orangeburg, SC 29115 / (803) 634-2449

SIGN LEASE

UNIT NO. 40082
UNIT NO. 40083
LEASE NO. 40133

THIS AGREEMENT made and entered into by and between ** Mr. L. Paul Truck **
hereinafter referred to as "Lessor", and PETERSON OUTDOOR ADVERTISING CORPORATION of South Carolina, hereinafter referred to as "Lessee",

WITNESSETH: THAT

Lessor does herewith lease to Lessee for a term of (3) Three years years beginning October 1, 1989 and expiring
October 1, 1992, the premises known and described as follows:

Hwy 21 n/o Beaufort, 2.75 mi n/o S.C. Hwy 116.

The consideration for the lease contract is *** (\$1500.00) Fifteen hundred dollars ***

*** see addendum for first yr. paymt. per year, rental, payable by Lessee paid annually in advance

The property is leased for the purpose of construction, operation and maintenance of an outdoor advertising display. Lessee is herewith granted the sole and exclusive right to display advertising copy on the premises. Lessee is granted the right to ingress and egress over the said premises for the purpose of constructing, maintaining, operating, removing or replacing said display.

An Easement is hereby granted to the Lessee and/or the electric utility company to establish electrical service, if required, to this location.

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

Should the view of said space become obstructed, or should Lessee's enjoyment for display advertising purposes be prevented or impaired in any way or by any means or if such activity becomes unprofitable within the sole judgement of Lessee, then Lessee shall have the right to cancel this agreement by giving Lessor sixty (60) days advance written notice. In such event Lessor agrees to refund to Lessee the unearned rent paid in advance.

If at any time the erection, placement, posting, painting, illumination or maintenance of its signs on the demised premises is prohibited by any law, ordinance or authority, or building permits are either not obtained or revoked, or if such activity becomes unprofitable within the sole judgement of Lessee, Lessee may terminate this lease by giving Lessor thirty (30) days advance notice of such termination. Lessor shall thereupon return to Lessee any rent paid in advance for the unexpired term.

Lessee does herewith indemnify and agree to hold Lessor harmless against all claims or damages to person or property by reason of accidents resulting from the negligence or willful acts of Lessee's agents, employees or workmen in the construction, maintenance, repair or removal of its signs.

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

In the event the property leased hereunder shall become the subject matter of condemnation proceedings instituted by any governmental authority, lessee shall be entitled to be compensated, from the total condemnation proceeds paid by the governmental authority, for the loss of Lessee's sign, and the loss of advertising income to Lessee resulting from the condemnation of the property leased hereunder; Lessor shall immediately notify Lessee of the institution of any condemnation proceedings upon the property leased hereunder. Lessor shall have no authority whatsoever to release the governmental authority from the payment of condemnation proceeds to lessee for losses sustained by Lessee as a result of the institution of said condemnation proceedings.

This lease is assignable by Lessor or Lessee and shall be binding upon the heirs, successors and assigns of both Lessor and Lessee.

Lessee agrees to pay promptly the rentals provided herein, Lessor warrants title and agrees that the right to cancel as provided above shall not be exercised for any other display advertising purposes. Lessor warrants that he as owner, agent or tenant has the full right and authority to enter into this agreement.

Lessor empowers Lessee with full authority to act as agent for Lessor in all matters necessary to the erection of said advertising display.

***\$3000.00 for first year 10/1/89 to

10/1/90

\$1500.00 for each year thereafter.

PETERSON OUTDOOR ADVERTISING CORPORATION

Signature L. Paul Truck

Lessor Mr. L. Paul Truck

Address Box 160

Burton, S.C. 29903

Telephone (803) 524-0265

This 11/14 day of 1989

Witness _____

Witness _____

Notary _____

By _____ Lessee

Witness _____

Witness _____

Notary _____

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE COUNTY ADMINISTRATOR
ADMINISTRATION BUILDING
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
100 RIBAUT ROAD

CHERYL H. HARRIS
EXECUTIVE ASSISTANT

POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2023
FAX: (843) 255-9403
www.beaufortcountysc.gov

ERIC L. GREENWAY
COUNTY ADMINISTRATOR
WHITNEY RICHLAND
DEPUTY COUNTY ADMINISTRATOR

December 1, 2021

Richard J. Zecchino
Vice President and General Counsel
Adams Outdoor Advertising
3801 Capital City Boulevard
Lansing, MI 48906

RE: Billboard Lease on Property Identified as Parcel # R100-020-000-0047-0000

Dear Mr. Zecchino:

By letter dated April 1, 2021, Beaufort County gave Adams Outdoor Advertising written notice that the above-referenced lease would be terminated as of October 1, 2021, and that Adams would have 30 days thereafter to remove the billboard from the property.

Adams has failed to comply with the County's April 1, 2021 notice. Instead, you responded on September 29, 2021 by sending a check for \$750 and a letter asserting that the lease would automatically renew on October 1 and would "continue doing so into the future unless and until Adams" decides otherwise.

Your claim that Adams has a unilateral perpetual right of renewal under the lease is wrong. *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-03 (1994) ("[T]he contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs, supra*, this contract can only be construed as terminable at will. Where the contract is terminable at will, reasonable notice from either party is all that is required to terminate the contract.").

Because the County terminated the lease as of October 1, 2021, the County is returning to you the \$750 check. The continued presence of Adams's billboard on County property is unlawful.

Sincerely,



Eric L. Greenway
County Administrator

ELG:bw

Enclosure (returned check)



BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3953 Pgs 1605-1609
FILE NUM 2020078101
12/30/2020 01:45:29 PM
REC'D BY oevans RCPT# 101048
RECORDING FEES \$0.00

ADD DMP Record 1/26/2021 03:40:51 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R100 020 000 0165 0000 00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that MICHAEL I. KLING, for and in consideration of the sum of TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$245,000.00), to him in hand paid by BEAUFORT COUNTY, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto BEAUFORT COUNTY, its successors and assigns, forever, the real property described on Attachment A hereto.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular, all my right, title and interest in the Premises before mentioned unto, BEAUFORT COUNTY, its successors and assigns, forever.

The Grantor does hereby bind himself, his heirs and assigns, forever, to warrant and forever defend all and singular the Premises unto BEAUFORT COUNTY, its successors and assigns, forever, and against any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

File 2728.0015

Page 1 of 3

Betty Wand 12/30/20
Deputy County Attorney



WITNESS my Hand and Seal on October 14, 2020.

Maryann McCracken Mikell)
 Witness 1 - Signature)

MARYANN McCRACKEN MIKELL)
 Witness 1 - Printed Name)

J. Thomas Mikell)
 Witness 2 - Signature)

Jr. THOMAS MIKELL)
 Witness 2 - Printed Name)

Michael I. Kling
 Michael I. Kling

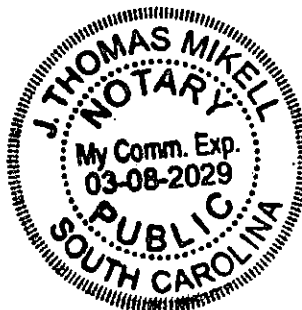
STATE OF SOUTH CAROLINA)

ACKNOWLEDGEMENT

COUNTY OF BEAUFORT)

I, J. Thomas Mikell a Notary Public for South Carolina, do hereby certify that Michael I. Kling personally appeared before me this day and acknowledged that he executed the foregoing Title to Real Estate.

WITNESS my Hand and Official Seal on October 14, 2020.



J. Thomas Mikell (SEAL)
 Print Name: J. Thomas Mikell

Notary Public for South Carolina

My Commission Expires: March 8, 2029

This deed was prepared without benefit of a title examination nor opinion in the Law Office of J. Thomas Mikell, P.O. Box 1727, Beaufort, SC 29901 File: 2728.0015

Address of Grantee: P.O. Box 1228
 Beaufort, SC 29901

ATTACHMENT A
PROPERTY DESCRIPTION

ALL that parcel of real property situate on Port Royal Island in Beaufort County, South Carolina containing 3.73 acres which is described on a plat prepared by David S. Youmans, SCRLS, on July 29, 2019 and revised on October 7, 2020 which plat is recorded in Plat Book 155 at Page 114 of the Office of the Register of Deeds of Beaufort County, South Carolina.

This being a portion of the same real property conveyed to Michael I. Kling in Record Book 565 at Page 920.

Tax Map Number: R100-020-000-0047-0000.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AFFIDAVIT

PESONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is known as:

ALL that certain, piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina and being 3.73 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY".

TMP: 100-020-000-0047-0000

3. Check one of the following: The deed is
 - (a)_____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X_____ exempt from the deed recording fee because (see Information section of affidavit): 12-24-40(sub-section 2)
 - (d) Exempt from Hilton Head Transfer fee: Under § 4-5-80(3) *Code of the Town of Hilton Head Island, South Carolina* (1983)

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

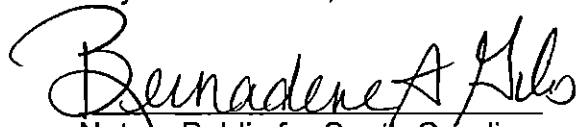
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a)_____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b)_____ The fee is computed on the fair market value of the realty which is _____

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes___ or No___ to the following: A lien or encumbrance existed on The land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes,"
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: _____
 - (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6 (b) from Line 6(a) and place result here: _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____
8. As required by **Code Section 12-24-70**, I state that I am a responsible Person who was connected with the transaction as: attorney for Beaufort County.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Thomas A. Bendle, Jr.,
Attorney for Beaufort County

SWORN to before me this 30th
Day of December, 2020


Bernadene A. Hils
Notary Public for South Carolina
My Commission Expires: 3/8/2029

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

BEAUFORT COUNTY, SOUTH CAROLINA,

Plaintiff,

vs. CASE NO. 2022-CP-07-01195

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP,

ELIZABETH "LIZ" MITCHUM, AND REX ALLEN "BO"

HODGES, JR.,

Defendants.

ADAMS OUTDOOR ADVERTISING LIMITED
30(B)(6) VTC PARTNERSHIP

DEPOSITION OF: BY: RICHARD JOSEPH ZECCHINO, JR.

DATE: May 22, 2024

TIME: 9:46 AM

LOCATION: BYBEE & TIBBALS
880 Johnnie Dodds Boulevard
Suite 2
Mount Pleasant, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MICHAEL DAVID ROBERTS,
Court Reporter



Page 2

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 BEAUFORT COUNTY, SOUTH CAROLINA:

(Appearing by VTC)

4 LAW OFFICE OF SCOTT D. BERGTHOLD

BY: SCOTT D. BERGTHOLD

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Suite 106

6 Chattanooga, TN 37421

(423) 899-3025

7 sbergthold@sdblawfirm.com

8 AND

9 (Appearing by VTC)

OFFICE OF THE BEAUFORT COUNTY ATTORNEY

10 BY: BRITTANY L. WARD

11 102 Industrial Village

Building 2

Beaufort, SC 29906

12 (843) 225-2059

bward@bcgov.net

13 ATTORNEYS FOR DEFENDANTS

14 ADAMS OUTDOOR ADVERTISING LIMITED

PARTNERSHIP, ELIZABETH "LIZ" MITCHUM,

15 AND REX ALLEN "BO" HODGES, JR.:

16 BYBEE & TIBBALS

BY: EVAN P. WILLIAMS

17 880 Johnnie Dodds Boulevard

Suite 2

18 Mount Pleasant, SC 29464

(843) 881-1623

19 ewilliams@bybeetibbals.com

20
21
22
23 (INDEX AT REAR OF TRANSCRIPT)

1 your position?

2 A. That is -- that is what I stated in my
3 letter, yes.

4 Q. Okay. If I say that that position is
5 properly characterized as asserting a perpetual
6 right of renewal to the lease, do you have any
7 reason to disagree with that characterization?

8 MR. WILLIAMS: Objection.

9 THE WITNESS: I would say that's a term
10 of art under South Carolina law, and my answer to
11 that would invade the attorney-client privilege.

12 BY MR. BERGTHOLD:

13 Q. Well, if you get to do something as
14 long as you want to do it, wouldn't that be a right
15 that is characterized as perpetual?

16 MR. WILLIAMS: Yeah. I'm going to
17 object on privilege and work product grounds. I
18 mean, you know, you've made the same objections
19 during the county's 30(b)(6) depositions. You're
20 treading on legal conclusions and legal analysis
21 here.

22 MR. BERGTHOLD: Well, I think count two
23 is a purely legal question.

24 MR. WILLIAMS: Well, then there we go.
25 It's just about interpreting the lease, isn't it?

1 Q. But what's pictured at the bottom
2 paragraph of page 17 is what you wrote?

3 A. Correct.

4 Q. Okay. So on page 1 of 17, yeah. So
5 that is saying that the lease will automatically
6 extend year by year and continue doing so in the
7 future unless and until Adams decides to provide
8 notice of termination.

9 Does that paragraph assert a perpetual
10 right of renewal of the lease?

11 MR. WILLIAMS: Objection.

12 THE WITNESS: That was -- what was in
13 that letter as of that time was my position at the
14 time. After conferring with our counsel, our legal
15 position has certainly evolved. And so what I
16 wrote then was what I meant.

17 BY MR. BERGTHOLD:

18 Q. Okay. And do you -- does Adams hold a
19 different position now?

20 A. My counsel is going to make legal
21 arguments, yes.

22 Q. How has your position changed?

23 A. I --

24 MR. WILLIAMS: Objection.

25 THE WITNESS: Yeah.

1 MR. WILLIAMS: Privileged.

2 MR. BERGTHOLD: So we're here on a
3 30(b)(6) deposition, and number 10 is matters
4 relating to the lease including the rights and
5 obligations thereunder and Adams' refusal to
6 acknowledge the county's termination of the lease.

7 MR. WILLIAMS: Correct. That's what it
8 says.

9 MR. BERGTHOLD: And you're saying
10 that -- you're instructing the witness to not
11 answer the question to state its legal position,
12 its position, you know, its rights and obligations
13 under the lease, and/or Adams' view of the rights
14 and obligations of the lease, because doing so
15 would invade attorney-client privilege?

16 MR. WILLIAMS: Well, I think there's a
17 difference between the rights and obligations as
18 set forth in the lease. That's just reading the
19 lease.

20 But, yeah, I'm instructing him not to
21 answer your question because it involves
22 attorney-client privileged communications, attorney
23 work product about what our beliefs and strategies
24 and interpretations of the law are, and you're not
25 entitled to ask about that.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

BEAUFORT COUNTY, South Carolina,

Civil Action No. 2022-CP-07-01195

Plaintiff,

vs.

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Defendant.

Defendant Adams Outdoor Advertising Limited Partnership (“Defendant” or “Adams”), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment, requesting, pursuant to Rule 56, SCRCF, that summary judgment be entered in its favor on all claims alleged by Plaintiff Beaufort County, South Carolina (“Plaintiff” or the “County”), as well as all of Adams’ counterclaims.

INTRODUCTION

Hoping to resuscitate its dead claims concerning state-approved sign repairs that Adams prevailed on in April 2022, the County initiated this action in June of 2022 and filed its Amended Complaint on August 31, 2022. Its first claim focuses on alleged County code violations, for which this Court, on appeal in the previous action, found Adams not guilty. The County’s second claim seeks to remove one of Adams’ signs located on County property, arguing it has an implied right to terminate the subject lease. Yet the County, in purchasing the property, contracted away its contingent termination right expressly provided for in the lease.

Adams’ counterclaims challenge the validity of the County’s regulations, acts, and omissions on constitutional grounds and as violations of state law, seeking declaratory, injunctive, and monetary relief. On March 18, 2025, the parties filed cross-motions for summary judgment

as to all pending claims, although the County's failed to explain or even identify its alleged affirmative defenses.

FACTUAL BACKGROUND

For convenience to the Court, the facts underlying the separate causes of action will be discussed in the corresponding argument section. As an initial point of clarification regarding the County's Community Development Code ("CDC") provisions at issue, CDC Division 5.6, entitled "Sign Standards" (the "Sign Code"), contains its sign regulations. On July 26, 2021, the County amended part of its CDC, including the off-premises sign maintenance regulations, mainly at issue here. The text of those provisions was not altered, but they were renumbered from "Former Sign Code" Section 5.6.50.E. to "Current Sign Code" Section 5.6.50.B. *See* County Ex. 22 pp. 6-7 (Current Sign Code § 5.6.50);¹ **Exhibit 1** attached hereto (Former Sign Code § 5.6.50).

STANDARD OF REVIEW

Adams' Motion should be granted if "there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citing Rule 56(c), SCRCP). "[T]he party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999).² In turn, to survive a motion for summary judgment, the opposing party must present sufficient evidence that "establishe[s] a 'genuine issue [of] material fact[.]'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 460-61, 892 S.E.2d 297, 299 (2023) (first alteration added). The *Kitchen Planners* Court clarified that the "mere scintilla" of evidence standard does not apply to summary judgment motions in South

¹ "County Ex. ____" refers to the exhibits that the County designated in support of its motion for summary judgment ("County MSJ") and in opposition to Adams' motion, via a May 30, 2025 filing (which became publicly available, and Adams first received, on June 3, 2025).

² Unless otherwise stated, all internal citations are omitted and all emphases are added.

Carolina, for both the moving and nonmoving parties. *Id.* at 463-64, 892 S.E.2d at 301. “[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014). In the instant matter, no triable issues of fact exist such that Adams must prevail as a matter of law against the County on all causes of action.

ARGUMENT

The evidence in this case, including the deposition testimony of the County and its former Administrator, as well as the relevant state statutory, regulatory, and common law, contravene the County’s claims seeking to remove Adams’ signs, which fail as a matter of law. Moreover, Adams must prevail on its facial challenges to the constitutionality and legal validity of the County’s regulations based on the text of such regulations and the preemptive state law. Finally, the record clearly establishes that the County has acted arbitrarily, capriciously, and/or with animus in attempting to regulate Adams’ signs, such that Adams is entitled prevail on its third and fourth claims, asserting selective enforcement and an “as applied” constitutional challenge.

I. THE COUNTY CONTRACTED AWAY ITS ABILITY TO TERMINATE THE SUBJECT LEASE WITH ADAMS.

A. Factual Background.

The County’s second claim involves a parcel that it purchased in December 2020. Am. Compl. ¶49. Adams owns and operates a billboard on the property pursuant to a pre-existing lease agreement, which, pursuant to its terms, is binding on the County as a successor to the lessor. *See Exhibit 2* attached hereto (the “Lease”). The leased property (hereinafter the “Kling Parcel”) was formerly a 3.73-acre parcel adjacent to Trask Pkwy that previously bore TMS No. R100-020-000-0047-000, which, apart from Adams’ billboard, remains vacant. *See Exhibit 3* attached hereto, Dep. Tr. of County’s Rule 30(b)(6), Designee, Robert Merchant (“County-Merchant Dep.”) at

20:17 – 23:22;³ **Exhibit 5** attached hereto (County Dep. Ex. 4) at p. 8. After the County’s purchase, the Kling Parcel was combined with adjacent tracts to create a 13.88-acre parcel, known as the Port Royal Island Battlefield. See **Exhibit 6** attached hereto, County’s April 1, 2021 letter; Ex. 4.

With funding from the Rural and Critical Land Preservation Program, South Carolina Battleground Preservation Trust (“Battleground Trust”), and U.S. Department of the Navy, the County acquired the Kling Parcel and surrounding land to preserve it as a historical site, a former Revolutionary War battlefield, and to protect the airspace due to its close proximity to the Marine Corps Air Station Beaufort. See Ex. 5 pp. 1, 5, 9-10; **Exhibit 7** attached hereto (County Dep. Ex. 7); **Exhibit 8** attached hereto, transcript of reconvened deposition of Eric Greenway, former County Administrator (“Greenway Tr.”), at 24:12 – 25:25.⁴ A few months after taking title to the Kling Parcel, the County attempted to terminate the Lease, via a letter from Mr. Greenway to Liz Mitchum (now Liz Ware). See Ex. 6. Although the letter was not addressed to and did not contain the word Adams, it responded, advising that the County did not have a right to terminate the Lease and thus, Adams’ sign would remain on the subject property. Am. Compl. Ex. 17.

B. The County Waived and Is Estopped from Attempting to Exercise Its Ability to Terminate the Lease.

The County seeks a declaratory judgment and injunction allowing it to remove Adams’ sign based on the attempted Lease termination. Am. Compl. ¶¶ 73-75. The County alleges that the Lease only provides the lessee with a right of termination, and therefore, because a lease is purportedly required to give both parties such a right, the County has an *implied* right to terminate

³ Discussing therein **Exhibit 4** attached hereto, Consolidation Plat recorded Dec. 16, 2020, in Book 155, Page 114. Unless otherwise stated, references herein to recorded documents are to those recorded with the Register of Deeds Office for Beaufort County, South Carolina.

⁴ Pursuant to the October 24, 2024 Order entered in this case regarding the reconvened deposition of Mr. Greenway, portions of the transcript filed herewith are being filed under seal, and references to the same herein are being redacted in the copy of this memorandum that is publicly filed.

the Lease in advance of the annual renewal term. Am. Compl. ¶¶ 57-58; *see also* County-Merchant Dep. at 59:23 – 62:20; Aug. 13, 2024 Hearing Tr. (*infra* Ex. 16) at 13:18 – 14:12. But the County’s argument is entirely misplaced and irrelevant — the Lease **does** give the County, the lessor under the Lease, a right to terminate the agreement. In relevant part, the Lease provides:

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor’s direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent.

Lease (Ex. 2), fifth clause. Thus, the County’s argument that it must be provided with and has an *implied* right of termination fails — it cannot have an implied right because the lease provides it with an *express* right of termination.

The bigger issue for the County, though, is that in exchange for the funds to purchase the Kling Parcel and other battleground properties, the County encumbered them with conservation and restrictive easements, which prohibit it from erecting any improvements thereon, forever barring its ability to cancel the Lease. The perpetual restrictive easement was conveyed to the United States of America, by and through the Department of the Navy, recorded December 30, 2020, in Book 3953, at Page 1610. *See* **Exhibit 9** attached hereto (the “Restrictive Easement”). The perpetual conservation easement was conveyed to the Battleground Trust, wherein ***the County agreed to preserve the property “as is,” and to not make any material changes or alterations to the topography of the property.*** *See* **Exhibit 10** attached hereto (the “Conservation Easement”), recorded Jan. 13, 2021, in Book 3958, Page 2410; *see also* County-Merchant Dep. at 46:6 – 49:20.

The Conservation Easement specifically prohibits the County from constructing buildings on the Kling Parcel. *See* Ex. 10 at ¶ 4(B), (C), (G). Pursuant to the Preservation Plan, which is attached to and formed the center of the Conservation Easement, **the County agreed that there**

would be “no structures, temporary or permanent, placed or constructed upon the [Kling Parcel]...” Ex. 10 at Exhibit B.⁵

Prior to purchasing the battlefield property, including the Kling Parcel, and encumbering the same with the Restrictive and Conservation Easements, the County was fully aware of the existence of Adams’ billboard on the Kling Parcel, as well as its other signs on adjacent parcels that were combined to create the larger battlefield parcel. *See, e.g.*, County’s deed recorded Dec. 30, 2020, in Book 3953, Page 1605 (County Ex. 20 p. 3) (property description referencing the Consolidation Plat (Ex. 4)), which depicts Adams’ sign on the Kling parcel); Greenway Tr. (Ex. 8) at 30:15-18 (“[REDACTED]”); *id.* at 26:10–27:24; County-Merchant Tr. at 29:24–30:15.

Almost a year before attempting to terminate the Lease, which the lessor can only terminate if construction of a building is initiated, County Council approved execution of the Restrictive and Conservation Easements. *See* Ex. 7, County Ordinance No. 2020/12 (County Dep. Ex. 7); *see also* County-Merchant Dep. at 39:3-21. And months before it breached the Lease by attempting to terminate the same, the easements were publicly recorded. These agreements the County entered into prohibit it from constructing a building on the leased property, the Kling Parcel, meaning the County willingly and knowingly contracted away its ability to terminate the Lease. Its second claim, seeking a declaration it terminated the Lease and is entitled to remove Adams’ billboard as a result, fails as a matter of law.

⁵ In addition, the Conservation Easement specifies that the County may only deviate from the Preservation Plan with permission from the Battleground Trust and State Historic Preservation Office (“SHPO”). Ex. 10 at ¶ 3.(A). Even though the County “agree[d] to preserve the [Kling Parcel] ‘as is[,]’” it has never notified the Battleground Trust or SHPO of its attempts to materially alter the property by seeking to remove Adams’ sign. County-Merchant Dep. (Ex. 3) at 52:7-10.

As applied to and against Adams, the Maintenance Ordinance and Article 9 are unconstitutionally vague and ambiguous, and impinge on free speech, due process, and equal protection freedoms and rights guaranteed by the United States and South Carolina Constitutions. The CDC provisions at issue vest unbridled discretion in a County employee to interpret and apply the same, without adequate (or any) standards to guide the employee's decision, and the evidence shows that the usual course of conduct is for said employees to make such decisions based on subjective, personal opinions. *See supra* Argument § V; Ex. 18 pp. 3-4 no. 38 (discussed *supra* pp. 40-41); County-Ogden Dep. at 34:14-22. The CDC and the acts and omissions of the County, and its agents and officials, thereunder, constitute policies, customs, and/or practices of the County.

The Maintenance Ordinance specifies that the Director alone must decide if a billboard is more than fifty percent damaged, without any standards or criteria whatsoever for determining the same. The County testified that it does not comply with the Maintenance Ordinance's provisions regarding the review of and response to and request for repair approval (to the extent one is needed), and that Adams was subjected to an unusual process when it gave courtesy notice of the repair work. And, as established herein, the County's discriminatory, prejudicial treatment of Adams under Article 9, including the County's continuing choice to willfully violate the CDC's mandatory notice and other provisions, demonstrates that the County uses unstructured, unlimited, and/or unbridled discretion in interpreting and applying those provisions.

Further evidencing the County's prejudicial and hostile treatment of Adams is that the County Administrator, despite repeatedly telling other County officials and staff members to leave Adams' sign on the County's property alone, was politically pressured and influenced to include the County's second claim in this lawsuit, attempting to remove that sign.

[REDACTED]

[REDACTED]

[REDACTED]

Greenway Tr. at 28:2-14 (cleaned up);¹⁴ *see also id.* at 33:7-11 (“[REDACTED]

[REDACTED]

[REDACTED]”). Providing background on the County’s purpose for purchasing the battlefield parcels, the former County Administrator testified that the County’s attempts to remove Adams’ sign do not relate to and do not further that purpose.

[REDACTED]

Id. at 26:8-9, 29:12-14; *see also* **Exhibit 40** attached hereto at p. 1 (County Dep. Ex. 6), March 9, 2020 emails between the County Council Chairman and a Councilmember.

[REDACTED]

[REDACTED]

[REDACTED]

Greenway Tr. at 36:20 – 37:25; *see also id.* at 30:10-13 (“[REDACTED]

[REDACTED]”);

¹⁴ Adams owns and operates two other billboards on tracts that were in proximity to the Kling Parcel which were consolidated to form the larger battlefield parcel. *See* Exs. 4, 6.

see also County-Merchant Dep. (Ex. 3) at 56:18-25.

The County cannot show that its arbitrary, disparate treatment of Adams bears a rational relationship to any legitimate government interest. As applied by the County with respect to and against Adams, the CDC's maintenance Ordinance and Article 9 impinges on Adams' constitutional freedoms and civil and property rights.

CONCLUSION

For the grounds and reasons set forth herein and in its memorandum opposing the County's summary judgment motion, filed concurrently herewith, Adams requests that summary judgment be entered in its favor as to all claims asserted in this action, that the County's motion for summary judgment be denied in full, and that Adams be granted fifteen (15) days' leave to submit an accounting and affidavit of its attorneys' fees and costs to be paid by the County, pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, 15-77-300, 15-36-10, *et seq.*, and/or 42 U.S.C. § 1988.

Respectfully submitted,

s/Evan P. Williams
 Jeffrey S. Tibbals (S.C. Bar No. 72628)
 jst@bybeetibbals.com
 Evan P. Williams (S.C. Bar No. 101981)
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 843.881.1623

*Attorneys for Defendant Adams Outdoor
 Advertising Limited Partnership*

June 6, 2025
 Mt. Pleasant, South Carolina

Exhibit 2

Lease Agreement

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas



CITY Beaufort
 COUNTY Beaufort
 ZONING _____

Post Office Box 738, US 601 North
 Orangeburg, SC 29115 / (803)534-2449

UNIT NO. 40082
 UNIT NO. 40083
 LEASE NO. 40133

SIGN LEASE

THIS AGREEMENT made and entered into by and between ** Mr. L. Paul Trask ***
 hereinafter referred to as "Lessor", and PETERSON OUTDOOR ADVERTISING CORPORATION of South Carolina, hereinafter referred to as "Lessee"

WITNESSETH: THAT

Lessor does herewith lease to Lessee for a term of (3) Three years years beginning October 1, 1989 and expiring October 1, 1992, the premises known and described as follows:

Rwy 21 n/o Beaufort, 2.75 mi n/o S.C. Hwy 116.

The consideration for the lease contract is ~~\$1000~~ (\$1500.00) Fifteen hundred dollars ***

**see addendum for first yr. paymt. per year, rental, payable by Lessee paid annually in advance

The property is leased for the purpose of construction, operation and maintenance of an outdoor advertising display. Lessee is herewith granted the sole and exclusive right to display advertising copy on the premises. Lessee is granted the right to ingress and egress over the said premises for the terms hereof for the purpose of constructing, maintaining, operating, removing or replacing said display.

An Easement is hereby granted to the Lessee and/or the electric utility company to establish electrical service, if required, to this location.

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

Should the view of said space become obstructed, or should Lessee's enjoyment for display advertising purposes be prevented or impaired in any way or by any means or if such activity becomes unprofitable within the sole judgement of Lessee, then Lessee shall have the right to cancel this agreement by giving Lessor sixty (60) days advance written notice. In such event Lessor agrees to refund to Lessee the unearned rent paid in advance.

If at any time the erection, placement, posting, painting, illumination or maintenance of its signs on the demised premises is prohibited by any law, ordinance or authority, or building permits are either not obtained or revoked, or if such activity becomes unprofitable within the sole judgement of Lessee, Lessee may terminate this lease by giving Lessor thirty (30) days advance notice of such termination. Lessor shall thereupon return to Lessee any rent paid in advance for the unexpired term.

Lessee does herewith indemnify and agree to hold Lessor harmless against all claims or damages to person or property by reason of accidents resulting from the negligence or willful acts of Lessee's agents, employees or workmen in the construction, maintenance, repair or removal of its signs.

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

In the event the property leased hereunder shall become the subject matter of condemnation proceedings instituted by any governmental authority, lessee shall be entitled to be compensated, from the total condemnation proceeds paid by the governmental authority, for the loss of Lessee's sign, and the loss of advertising income to Lessee resulting from the condemnation of the property leased hereunder; Lessor shall immediately notify Lessee of the institution of any condemnation proceedings upon the property leased hereunder. Lessor shall have no authority whatsoever to release the governmental authority from the payment of condemnation proceeds to lessee for losses sustained by Lessee as a result of the institution of said condemnation proceedings.

This lease is assignable by Lessor or Lessee and shall be binding upon the heirs, successors and assigns of both Lessor and Lessee.

Lessee agrees to pay promptly the rentals provided herein, Lessor warrants title and agrees that the right to cancel as provided above shall not be exercised for any other display advertising purposes. Lessor warrants that he as owner, agent or tenant has the full right and authority to enter into this agreement.

Lessor empowers Lessee with full authority to act as agent for Lessor in all matters necessary to the erection of said advertising display.

**\$3000.00 for first year 10/1/89 to 10/1/90
\$1500.00 for each year thereafter.

Signature L. Paul Trask

Lessor Mr. L. Paul Trask

Address Box 4160

Burton, S.C. 29903

Telephone (803) 524-0269

This 11/74 day of 19 89

Witness _____

Witness _____

Notary _____

By _____ Lessee
 Witness _____
 Witness _____
 Notary _____

Exhibit 3

Excerpts of the Transcript of the Deposition of the County's Rule 30(b)(6), SCRCP, Designee, Robert Merchant

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

30(b)(6) of BEAUFORT COUNTY
DEPOSITION OF ROBERT MERCHANT
MARCH 13, 2024

BEAUFORT COUNTY, South Carolina,

Plaintiffs,

vs. CASE NO. 2022-CP-07-01195

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendants.

TIME: 10:00 A.M.

LOCATION: Clark-Bolen
Bluffton, SC

REPORTED BY: JENNIFER M. ADAMS
CERTIFIED SHORTHAND REPORTER
CLARK BOLEN
CHARLESTON, SC 29405
843-762-6294
WWW.CLARKBOLEN.COM

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

LAW OFFICE OF SCOTT D. BERGTHOLD, PLLC
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Also present:

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for Beaufort County
Audra Antonacci-Ogden

1 he's prepared to talk about that, and then other
2 projects would be uniquely different, I guess, to
3 those other projects.

4 BY MR. WILLIAMS:

5 Q. Okay. All right. So let's, I guess,
6 switch gears then to the Port Royal Island
7 Battlefield. So one of the county's claims in
8 this lawsuit concerns that parcel of land,
9 correct? And part of it borders Trask Parkway;
10 is that right?

11 A. That is --

12 Q. And I will make this easier for you, and
13 introduce this plat.

14 A. Yeah.

15 (Exhibit 2, Plat, was marked for
16 identification.)

17 Q. And so from my understanding, this is a
18 combination survey or plat performed for the
19 county showing what is now the Port Royal Island
20 Battlefield parcels, for lack of a better term;
21 is that correct?

22 A. Yes, I would say that's correct.

23 Q. Okay. And so previously, I think the
24 county acquired or was conveyed, donated four
25 separate tracts of land that were consolidated,

1 right? I think on the survey, it shows from --
2 well, north to south, kind of the four separate
3 parcels that border US Highway 21; is that right?

4 A. Yeah, that's -- that's how it appears on
5 the plat.

6 Q. Okay. And if you look at the -- I guess
7 what I'm going to refer to as the bottom of the
8 survey, bordering Trask Parkway is US Highway 21.
9 In the setback area, it looks like there's
10 actually three different signs. Do you see that?

11 A. So this one, this one, and this one?

12 Q. Yes, sir. Yeah. And just for the
13 record, you pointed to -- there's a sign in the
14 lower left-hand corner, one that's kind of in the
15 middle, and then there's another sign in the
16 lower right-hand corner of the property. And at
17 issue in this lawsuit is the sign that -- the
18 second sign in the middle, correct, that was on
19 the parcel that was formerly bearing tax map ID
20 R100-020-0000047; is that right?

21 A. Uh-huh.

22 MR. WILLIAMS: Unfortunately, I
23 don't think the deposition notice in the
24 definitions has that.

25 MR. BERGTHOLD: Yeah. I don't

1 think --

2 MR. WILLIAMS: Because they've all
3 been combined into one under a different tax map
4 number.

5 BY MR. WILLIAMS:

6 Q. And maybe your preparations didn't cover
7 this, but Adams' sign at issue under the lease is
8 on this parcel here, 3.73 acres. And we'll get
9 into it a little bit more in depth, but I believe
10 it was formerly owned by Michael Kling; is that
11 correct?

12 A. I believe so.

13 (Exhibit No. 3, Deed to Beaufort
14 County, was marked for identification.)

15 Q. All right. Mr. Merchant, Exhibit 3 is a
16 title of real estate, the deed from Michael I.
17 Kling to Beaufort County recorded, it looks like,
18 I believe December 30th, 2020.

19 And the property description is on the
20 last page, page number Bated -- it has the case
21 number BC production 002129. And so this sort of
22 matches up with the plat, 3.73 acres, tax map,
23 and it has the same tax map number there. Do you
24 see that?

25 A. On page 3?

1 Q. Yes, sir.

2 MR. BERGTHOLD: This is the one you
3 e-mailed me yesterday, right?

4 MR. WILLIAMS: No. This is the
5 December 2020 deed to Beaufort County from
6 Mr. Kling.

7 MR. BERGTHOLD: Okay.

8 MR. WILLIAMS: I'm just trying to
9 get this on the record, just to say that
10 Mr. Kling --

11 MR. BERGTHOLD: We're talking
12 about the right --

13 MR. WILLIAMS: Right, yeah.

14 THE WITNESS: Uh-huh.

15 BY MR. WILLIAMS:

16 Q. All right. So the county took title to
17 at least that track, and just at the end of
18 December of 2020. And throughout the deposition,
19 I refer to -- I know it's been combined, but that
20 land as the Kling tract or the Kling parcel. Is
21 that understood?

22 A. Yes.

23 Q. Okay. So backing up a little bit, how
24 did the county originally become interested in
25 acquiring this land, I guess, the almost 14 acres

1 here that comprises the former battlefield?

2 A. I don't know the specifics of how --
3 what the origins of -- of this acquisition was.

4 But I know that there is a group that is
5 interested in Revolutionary War era battlefield
6 sites. And they, you know, the -- so the
7 purchase of this property, I believe, originated
8 through that interest, and, you know, willing
9 seller.

10 Q. Okay. And was that -- was that group a
11 nonprofit or private interests? Are you aware?

12 A. Which group?

13 Q. The one that has an interest in
14 Revolutionary War battlefields. Is that the
15 South Carolina Battleground Preservation Trust?

16 A. I don't know the nature. I have, you
17 know --

18 Q. Okay. But is that the group that kind
19 of came to the county and said, hey, there's this
20 former Revolutionary War battlefield?

21 A. Yeah. To be honest, I don't recall the
22 origination --

23 Q. Okay.

24 A. -- of how this started.

25 Q. And I think we might have some documents

1 that predate the purchase that we can get into a
2 little bit on background.

3 A. Uh-huh.

4 (Exhibit No. 4, Agenda Packet, was
5 marked for identification.)

6 Q. There is, I think, an agenda packet
7 from -- sorry, I cutoff mid sentence. It's an
8 agenda packet from the March 23rd, 2020, Beaufort
9 County Council meeting produced by the county.
10 It starts on page Bates number BC production
11 001760.

12 And so I just wanted to introduce this
13 to get a little bit of background on the -- I
14 guess, leading up to approving the sale. And so
15 this contains -- is this pretty standard to have
16 this sheet on top with the summary and the
17 recommendation from staff?

18 A. Yes. There is -- agenda item summary is
19 typically the cover page for any item that goes
20 before the council or its committees.

21 Q. Okay. And then what follows is a draft
22 of the county ordinance that is being proposed to
23 approve the acquisition of these parcels and a
24 couple of easements. I wanted to turn to the
25 memo from the purchasing director. It's the page

1 after. I think you're on that page.

2 A. Yes.

3 Q. Bates number 1764. There's a line, that
4 background paragraph, a line towards the bottom
5 that says, the restrictive -- there will be a
6 restrictive easement on the property that will
7 allow up to 20 visitors a day. Why was there a
8 limitation on the number of visitors?

9 A. The property is located -- well, the
10 property is located within the -- what the Air
11 Station would call the air installation
12 compatible use zone, AICUZ.

13 Q. That's a mouthful.

14 A. Yes. And that is a -- based on
15 modeling, a study done to determine the impact of
16 the F-35 Joint Strike Fighter, the noise. And it
17 looks both at noise and crash zones, you know,
18 around the Air Station.

19 Q. I understand. So kind of similar to an
20 airport overlay zone where their projective field
21 of, you know, most dangerous zones to build in,
22 in terms of takeoff and landing; is that right?

23 A. Well, the airport overlay district is
24 based on that AICUZ, and the airport overlay
25 district is what the county adopted to enforce

1 the -- and so because of the AICUZ and the
2 concern about encroachment, the air station has
3 an interest in purchasing land close in proximity
4 to the Air Station to prevent encroachment.

5 And so they partnered with the county 50
6 percent to fund the purchase of this property,
7 and the condition of that partnership meant that
8 they were able to replace restrictive covenants,
9 which would limit the number of people
10 congregating on the site, which is in their --
11 their interest to avoid, you know, the --

12 Q. Okay. I guess --

13 A. -- adverse impacts.

14 Q. -- traffic considerations, impacts to
15 the property, things of that nature?

16 A. I think, and to be honest, I don't know
17 on that particular site.

18 But I know that they're concerned not
19 only about the noise and overall people
20 complaining and then that beginning to negatively
21 impact their installation, or whether there is a
22 concern about -- because it's right across the
23 street from the Air Station, the safety issues
24 related to the -- but for those reasons, they
25 placed a restrictive covenant on the property.

1 Q. But for one of those or other reason --
2 and MCS is Marine Corps Air Station; is that
3 right?

4 A. Yes.

5 Q. And so they said, hey, we're -- if we're
6 partnering with Beaufort County, we're going to
7 need to put these -- this restrictive covenant
8 in.

9 And I guess that was part of the
10 consideration exchange; is that right? For -- in
11 exchange for paying, don't -- giving the county
12 money to purchase the land, they said, we're
13 going to put this restrictive covenant on the
14 land?

15 A. Yeah. I'm not a hundred percent certain
16 whether that is automatically an instrument when
17 they use what they call REPI funds to partner
18 with the county or whether that -- you know, I
19 don't know the nature of, you know, how those
20 particular covenants were adopted.

21 But that's typically what happens when
22 there is a property purchased using matching
23 funds from the Department of Defense.

24 Q. And what those -- did you say REPI
25 funds?

1 A. I don't remember what it stands for.

2 Q. Okay. I was going to ask. That was my
3 next question.

4 A. Yeah, that is -- it's a Department of
5 Defense funding source.

6 Q. Some federal acronym, right?

7 A. Yeah, yeah.

8 Q. All right. If we turn to the next --
9 there's Exhibit A, the next page. I think it's a
10 proposal from the Beaufort County Rural and
11 Critical Land Preservation Program; is that
12 right?

13 It starts -- well, the actual proposal
14 starts on the page number Bated BC production
15 001766. And at the top, it says, Port Royal
16 Island Battlefield, Beaufort County proposal fee
17 acquisition. And I wanted to look at one or two
18 things in here. On page 5 of this proposal, it
19 goes into cost considerations, due diligence,
20 things of that nature.

21 And under cost considerations, there's a
22 subheading, future cost considerations. There's
23 a line item under there that states, billboard
24 removal slash reuse, indicating that the county
25 was aware of the existence of one or more of

1 Adams' signs on the property, right?

2 A. Yeah. This document was prepared by the
3 Beaufort County rural and -- by the Beaufort
4 County Open Land Trust.

5 Q. Oh, okay. So it was not prepared by the
6 rural and critical land program?

7 A. Well, they are contracted with the
8 county to administer the program, and so
9 they're -- they're the ones who prepared the
10 document. And its purpose is to inform council,
11 you know, to provide backup information on the
12 purchase.

13 Q. Okay. So council was informed that
14 there was at least one billboard on the parcel
15 through this proposal, and it says removal slash
16 reuse. That reuse part, was the county
17 considering keeping the billboard on the parcel
18 to generate income?

19 A. I don't know. You know, I don't know
20 enough about this document to know what they mean
21 by reuse.

22 Q. Okay. So I guess reuse could also mean,
23 just thinking about it, to repurpose the
24 billboard. Was the county maybe thinking they
25 could remove it and reuse it somewhere else, or

1 is that just speculation?

2 A. That would -- that's just speculation.

3 Q. Okay. And it's not contained in this,
4 and I know you said this was prepared by the Open
5 Land Trust, but as part of council's
6 considerations, did they ever consider the
7 possibility or potential litigation fees and
8 costs that would be -- might be incurred to
9 remove one of the billboards?

10 A. I don't know.

11 (Exhibit 5, Harris Pillow Supply
12 Notes, was marked for identification.)

13 Q. Mr. Merchant, Exhibit 5, it was a Word
14 document produced by Beaufort County in
15 discovery. It was just titled -- the file name
16 was, purchase of Harris pillow, notes for
17 committee meeting.

18 And feel free to look through it. I
19 think these were notes prepared in advance of
20 either a council meeting or a committee meeting
21 on the battlefield purchase. There's just a
22 couple line items I wanted to review.

23 On the first page, at the top under
24 purchase of property, there was a subheading,
25 funds previously provided. Are those funds that

1 MR. WILLIAMS: But I was just
2 trying to get an idea.

3 MR. BERGTHOLD: I know there was a
4 lot of -- we spent more time looking at the
5 finalized documents.

6 MR. WILLIAMS: Right, right.

7 MR. BERGTHOLD: And there was some
8 preliminary stuff, but --

9 THE WITNESS: Okay. Yeah, I can't
10 speak to that number.

11 BY MR. WILLIAMS:

12 Q. All right. We will move on then to --
13 generally speaking, was there any opposition to
14 purchasing the property within council?

15 A. I don't recall. I would have to look at
16 the minutes.

17 (Exhibit 6, 3/9/20 E-mail, was
18 marked for identification.)

19 Q. And this is an e-mail. The top e-mail
20 is from Joseph Passiment, March 9th, 2020, to
21 Gerald Dawson. This was also produced by
22 Beaufort County in discovery as a native Outlook
23 e-mail file. So it does not have a Bates number.
24 But the subject line is, reconsideration
25 requested for Port Royal Island Battlefield, ATAX

1 and HTAX funding awards for 2020.

2 A. Uh-huh.

3 Q. First, what does ATAX and HTAX stand
4 for?

5 A. ATAX is a combinations tax and HTAX is a
6 hospitality tax.

7 Q. Okay. And so I think the bottom e-mail
8 on the chain is from Beaufort County Open Land
9 Trust, and this might explain some of the
10 background. I think the last page has her
11 signature line. It's an e-mail from Barbara
12 Holmes, director of land protection.

13 And feel free to read through, but on
14 the second page, she says -- basically, she's
15 asking for reconsideration. They submitted an
16 application. The application window December --
17 ending December 31, 2019. And I think she's
18 asking the council to reconsider the grant of
19 either HTAX or ATAX funding; is that right?

20 MR. BERGTHOLD: Can we get a minute
21 to look through this just for a second because
22 I just need to --

23 MR. WILLIAMS: No. It was produced
24 by Beaufort County in discovery.

25 MR. BERGTHOLD: Sure, sure.

1 BY MR. WILLIAMS:

2 Q. Just let me know whenever you're ready
3 and comfortable with the document.

4 A. Okay.

5 Q. And so I'm not trying to pin you down on
6 specifics or what the Open Land Trust was trying
7 to do, but would you say it's generally an
8 accurate description of this e-mail from Barbara
9 hospital that she was asking the county to
10 reconsider a grant of HTAX or ATAX money to
11 purchase all or some of the battlefield parcels?

12 A. What I can gather is that she was
13 advocating for the use of those grant
14 applications to leverage the purchase.

15 Q. Okay. And the Beaufort County Open Land
16 Trust, do you know if that was the entity you
17 spoke of towards the begin of this deposition
18 that's -- was interested in acquiring and
19 preserving revolutionary war battlefields?

20 She talks about the -- in her e-mail
21 about the South Carolina liberty trail, and it's
22 the only definitively located Revolutionary War
23 battlefield in Beaufort County. Is it --

24 A. No, that's not who I was referring to.

25 Q. Okay.

1 A. Yeah.

2 Q. And turn back to the first page. The
3 e-mail is between Mr. Passiment and Mr. Dawson.
4 And those are both county council members, or
5 they were at the time; is that correct?

6 A. Correct.

7 Q. And is Mr. Passiment, he was the
8 chairman or he still is?

9 A. I don't recall if he was the chair in
10 2020.

11 Q. Okay.

12 A. I don't remember.

13 Q. I guess I can check public records.

14 A. Yes, yeah.

15 Q. Either way, I think it's in one of the
16 documents. The project is in Mr. Dawson's
17 council district. Does the county or the council
18 give any deference to the opinion of the council
19 member representing the district in which the
20 project is situated?

21 A. I think that's too broad of a question.

22 Q. Okay. And Mr. Dawson's e-mail on March
23 9th, 2020, he says, Joe, I voiced my concerns
24 last week about the deal surrounding this
25 project.

1 The bottom line is, the proposed land
2 acquisition council will purchase has the old
3 Harris Pillow building on it. The building has
4 asbestos in it and is of no use to the county or
5 the public. The county will have to foot the
6 costs of demolition and disposal of materials.
7 This is a sweetheart deal for the owners of the
8 building.

9 And so the Harris, the old Harris Pillow
10 building, was that a manufacturing -- what kind
11 of industrial use building?

12 A. I'm not familiar with the -- all that
13 went on inside the building, but it was a
14 headquarters of Harris Pillow.

15 Q. Okay. And at the time we entered the
16 purchase, was the county considering demolishing
17 and disposing of the building on the property?

18 A. I don't know.

19 Q. Do you know if the purchase price
20 factored in the cost of demolition? And I can go
21 back and look if there's an appraisal. I just
22 didn't know if you knew?

23 A. I would have to see the appraisal.

24 Q. Okay. All right. So March 2020,
25 council had its first meeting. And skipping

1 ahead -- I can introduce the ordinance if you
2 would like.

3 But in late April 2020, council adopted
4 the ordinance authorizing basically the purchase
5 of the parcels and the execution of the
6 conservation and restrictive easements; is that
7 right? I will go ahead and introduce the
8 ordinance.

9 A. Okay.

10 (Exhibit 7, Ordinance, was marked
11 for identification.)

12 Q. All right. So Exhibit 7 is the county
13 ordinance 2020 slash 12. It's got a long title,
14 but authorizes the county administrator to
15 execute the documents for the purchase of the
16 parcels comprising the Port Royal Island
17 Battlefield and also to accept donations to grant
18 a conservation easement and a restrictive
19 easement; is that correct?

20 A. Yeah. I would say it was under -- now
21 therefore being ordained.

22 Q. And I'm just trying to establish a basic
23 timeline leading up to the purchase.

24 A. Uh-huh.

25 Q. And so April -- it looks like it was

1 adopted April 27th, 2020, and there's our answer
2 to the question. Mr. Passiment was the chairman
3 at the time of county council.

4 A. Okay.

5 Q. So I guess thereafter, the county moved
6 ahead. I guess we will introduce the purchase
7 and sale agreement and the other documents. And
8 so the deal was kind of in two steps.

9 I'm going to introduce two documents to
10 you at once. There's a purchase and sale
11 agreement between Mr. Kling and the Battleground
12 Preservation Trust and then an assignment of that
13 purchase and sale agreement to the county. So
14 just to make it easier, I will give them to you
15 both at the same time.

16 (Exhibits 8 and 9, Purchase an Sale
17 Agreement and Assignment of Agreement, were
18 marked for identification.)

19 Q. All right. Mr. Merchant, so Exhibit 8,
20 I believe it was an exhibit -- there's an
21 Exhibit A at the top. I think it was an exhibit
22 to a council agenda packet.

23 But this is the signed purchase and sale
24 agreement between Michael I. Kling and the South
25 Carolina Battleground Preservation Trust,

1 Incorporated for the Kling parcel, the parcel
2 that we discussed earlier; is that correct?

3 A. This is an agreement --

4 Q. Yeah, so at the top --

5 A. -- of purchase and sale?

6 Q. Yes, sir. Yeah. On the first page, the
7 heading is agreement of purchase and sale of real
8 property.

9 A. Made effective 17th day of January.

10 Q. And maybe you didn't go over this in
11 your preparation. So the timeline was January
12 2020, Mr. Kling and the other property owners of
13 the different parcels entered into the purchase
14 and sale agreements with the Battleground
15 Preservation Trust.

16 And then I think there's -- one of the
17 contingencies in here is that they received
18 county and Navy federal funding. Then council
19 moved forward with approving the purchase in
20 April 2020.

21 And then Exhibit 9 is the result of that
22 approval by council, where Mr. -- or sorry, the
23 Battleground Preservation Trust assigned its
24 rights as the purchaser under the purchase and
25 sale agreement to Beaufort County. Are you

1 familiar with these documents?

2 A. I --

3 Q. And I'm not going to quiz you on
4 every --

5 A. Yeah. I --

6 Q. -- paragraph of the purchase and sale
7 agreement. What I mainly want is, if you -- and
8 I don't know if you can, based on your
9 preparation, if you can confirm that Exhibit 9,
10 the assignment assigned to Beaufort County the
11 rights of the purchaser under Exhibit 8, the
12 purchase and sale agreement?

13 And so I think the easiest way to do
14 that is, the first whereas paragraph on
15 Exhibit 9, assigner has entered into a certain
16 real estate PSA with Michael Kling, executed
17 January 21, 2020, and it has the TMS number in
18 that paragraph.

19 A. Uh-huh.

20 Q. And then I think you can compare that
21 with the introductory paragraph on Exhibit 8, the
22 purchase and sale agreement. And so it has the
23 same date, January 17th. It has the same
24 parties, Michael Kling, and then recital
25 paragraph A on Exhibit 8 has the same text parcel

1 number as Exhibit 9. Do you see that?

2 A. Yeah. And I have to be honest, I'm just
3 not familiar with this detail of the purchase,
4 and so I'd have to --

5 Q. But you have been designated to testify
6 on topics 1 through 7 by Beaufort County for this
7 deposition?

8 A. Yes.

9 MR. BERGTHOLD: I mean, I think
10 we're --

11 MR. WILLIAMS: That's okay, Scott.

12 MR. BERGTHOLD: The only thing that
13 we're --

14 MR. WILLIAMS: Scott, we're not --
15 we're not --

16 MR. BERGTHOLD: Do you have
17 anything else you want to ask about this?

18 MR. WILLIAMS: I do, but it's -- I
19 don't think it's really appropriate. If you
20 would like, we can go off the record if you want
21 to go over something.

22 MR. BERGTHOLD: Sure, sure.

23 (A recess transpired.)

24 MR. MR. WILLIAMS: Okay. Going
25 back on the record, Mr. Bergthold has helpfully

1 pointed out to me that the -- two of the dates on
2 the Exhibits 8 and 9 did not exactly match up.
3 Exhibit 8 has an effective date of January 17th,
4 2020, and Exhibit 9, the assignment, discusses
5 the purchase and sale agreement as being executed
6 January 21 of 2020.

7 However, off the record, Mr. Bergthold
8 agreed that the county would agree that Exhibit 9
9 is the assignments of the purchase and sale
10 agreement that is representing in Exhibit 8.

11 MR. BERGTHOLD: Correct.

12 MR. WILLIAMS: Is that correct?

13 MR. BERGTHOLD: Correct.

14 BY MR. WILLIAMS:

15 Q. All right. So I think I only have a
16 couple questions about the documents themselves.
17 Do you -- do you know if the purchase and sale
18 agreement, Exhibit 8, contained any provisions or
19 discussions about Adams' lease or any of their
20 signs on the property?

21 And to short circuit it, if you turn to
22 page 4, section 6.7. 6.7, the heading is leases,
23 and it says, the property is not subject to any
24 lease or other agreement granting another party
25 possession or occupancy of the property. Do you

1 see that?

2 A. Yes.

3 Q. Did the -- well, let's back up. So
4 there is a delay between council adopting the
5 ordinance authorizing the purchase in April of
6 2020 and signing the assignments, Exhibit 9,
7 which was executed in November of 2020. What was
8 the cause for delay between approving that
9 ordinance and executing the assignment? Do you
10 know?

11 A. No, I don't.

12 Q. Was there due diligence conducted during
13 that period?

14 A. I mean, we generally conduct due
15 diligence prior to going to council to request
16 purchase of a property.

17 Q. Does the -- do you know if the county
18 has title insurance on these parcels?

19 A. I don't know.

20 Q. You're not aware if they've made any
21 claim to title insurance about any
22 misrepresentations in this contract?

23 A. I'm not aware.

24 Q. And the county hasn't approached
25 Mr. Kling or the Battleground Trust about six,

1 seven saying there were no leases burdening the
2 property?

3 A. I don't know.

4 (Off-the-record discussion.)

5 BY MR. WILLIAMS:

6 Q. So we've touched on the fringes, but in
7 connection with the purchase, the county conveyed
8 a conservation easement to the South Carolina
9 Battleground Preservation Trust; is that right?

10 A. Uh-huh.

11 Q. And I will go ahead and introduce the
12 easement.

13 (Exhibit 10, Easement, was marked
14 for identification.)

15 Q. Take your time reading through it. It's
16 a longer document, but Exhibit 10, it was
17 recorded with the Beaufort County Register of
18 Deeds, January 13th, 2021, in book 3958 at page
19 2410.

20 The heading is conservation easement
21 made effective December 30, 2020, between
22 Beaufort County and the South Carolina
23 Battleground Preservation Trust, Incorporated.
24 The first page is Bated with the case number BC
25 production 002138. Are you familiar with or have

1 you seen this document before?

2 A. I've seen this document before.

3 Q. Okay. And so, generally speaking, this
4 easement or easement agreement subjected the 13
5 plus acres to the conservation easement and
6 certain restrictive covenants relating to use in
7 conservation; is that right?

8 A. Yes.

9 Q. And do you know -- so in exchange for
10 the Battleground Trust assigning its purchasing
11 rights to Beaufort County, do you know if this
12 easement was exchanged as consideration for that
13 assignment?

14 A. Could you repeat that?

15 Q. Yeah, that's long-winded, I know. So
16 South Carolina Battleground Preservation Trust
17 assigned -- when we looked at it, assigned its
18 rights to purchase these parcels to Beaufort
19 County, right?

20 And generally speaking, when you assign
21 your rights under a contract, you get some type
22 of consideration. Do you know if the county
23 agreed to convey this conservation easement as
24 the consideration for obtaining the purchasing
25 rights?

1 A. I don't know.

2 Q. And it might say in here. Do you -- was
3 there -- do you know if there was a consideration
4 exchange for the conveyance of this easement?

5 A. I do know that conservation easements
6 with the county's rural and critical land's
7 preservation program, a goal is the perpetual
8 protection of the property.

9 Q. Probably advancing those interests
10 would --

11 A. Yes.

12 Q. -- serve as type of --

13 A. They would serve as the goal of -- or
14 meeting the goal of the program.

15 Q. And if we look at page 4 of this
16 easement, Bates number 2141, section 3 is the
17 covenants of the grantor, and the grantor was
18 Beaufort County. And section A talks about a
19 preservation plan.

20 And so the county, as part of this
21 easement agreement, prepared a preservation plan
22 for the property; is that right? The plan is on
23 the last page of the document, Exhibit B.

24 A. Okay.

25 Q. I just wanted to confirm that, as part

1 of the agreement, the county prepared that plan?

2 A. Okay. Yeah. It appears that that plan,
3 this Exhibit B in this.

4 Q. Okay. And it states -- you know, the
5 document is what it is.

6 A. Uh-huh.

7 Q. But it says, the grantor of Beaufort
8 County agrees to preserve -- so this plan was
9 either prepared to or at least agreed to by
10 Beaufort County, correct?

11 A. Yes.

12 Q. Okay. Do you know if this plan has ever
13 been amended?

14 A. I'm not aware of any amendments.

15 Q. Okay. And those -- that first
16 paragraph, it says, the county agrees to preserve
17 the property as is and to not make any material
18 changes or alterations to the topography of the
19 property, correct?

20 A. Correct.

21 Q. And so has the county made the trust in
22 the State Historic Preservation Office aware of
23 this litigation and the county's efforts to
24 deviate from that promise?

25 MR. BERGTHOLD: Objection,

1 foundation. Also objection, outside the scope of
2 the notice. But you can answer if you know.

3 BY MR. WILLIAMS:

4 Q. Well, in this lawsuit, the county is
5 attempting to remove Adams' billboard on the
6 property, right?

7 A. I believe that's part of the -- could
8 you repeat the question?

9 Q. We can go back to page 4 under section
10 3A. It says, to deviate or amend the
11 preservation plan, the county has to get written
12 permission from the Battleground Preservation
13 Trust and the State Historic Preservation Office.

14 And so my question was, have either of
15 those entities been made aware of this litigation
16 or the county's efforts to alter the topography
17 by removing Adams' billboard?

18 MR. BERGTHOLD: Same objection,
19 foundation. Outside the -- outside the scope of
20 the deposition notice. And I mean, I don't think
21 anything in the notice gives him the duty to talk
22 about communicating litigation stuff to somebody
23 or -- or trying to discern whether that's in
24 communication.

25 MR. WILLIAMS: Sure. Topic 4 was

1 the county's acquisition use or intended use of
2 the property and any consideration, negotiations
3 for its acquisition and use --

4 MR. BERGTHOLD: Right.

5 MR. WILLIAMS: -- including
6 communications containing or referencing the
7 same. I would posit that that's included in the
8 scope.

9 MR. BERGTHOLD: But you're talking
10 about a post-acquisition event, right? And that
11 seems to be all about leading up to the
12 acquisition.

13 MR. WILLIAMS: Well, the topic also
14 covers the county's use or intended use of the
15 property. So use means current use.

16 MR. BERGTHOLD: Okay. Well --

17 BY MR. WILLIAMS:

18 Q. But was your answer, no, you're not
19 aware of whether that's happened?

20 A. I don't agree with the premise of the
21 question.

22 Q. And why is that?

23 A. Well, what -- once again, could you
24 restate the question?

25 Q. So by attempting to remove Adams'

1 billboard from the property, if that billboard
2 was removed, that would change the topography of
3 the property and it would no longer be in its as
4 is state as when it -- this agreement was entered
5 into?

6 A. Yeah, I don't agree with that.

7 Q. Okay. But just to confirm the question,
8 neither of those entities, the trust, or SHPO has
9 been informed of efforts to remove the billboard?

10 A. I'm not aware of any communication.

11 Q. All right. And then turning to the
12 second easement.

13 (Exhibit 11, Restrictive Easement,
14 was marked for identification.)

15 Q. All right. Exhibit 11, title heading,
16 restrictive easement, Bates number with the case
17 number BC production 002214. Same effective
18 date, December 30th, 20 -- well, it does not have
19 the year. It just says December 30th between
20 Beaufort County and -- who is the grantor and the
21 United States of America, through the Department
22 of the Navy as the grantee.

23 And take your time to review the
24 document, but just to confirm, this is the
25 restrictive easement that was conveyed to the

1 Department of Defense as part of the county's
2 purchase of the battleground properties; is that
3 right?

4 A. Yes.

5 Q. Okay. If we turn to page 3, Bates
6 number 2216, Roman -- or sorry, subparagraph C,
7 it's paragraph 3C of the agreement. It's titled,
8 number and location of existing structures.

9 A. Paragraph 3C.

10 Q. On page 3.

11 A. Oh.

12 Q. So 3 starts on page 2 and then --

13 A. Yes, I see it.

14 Q. Yeah. And so paragraph 3 was titled,
15 restricted uses and development rights, and then
16 as part of that subparagraph C listed out, the
17 number and location of existing structures on the
18 battleground properties.

19 And there's two structures listed, the
20 commercial building, which I believe is the
21 former Harris Pillow Supply building and then the
22 parking lot; is that right?

23 A. So one structure is the commercial
24 building.

25 Q. Yes.

1 A. The Harris Pillow, and the number 2 is
2 the parking lot.

3 Q. Correct. And so those are the only two
4 existing structures listed in the agreement,
5 correct? And it's not a trick question. Again,
6 the terms of the agreement are what they are.

7 A. Uh-huh.

8 Q. I just wanted to confirm that under
9 3C --

10 A. Those are the two that are listed there.

11 Q. -- those are the only two structures
12 listed?

13 A. Correct.

14 Q. All right. Turning to more present day,
15 how is the county using the property currently?
16 And I want -- when I say property, I'm referring
17 to the 13 point acres or whatever it is
18 comprising the consolidated parcels.

19 A. I am aware that there is some storage in
20 the building, just based on my own knowledge.
21 Other than that, there is no -- been no historic
22 marker that has been set up.

23 Q. Did the county -- and that building is
24 the former Harris Pillow Supply building; is that
25 right?

1 A. Correct.

2 Q. Did the county perform any remediation
3 efforts, or was the asbestos removed? Do you
4 know?

5 A. I don't know.

6 Q. So other than the building and Adams'
7 signs adjacent to Trask Parkway, are there any
8 other improvements or structures that predated
9 the county's purchase that still remain on the
10 property?

11 A. What was that again?

12 Q. Yeah. That was a long question. Other
13 than the Harris Pillow building and Adams' signs
14 adjacent to Trask Parkway, are there any other
15 structures on the property remaining from before
16 the county's purchase?

17 A. I'm not aware.

18 Q. Okay. Besides the restrictive and
19 conservation easement agreements, are there any
20 other agreements or restrictive covenants that
21 relate to or govern the use of the Kling parcel?

22 A. I'm not aware of any.

23 Q. And so is Adams' billboard on the Kling
24 parcel, would the county say that that sign is
25 hindering the county's use of the property?

1 A. I don't have enough information to
2 answer that.

3 Q. So I guess the current use of the
4 property is -- and correct me if I'm wrong --
5 from what I understand is, the old building is
6 being used for storage, and that's the current
7 use, right?

8 A. It's not unusual when properties are
9 purchased who are critical, that they -- that
10 don't immediately -- you know, there's often a
11 lag between when that property is purchased and
12 when it's -- you know, whatever the end use of
13 the property is.

14 Q. Certain. I understand. And especially,
15 I'm sure, when there's federal funding and other
16 departments involved.

17 A. Yeah.

18 Q. And that's not what I'm getting at. I'm
19 just trying to understand the current use is,
20 using the building for storage, and that's what's
21 going on on the property currently, correct?

22 A. To the best of my knowledge.

23 Q. And so is Adams' billboard on the Kling
24 parcel, is that interfering with that use?

25 A. I'm not -- I don't -- I'm not aware of.

1 MR. WILLIAMS: Okay. I think
2 that's a good place for a break.

3 MR. BERGTHOLD: Okay.

4 (A recess transpired.)

5 BY MR. WILLIAMS:

6 Q. All right. Mr. Merchant, we are going
7 to turn topics a little bit and stay on the same
8 property. We talked a little bit about the
9 specifics of the county's second cause of action
10 relating to the lease.

11 It is seeking to terminate the court
12 declaration of the Adams' lease for the
13 operations of its sign on the former Kling parcel
14 has been terminated, correct? The county is
15 seeking to remove the billboard on the old Kling
16 parcel?

17 A. Correct.

18 (Exhibit No. 12, E-mails, was
19 marked for identification.)

20 Q. Okay. So Exhibit 12 is a string of
21 e-mails, and these were produced by Adams in
22 discovery. The first page is Bated Adams
23 underscore 000362. Looking at all the pages, I
24 think the e-mails span early March, or there is
25 one in late February 2021 through early March

1 lease. Do you know why the county wants to
2 terminate this lease?

3 MR. BERGTHOLD: You referenced the
4 letter?

5 MR. WILLIAMS: Yeah. And I can go
6 ahead and put it in the record. Let's just go
7 ahead and put everything in the record.

8 (Exhibit No. 13, Lease, was marked
9 for identification.)

10 BY MR. WILLIAMS:

11 Q. All right. So for the good of the order
12 and the record, Exhibit 13, have you seen this
13 document before?

14 A. Yes.

15 Q. Okay. And this is a copy -- well, it's
16 between Peterson Outdoor and Mr. L. Paul Trask,
17 but through conveyances and acquisitions, this is
18 the -- in effect, the lease for Adams' sign on
19 the former Kling parcel, correct?

20 A. Yes.

21 (Exhibit No. 14, 4/1/21 Letter, was
22 marked for identification.)

23 Q. And Exhibit 14 is the letter I
24 referenced dated April 1, 2021. The second page
25 is signed by Mr. Greenway as the interim Beaufort

1 County administrator to Liz Mitchum. And it
2 looks like he was detailing -- we discussed
3 earlier, there's three signs on the property, and
4 it has different paragraphs for each sign.

5 The paragraph relevant to our discussion
6 is number 2. He references the tax map parcel
7 for the Kling -- the former Kling parcel. Do you
8 know who made the decision to attempt to
9 terminate the lease?

10 A. No, I don't.

11 Q. Are you aware of why the county wants to
12 terminate the lease?

13 A. I'm not aware of any -- anything that
14 outlines the reasons that the county wants to
15 terminate the lease.

16 Q. Do you know approximately when, the time
17 frame the decision was made to attempt to
18 terminate the lease?

19 A. I mean, the best I can go by are the
20 dates of the documents.

21 Q. And do you know, did Mr. Greenway draft
22 this letter? Was it a collaboration? Are you
23 aware of that, who authored the letter?

24 A. Yeah. I don't know who was involved in
25 the drafting of the letter.

1 Q. Okay. But you are the county's
2 designated witness for topic number 1, matters
3 relating to the lease, rights and obligations
4 thereunder and the county's alleged termination
5 of the same, correct?

6 A. You mean in the -- for this?

7 Q. You've been designated to testify at
8 this deposition on that?

9 A. Correct.

10 Q. All right. So you're not aware -- the
11 decision to terminate, you're not aware if that
12 was a solo decision by one individual, if there
13 was a meeting of different officials came
14 together? You're not aware of how that decision
15 was made?

16 A. I'm not aware.

17 Q. Okay. Do you know if the county has
18 received any complaints about Adams' sign on the
19 former Kling parcel?

20 A. I'm not aware of any.

21 Q. Would you be knowledgeable about why the
22 county -- well, there's a period between the
23 county's purchase, December 30th, 2020 and the
24 letter of a little more than three months. Do
25 you know why there was a lag time there between

1 the two events?

2 A. No.

3 Q. So looking at Exhibit 14, as I said,
4 paragraph 2 is a paragraph discussing the lease,
5 and there in section or paragraph 7 of the lease
6 is cited as providing an ability to terminate the
7 lease; is that correct?

8 A. I'm sorry?

9 Q. I think it's the third sentence of
10 paragraph 2.

11 A. Yeah.

12 Q. As stated in paragraph 7. The county
13 cited paragraph 7 as giving it the ability to
14 terminate the lease; is that correct?

15 A. Yes.

16 Q. Okay. Is there any other provision of
17 the lease that the county contends provides it
18 with the right of termination?

19 A. I could only speak to what was cited in
20 this -- this letter.

21 Q. Okay. So since you've been designated
22 to testify on that topic, the county does not
23 contend there's another provision that provides
24 it with the right of termination?

25 A. My preparation didn't involve analyzing

1 every item on this, and I would most likely
2 consult legal counsel, you know, in making that
3 determination.

4 Q. Do you know how the decision was made to
5 initiate litigation in this claim concerning this
6 lease? Which individuals or departments were
7 involved?

8 A. Outside of the county administrator and
9 the legal department, I'm not aware.

10 Q. Okay. Does council have to approve
11 and -- just generally, does council have to
12 approve the county initiating litigation and
13 filing a lawsuit?

14 A. That's not within my area of expertise.

15 Q. Okay. Are you prepared to testify and
16 knowledgeable about the authority that the
17 authority the county contends provides it with an
18 ability to disconnect electric service to the
19 sign on the Kling parcel?

20 So as part of its claim, the county is
21 seeking a declaration that it has the right to
22 disconnect electric service to the sign and
23 remove it from the property. Do you know what
24 support it has for its claim to disconnecting
25 electric service?

1 A. Which document are you referring to?

2 Q. Well, that's a claim in the amended
3 complaint that was filed in the lawsuit. I think
4 we will go ahead and introduce a copy. All
5 right.

6 (Exhibit 15, Amended Complaint, was
7 marked for identification.)

8 Q. And so I believe it's either page 15 or
9 16. I'm sorry. For the record, this is Beaufort
10 County's first amended complaint for declaratory
11 and injunctive relief filed in this case August
12 31, 2022. And the first page is number 2, and I
13 believe if you flip back to page 14 or 13,
14 paragraph 74, the county seeks and is entitled to
15 the following declarations.

16 And the next page, page 14, subparagraph
17 C, that Beaufort County has authorized to
18 disconnect electric service to the sign and to
19 remove and dispose of all sign and materials and
20 displays in the county's sole discretion. Do you
21 see that?

22 A. Yes.

23 Q. Okay. And so my question is -- I'm not
24 sure if you know this. What authority is the
25 county contending provides it with the alleged

1 right to disconnect electric service to the sign?

2 A. I mean, to the best of my knowledge, the
3 county is arguing that the lease is terminated,
4 and so the county is -- would be exercising its
5 right as a property owner.

6 Q. Okay. Do you know -- so the county is
7 saying, because the lease is terminated, it has
8 the right to go in as the property owner and
9 remove the sign from the property? Is that your
10 testimony?

11 A. Yes.

12 Q. Okay. Is there any provision in the
13 lease that you're aware of that talks about the
14 county's remedies or what happens to the sign
15 after the lease is terminated?

16 A. I mean, once again, this is a question
17 that I would have consulted an attorney in
18 interpreting this lease document.

19 Q. Okay. So I think we -- based on the
20 topics that you advised you're prepared to
21 testify on, I think we will move to topic 13 and
22 discuss the off-premises sign located on the
23 parcel bearing the address of 3492 Trask Parkway.
24 Are you familiar or prepared to testify on that
25 topic?

WITNESS CORRECTION SHEET

Witness: Robert Merchant 30(b)(6) of Beaufort County

Date of Deposition: 3/13/2024

Case: Beaufort County, SC v. Adams Outdoor Advertising
62380

I, the undersigned, Robert Merchant do hereby certify that I have read the foregoing deposition and wish to make the following clarifications and/or corrections, if any.

Page	Line #	Correction	Reason
28	2	Should read: "and MCAS is Marine Corps Air Station; is flat"	Misheard
35	5	Should read: "A. ATAX is an accommodations tax and HTAX is a"	Misheard
48	13	change "severe" to "serve"	Typographical error

Signature: Date: May 14, 2024

Clark Bolen
29 Gamecock Avenue Suite 200
Charleston, SC 29407
production@clarkbolen.com

Exhibit 4

Consolidation Plat, Recorded in the Beaufort County
Register of Deeds Office on December 16, 2020,
in Book 155, at Page 114

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

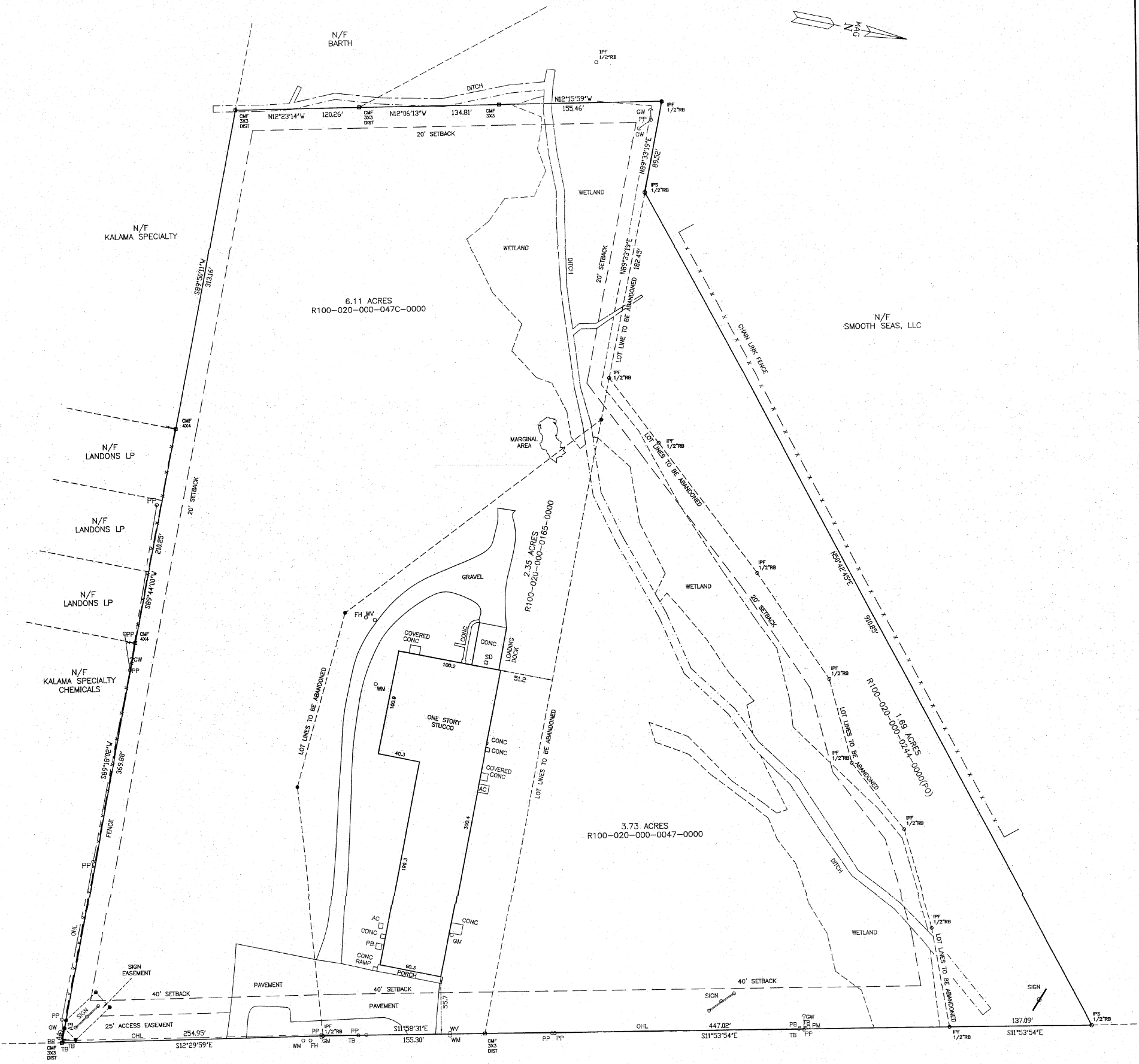
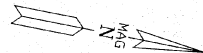
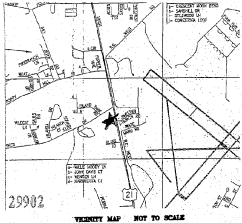
Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY
PREPARED FOR
BEAUFORT COUNTY
BEAUFORT TAX MAP 20, PARCELS 47, 47C, AND 165
BEAUFORT COUNTY, SOUTH CAROLINA
13.88 ACRES TOTAL

BEAUFORT COUNTY SC-ROD
BK 155 Pg 114
INST# 2020074921 RCPT#1008438
DATE: 12/16/2020 10:12:37 AM
REC FEES: \$0.00
CORS: 00 ST50.00 TR50.00

NO.	BEARING	DISTANCE
AA	S89°18'02"W	14.37'
AB	S89°18'02"W	7.62'
AC	N89°40'56"E	40.53'

LEGEND:
FH = FIRE HYDRANT
GM = GAS METER
GW = GUY WIRE
PB = POWER BOX
PP = POWER POLE
SD = STORM DRAIN
TB = TELEPHONE BOX
WM = WATER METER
WV = WATER VALVE



REFERENCE PLATS:
DAVID S. YOUNG
DATED SEPTEMBER 24, 1997
LAST REVISED MAY 8, 2005
PLAT BOOK 105, PAGE 191
ZYAD A. KHALIL
DATED MARCH 3, 2016
PLAT BOOK 144, PAGE 70
ZYAD A. KHALIL
DATED JANUARY 20, 1998
PLAT BOOK 63, PAGE 133
DAVID E. GASQUE
DATED MARCH 18, 2013
PLAT BOOK 136, PAGE 104

NOTE:
EASEMENT TO SOUTH CAROLINA POWER COMPANY
DEED BOOK 60, PAGE 167, NOT PLOTTABLE.

NOTE:
WETLANDS AND DITCHES NOT SURVEYED THIS DATE
INFORMATION TAKEN FROM OTHERS.

THE SAME BEING PARCELS 47, 47C, AND 165 ON BEAUFORT TAX MAP 20.
THIS PROPERTY IS LOCATED IN ZONE 'C', AS DETERMINED BY FEMA, FIRM
COMMUNITY-PANEL NUMBER 450025 0065 D, DATED 9-29-86.

R100-020-000-0047-0000
R100-020-000-0047C-0000
R100-020-000-0165-0000
R100-020-000-0244-0000(PORTRION OF)

0 25' 50' 100' 150'

SCALE 1" = 50'
APRIL 19, 2020
P17062CR2/MDY

REVISED 4-19-20 = ADDED 1.69 ACRES.
REVISED 10-7-20 = REMOVED FENCE AND ADDED PARCEL NUMBER.
REVISED 12-1-20 = ADDED POWERLINE EASEMENT STATEMENT.



EXEMPT
This plat of property is exempt from having to
obtain a subdivision approval under the provisions
of the Beaufort County Community Development
Code as provided for in Division 7, 1
Section 7-2 TO 7-2.1
Certified By: *[Signature]*
Date: 12-10-2020

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON
WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF
THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF
LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR
EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS
SPECIFIED THEREIN.
ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN.

[Signature]
DAVID S. YOUNG, RLS 9765
BEAUFORT SURVEYING, INC.
2201 BOUNDARY ST., SUITE 103
BEAUFORT, S.C. 29902
PHONE (843) 524-3261

Exhibit 5

County Council Agenda Item Summary for the Proposed Purchase of the Port Royal Island Battlefield Parcels (County Rule 30(b)(6) Dep. Ex. 4)

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Land Acquisition Proposal through Rural and Critical Land Program - Project 2020A

Council Committee:

County Council - Executive Session

Meeting Date:

March 23, 2020

Committee Presenter (Name and Title):

Barbara G. Holmes, Beaufort County Contractor; Eric Greenway, CDD Director

Issues for Consideration:

The fee simple acquisition of +/- 12 acres on US Highway 21 (3020, 3026, and 3030 Trask Parkway) for \$544,537 in Rural and Critical Program land acquisition funds, acceptance of 1.7 acres of donated property, sale of restrictive easement and grant of conservation easement of purchased and donated property. Project summary sheet, Restrictive Easement, conservation easement and purchase contracts are attached. Rural and Critical Land Preservation Board unanimously recommended approval on January 9, 2020. Natural Resources Committee recommended approval 5 to 1 on March 2, 2020 with some discussion, that was not part of the motion, regarding potentially using H-Tax funding towards some of the expense for the purchase.

The properties are currently under contract for purchase by the Battleground Preservation Trust, which will be assigned to the County if purchase is approved.

Points to Consider:

Property being purchased below fair market value. The three parcels under consideration comprise a significant portion of the battlefield of the 1779 Revolutionary War Battle of Port Royal Island. One tract includes an existing 22,000 s.f. commercial building. SC Conservation Bank, and DoD/Marine Corps Air Station Beaufort are cost-share partners. Marine Corps Air Station Beaufort purchasing a Restrictive Easement on the property with limitations on public access and use of the commercial building. The SC Battleground Preservation Trust will hold a conservation easement to protect historic resources. County would be sole owner of purchased and donated property. Property could be established as a site on the South Carolina Liberty Trail.

Funding & Liability Factors:

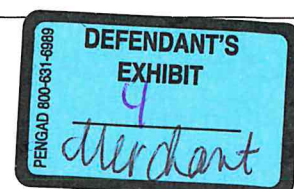
Land acquisition cost from Rural & Critical Program funds = \$544,537. Other cost-share funds are MCAS Beaufort \$897,500, and SC Conservation Bank \$352,963. County has expended \$18,235 in identifiable due diligence expenses, further costs expected for closing including survey of donated parcel and closing costs. Post-closing costs for County listed in Project Summary Sheet. The existing building is a liability consideration.

Council Options:

Approve the proposal and recommend purchase to Council, modify proposal, or reject proposal

Recommendation:

Staff recommends the Committee approve the request.



ORDINANCE 2020/_____

AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF APPROXIMATELY 12 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND ALSO KNOWN AS THE PORT ROYAL ISLAND BATTLEFIELD; TO SELL A RESTRICTIVE EASEMENT TO THE UNITED STATES OF AMERICA ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000; TO ACCEPT THE DONATION OF A PORTION OF R100 020 000 0244 0000; AND TO GRANT A CONSERVATION EASEMENT TO THE SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND A PORTION OF R100 020 000 0244 0000.

WHEREAS, Beaufort County (“Buyer”) established the Rural and Critical Land Preservation Program in 1999 with purposes which include providing for the purchase of fee simple interests in lands which are deemed critical for the protection of natural resources, historic and cultural significance, regional or local recreation potential, viewsapes and lands suitable for public use; and

WHEREAS, in 2016, experts conclusively determined the specific location in northern Beaufort County of the Revolutionary War’s 1779 Battle of Port Royal Island and a National Historic Marker has been placed near the battlefield; and

WHEREAS, sellers wishes to sell and buyer wishes to buy the real property identified as **R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000** also known as the Port Royal Island Battlefield, approximately 12 acres located in northern Beaufort County, on U.S. Highway 21 (“Property”); and

WHEREAS, the purchase of the Port Royal Island Battlefield has been demonstrated to meet the Critical Lands Criteria of the Rural and Critical Lands program; and

WHEREAS, the Port Royal Island Battlefield abuts Marine Corps Air Station Beaufort, property owned by the United States of America; and

WHEREAS, Buyer and the United States of America have entered into an agreement pursuant to 10 U.S.C. Section 2684a to acquire property interests that would be otherwise incompatible with the mission of Marine Corps Air Station Beaufort and otherwise meets the mutual objectives of the buyer and the United States of America; and

WHEREAS, the United States of America desires to purchase a Restrictive Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and

WHEREAS, the South Carolina Battleground Preservation Trust (“Preservation Trust”) is a §501(c)(3) organization corporation established in 1991 dedicated to the preservation of South Carolina’s historic battlegrounds and military sites and desires to protect the historic integrity of the Port Royal Island Battlefield as the holder of a conservation easement; and

WHEREAS, the Preservation Trust desires to purchase, through funds provided by a South Carolina Conservation Bank grant, a Conservation Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and

WHEREAS, the proposal to purchase the Port Royal Island Battlefield is for a fee simple purchase of \$1,820,000.00 plus reasonable closing costs; and

WHEREAS, funding for the purchase of Property comprised of \$544,537.00 from the Rural and Critical Land Preservation Program, \$352,963.00 from a South Carolina Conservation Bank grant and \$922,500.00 from the sale of a Restrictive Easement to the United States of America; and

WHEREAS, the seller of **R100 020 000 0165 0000** and **R100 020 000 047C 0000** has offered to donate to the buyer approximately 1.7 acres of land of **R100 020 000 0244 0000** that also includes a portion of the battlefield; and

WHEREAS, the American Battlefield Trust, the National Park Service, the South Carolina Battleground Preservation Trust and the South Carolina American Revolution Sestercentennial Commission are collaborating to commemorate South Carolina's involvement in the Revolutionary War with the establishment of the *Liberty Trail*, a heritage tourism and preservation initiative and the Port Royal Island Battlefield can be a part of the *Liberty Trail*; and

WHEREAS, the proposed purchase of the Port Royal Island Battlefield was presented to the Rural and Critical Land Preservation Board (RCLPB) at its January 9, 2020 meeting and the RCLPB unanimously recommended approval of the purchase; and

WHEREAS, the proposed purchase of the Property was presented to the Natural Resources Committee on March 2, 2020 and the Committee voted by a vote of 5-1 to recommend approval to Beaufort County Council of the purchase of the Port Royal Island Battlefield using Rural and Critical Lands program funds; and

WHEREAS, the project proposal and essential terms for the purchase and perpetual protection of the Port Royal Island Battlefield are included in the attached Project Summary Sheet (Exhibit "A") describing the fee simple purchase of approximately 12 acres of real property at a price less than the appraised value, the acceptance of a donation of approximately 1.7 acres of real property, the sale of a Restrictive Easement to the United States of America and the grant of Conservation Easement to the South Carolina Battleground Preservation Trust; and

WHEREAS, Beaufort County Council has determined that it is in the best interest of its citizens and residents of Beaufort County to authorize the execution and delivery of the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0165 0000** (Exhibit "B"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 047C 0000** (Exhibit "C"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0047 0000** (Exhibit "D"), the Restrictive Easement (Exhibit "E"), and the Conservation Easement (Exhibit "F") which are attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED by Beaufort County Council that the County Administrator is hereby authorized to:

1. execute the Assignment of Real Estate Purchase and Sale Agreements as shown in Exhibit B, Exhibit C, and Exhibit D attached hereto; and
2. execute the necessary documents for the purchase of approximately 12 acres of real property known as tax map serial numbers R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000 and also known as the Port Royal Island Battlefield; and
3. sell a Restrictive Easement to United States of America and execute the Restrictive Easement as shown in Exhibit E attached hereto; and
4. sell a Conservation Easement to South Carolina Battleground Preservation Trust and execute the Conservation Easement as shown in Exhibit F attached hereto F; and
5. accept the donation of a portion of real property known as R100 020 000 0244 0000.

Adopted this ____ day of _____, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Joseph Passiment, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council

Chronology

- Natural Resources Committee discussion and recommendation occurred on March 2, 2020 / Vote 5:1



**COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT**

106 Industrial Village Road
Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

ELECTRONICALLY FILED - 2025 Jun 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701195

TO: Council Chairman Joseph Passiment, County Council

FROM: Dave Thomas, CPPO, Purchasing Director

SUBJ: **Recommendation of Purchase of Fee Simple Interest of Project 2020A Port Royal Island Battlefield through the Beaufort County Rural and Critical Land Preservation Program**

DATE: March 23, 2020

BACKGROUND: On January 9, 2020, the Beaufort County Rural and Critical Land Preservation Board unanimously voted in Executive Session to approve the fee simple acquisition purchase of Project 2020A Port Royal Island Battlefield and send it to the Natural Resources Committee meeting on March 3, 2020 for approval. The property is 13.86 acres located at 3020, 3026, and 3030 Trask Parkway in Beaufort and is owned by Smooth Seas, LLC (Harris Pillow) and Michael Kling. This property is the specific location of the Revolutionary's War's 1779 Battle of Port Royal Island. The three parcels under consideration comprise a significant area of the battlefield and one parcel includes a 22,000 square foot building. This project has been presented several times to the Beaufort County Rural and Critical Land Preservation Board, however, was not approved under previous proposals. The current proposal has MCAS Beaufort (Department of Defense) funding 50% of the project, South Carolina Conservation Bank funding 20% of the project, and the Beaufort County Rural and Critical Land Preservation Program funding 30% of the project. One of the owners, Smooth Seas, LLC, will donate 1.7 acres of contiguous property for inclusion in the project. MCAS Beaufort will hold a restrictive easement on the property that will allow up to 20 visitors a day for historic, educational, and interpretive activities and may be a part of the Liberty Trail. The South Carolina Battleground Preservation Trust will put a conservation easement on the property to protect its historic resource. Beaufort County will be the sole owner of the purchased and donated property.

FUNDING: Funding for the project will be \$544,537 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011), \$922,500 from MCAS Beaufort (Department of Defense), and \$352,963 from the South Carolina Conservation Bank.

FOR ACTION: Natural Resources Committee meeting (Executive Session) on Monday, March 2, 2020 at 3:30 p.m. for recommendation to County Council on Monday, March 23, 2020 at 6:00 p.m.

RECOMMENDATION: The Community Development Department recommends that the Natural Resources Committee recommend to County Council approval of the purchase of fee simple interest of Project 2020A Port Royal Island Battlefield in the amount of \$544,537 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011). The total cost of the project with partners will be \$1,820,000.

CC: Ashley Jacobs, County Administrator
Alicia Holland, Asst. Co. Administrator, Finance
Phil Foot, Asst. Co. Administrator, Public Safety
Eric Greenway, Community Development Department Director
Amanda Flake, CDD Natural Resources Planner

Exhibit A

Ranking: 5.48

March 2, 2020

Beaufort County
Rural & Critical

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**2020A Port Royal Island Battlefield (3
tracts) Beaufort County, SC
Proposal: Fee Acquisition**

THREE PROPERTIES:

Seller	DMP#	Acres
Smooth Seas, LLC (Harris Pillow)	R100 020 000 0165 0000	2.36
Smooth Seas, LLC (Harris Pillow)	R100 020 000 047C 0000	6.07
Michael Kling	R100 020 000 0047 0000	<u>3.73</u>

Acreage to be Purchased: **12.16**

Acreage to be Donated (estimated): **1.70**

Total Acreage to be Owned by County **13.86**

TOTAL PRICE: \$1,820,000

RCLPP FUNDS: \$ 544,537 (30% of purchase cost)

PARTNER FUNDS: \$1,275,463 See Purchase and Cost Structure

SELLER CONTRIBUTIONS: See Purchase and Cost Structure

ZONING: S1 Light Industrial
MCAS AICUZ Noise Zones 80-85db and 75-80db

COUNCIL DISTRICT: 1 (Councilman Gerald Dawson)

LOCATION: 3020, 3026 and 3030 Trask Parkway, Beaufort, SC
North of the City of Beaufort, west and adjacent to U.S. Highway 21, south of
Parker Drive, directly across U.S. Highway 21 from Marine Corps Air Station
Beaufort (MCAS Beaufort)

Project Background:

- The specific location of the Revolutionary War's 1779 Battle of Port Royal Island was conclusively determined in the spring 2016. The three parcels under consideration comprise a significant area of the battlefield. A National Historic Marker is located near the property just off U.S. Highway 21 north of the subject tracts.

A Narrative of the Battle of Port Royal Island can be found after the Project Analysis.

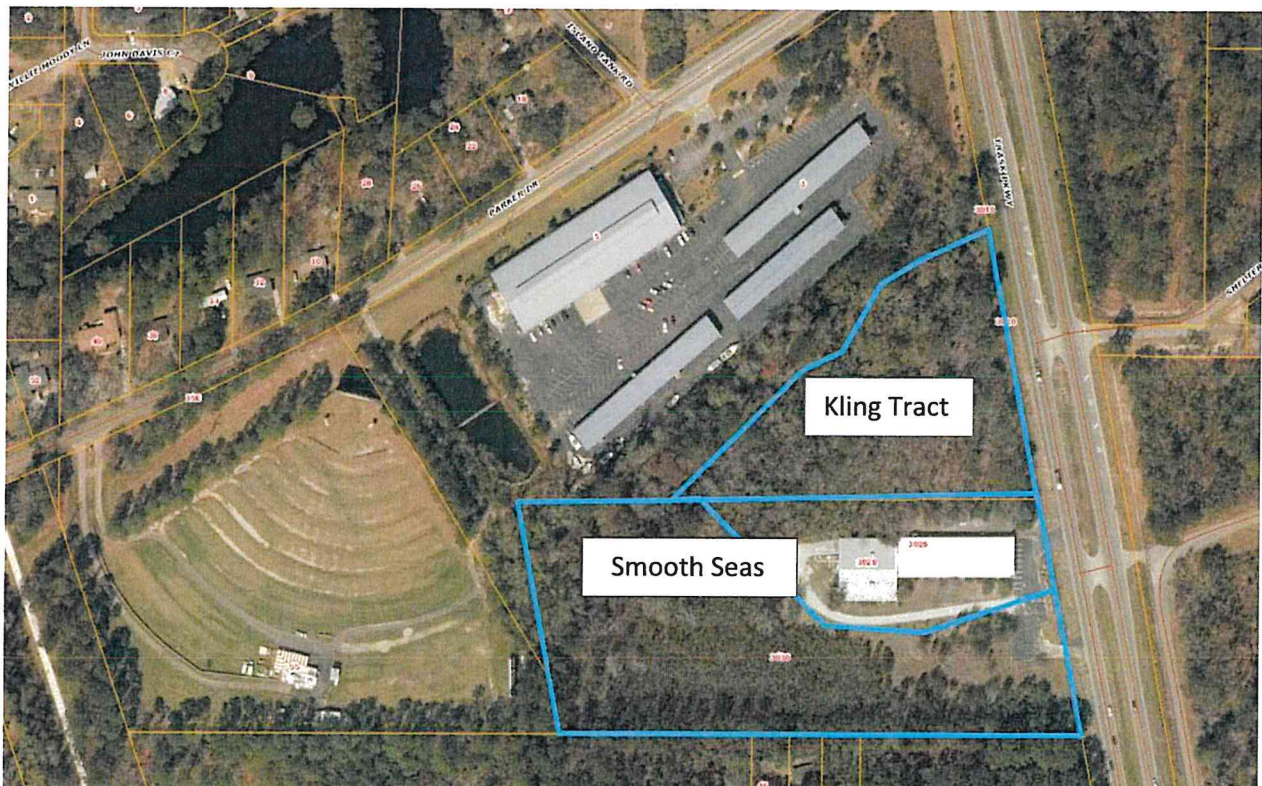
- This project has been presented several times through the Rural and Critical Program, however, was not approved under previous proposals.

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Property Characteristics:

- The 2.36-acre Smooth Seas tract includes a 22,000 s.f. industrial building ca. 1973 with a paved parking lot in the front of the building and an unpaved driveway extending from the parking lot to the back of the building.
- The 6.07-acre Smooth Seas tract is an unimproved vacant parcel of mixed forest and wetlands. A portion of the paved parking extends onto this tract. One billboard with a permanent easement is located at the southeast corner of the tract facing southbound U.S. Highway 21 traffic.
- The Kling tract is an unimproved vacant parcel with mixed upland forest and wetlands. One billboard is sited on this parcel facing southbound U.S. Highway 21 traffic.
- The properties have 1,680 feet of road frontage on U.S. Highway 21 with over 20,000 cars passing daily



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Purchase and Cost Structure:

Appraised Values and Negotiated Price					
<u>DMP#</u>	<u>Acres</u>	<u>Owner</u>	<u>Appraised Values</u>	<u>Appraisal Totals</u>	<u>Negotiated Price</u>
R100 020 000 0165 0000 Land	2.36	Smooth Seas	\$220,000		
R100 020 000 0165 0000 Bldg		Smooth Seas	\$930,000		
R100 020 000 047C 0000	6.07	Smooth Seas	\$460,000		
				\$1,610,000	\$1,575,000
R100 020 000 0047 0000	3.73	Kling		<u>\$280,000</u>	<u>\$245,000</u>
				\$1,890,000	\$1,820,000

Port Royal Island Battlefield Purchase Budget			
Costs:			
Purchase of Smooth Seas Tracts (negotiated)		\$ 1,575,000	
Purchase of Kling Tract (negotiated)		<u>\$ 245,000</u>	
Total Purchase Funds Needed:			<u>\$ 1,820,000</u>
Funding Sources/Partners:			
Department of Defense	\$ 922,500		51%
South Carolina Conservation Bank (previously awarded)	\$ 352,963		19%
Beaufort County Rural & Critical Land Program	<u>\$ 544,537</u>		<u>30%</u>
Total Funds Requested:			<u>\$ 1,820,000</u>

Cost-Share Partner Contributions:**1. Department of Defense MCAS Beaufort Restrictive Easement**

Restrictive Easement allows for up to 20 visitors/day for historic, educational and interpretive activities with no notice to MCAS. The site could be included on the Liberty Trail. Approval required for events that include more than 20 people/day.

2. South Carolina Conservation Bank

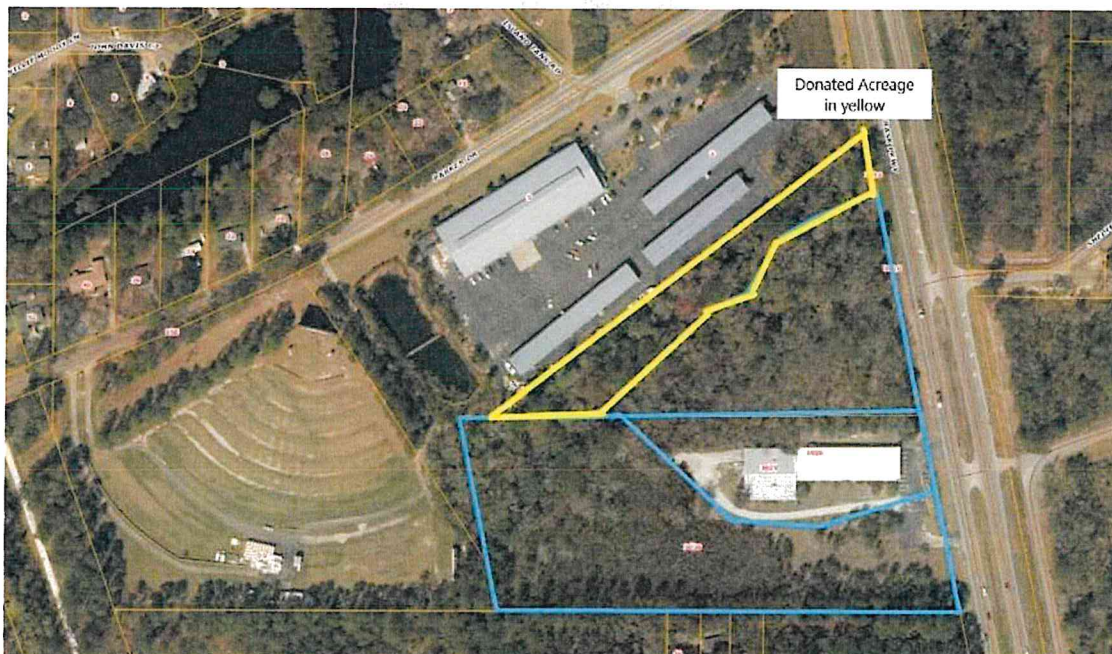
In 2017 the South Carolina Battleground Preservation Trust (SCBPT) was awarded a \$352,963 grant from the SCCB. The proposed project went inactive and those funds were ultimately released to other projects. The SCBPT is re-applying for funds in January 2020. Grant awards are expected to be finalized by the Board by the end of February 2020. Approved funds must be expended by June 30, 2020.

3. South Carolina Battleground Preservation Trust

The SCBPT is applying for the SCCB funds on behalf of the project and will be a continued partner with Beaufort County on the Liberty Trail project. The SCBPT will hold a conservation easement on the property with the purpose of protecting its historic and cultural resources.

4. Seller Contributions

The seller of the Smooth Seas properties has offered to convey approximately 1.7 acres of contiguous property to County for inclusion into project, bringing the total battlefield acreage to almost 14 acres. The value of this donated acreage has not been appraised.



Both owners of the properties are willing to sell the property below fair market value in the interest of permanent protection of the battlefield.

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Cost Considerations:**Due Diligence and Closing**

Beaufort County has expended identifiable due diligence funds of \$17,485 on the Port Royal Island Battlefield project which included a new survey of the three properties, a Phase I Environmental Site Assessment, an asbestos survey, a wetlands delineation and a USPAP-standard FMV appraisal. Other costs must be expended by Beaufort County to finalize the closings, including a survey of the donated parcel and the attorney fees for title work and closing the project.

Future Cost Considerations

Economic impact of purchases on tax base of the County:

Foregone property tax revenue	\$ 25,924

Operations & Maintenance

Annual mowing maintenance	\$ 15,000

Other items	Est. not available

If the building were to be demolished (not required by easement):

Asbestos removal, estimated	\$ 5,015

Demolition of building, parking areas	\$100,000

Billboard removal / Re-use	Est. not available

The South Carolina Battleground Preservation Trust plans to be an ongoing partner with Beaufort County in the fundraising and ongoing efforts needed to optimally protect, interpret and promote this battleground property.

Critical Lands Criteria:

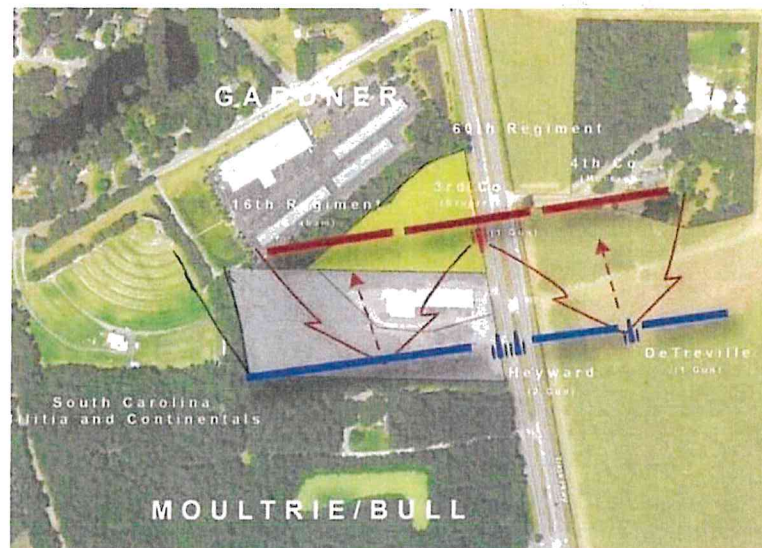
- Complementary with County Comprehensive Plan recommendation 6-1 and implementation strategy to continue to pursue the acquisition of significant archeological and historical sites via the Rural & Critical Land Preservation Program
- Proximity to protected areas: Located 1,000 feet from RCLPP-purchased AMGRAY (~21 acres).
- Public access, historic and educational benefits
- Leverage of other funding – strong cost-share funding partners
- Public views of scenic forested frontage from U.S. Highway 21
- Water quality/groundwater recharge ecosystem services benefits

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LAND PRESERVATION PROGRAM

Project Analysis:

This project represents an opportunity for Beaufort County to purchase three properties comprising the unprotected and only publicly accessible portion of the Revolutionary War's 1779 Battle of Port Royal Island, a land area of great historic significance for the United States. The project offers the possibility of public ownership and permanent protection and interpretation of this unique and decisive victory of the Patriots over the British Loyalists in America's War for Independence.



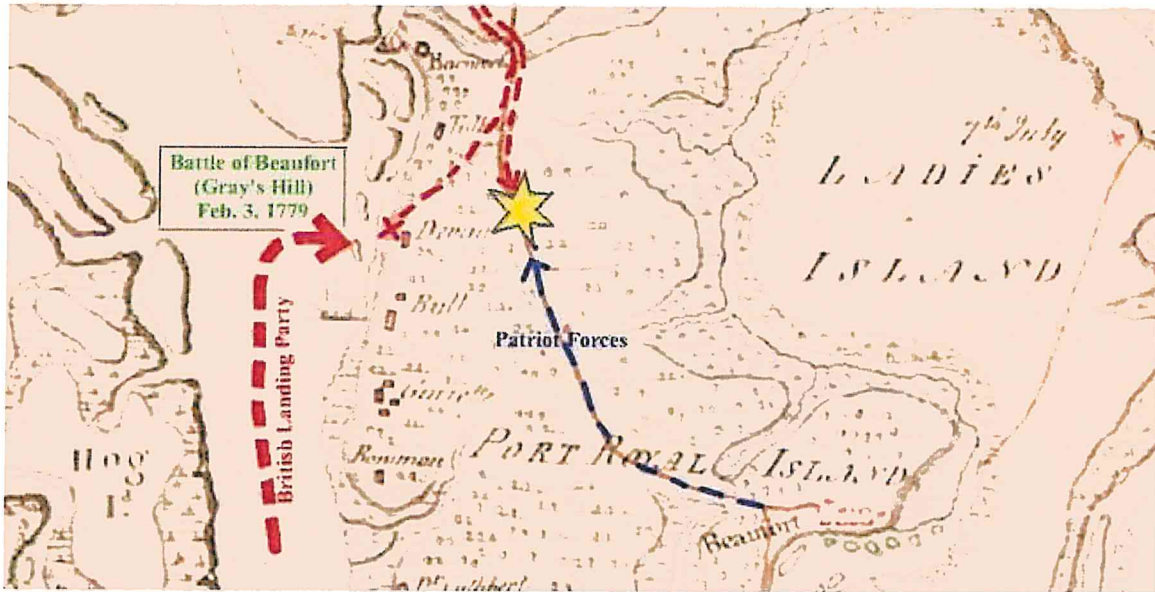
Diverse and important goals can be accomplished by this project. Beaufort County's partners have been asked to contribute 85% of the purchase funds to protect the Port Royal Island Battlefield. Marine Corps Air Station Beaufort has the goal of protecting today's military from incompatible future development adjacent to the installation. To those who work to protect and commemorate South Carolina's history and heritage, this project will highlight Beaufort County's involvement in the Revolutionary War through the **Liberty Trail**, a heritage tourism and preservation initiative to promote the Palmetto State's leading role in the founding of the United States. The **Liberty Trail** is a collaboration of The American Battlefield Trust, the National Park Service, the SCBPT and the South Carolina American Revolution Sestercentennial Commission and is expected to be functional in late 2020. The Trail will be an interactive history

Beaufort County
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**LAND
PRESERVATION
PROGRAM**

experience that will be 400 miles long and feature 70 sites, including 16 park sites and 14 roadside vehicle pull-offs.

Previous versions of this project have not been approved due to a number of reasons, including a high price per acre, limitations on public access and future expected costs. The cost per acre is high because the property is situated on the main roadway into northern Beaufort County and is zoned to allow for commercial uses. However, the property is being purchased below fair market value, and the number of cost-share partners brings the RCLP's share down to just 15%. The South Carolina Battleground Preservation Trust is willing to continue working with Beaufort County on the interpretation and education of the site, to fundraise to create an appropriate roadside battleground site and to bring additional partners to the project. The Department of Defense, the SC Battleground Preservation Trust and Beaufort County have come together and reached an agreement they will support to protect this important site.



Narrative of the Battle of Port Royal Island

By Doug Bostick

Executive Director, South Carolina Battlefield Preservation Trust
November 2016

In January 1779, British Major William Gardner was ordered to make a naval landing and march infantry companies to occupy Port Royal Island. They landed at Hilton Head and skirmished with Patriot militia. Gardner's troops burned the plantation belonging to Captain Thomas Heyward Jr., one of South Carolina's Signers of the Declaration of Independence. They continued to burn abandoned plantations as they encountered them on their march to Port Royal Island.

Learning of the British advance, Patriot General Benjamin Lincoln dispatched Brigadier General William Moultrie to meet this British threat. Moultrie's troops included the SC 3rd Regiment (Rangers), the SC 4th Regiment of Artillery led by Captain John Francis DeTreville, the SC 5th Regiment (Riflemen), and the 1st Brigade of SC Militia led by Brigadier General Stephen Bull.

Moultrie arrived at Port Royal a day ahead of the British. The British troops deployed ashore at first light on February 3. After marching two miles, they skirmished with a small party of Patriot

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Rural & Critical

LAND PRESERVATION PROGRAM

militia. As they continued their advance on Port Royal, word of their location reached Moultrie.

Moultrie attempted to deploy his men in a wooded swamp near the highway, but the British beat him to that location. The Patriot troops then lines up across the road and in an open field, just two hundred yards from the British troops. Moultrie deployed two six-pound guns commanded by Thomas Heyward Jr. in the middle of the road and one 2-pound gun in the woods on the right commanded by DeTreville.

Major Gardner rode to the American lines with a handkerchief tied to his sword demanding that the Patriots surrender. Moultrie sent Captain Francis Kinlock forward to refuse, and noting that Gardner was outnumbered, that he should consider surrendering.

The British fired their howitzer on Heyward's artillery, killing a Patriot officer. Heyward returned fire and, on his second shot, disabled the Gardner's only cannon, killed two British lieutenants, and hit Gardner's horse.

After taking casualties, Moultrie ordered his men to move to the woods on either side. Both armies tried to flank each other without success. During the forty-five minute battle, a British major and two captains were wounded. As both sides were about to run out of ammunition, Moultrie and Gardner disengaged.

Moultrie sent Captain John Barnwell and his Beaufort militia to pursue the retreating British. Gardner reached the boat landing where forty Loyalist marines had set a defensive position. Forty of the British troops were either killed or wounded and another twenty-six taken prisoner. The Patriot casualties were only eight killed and twenty-two wounded. As the British retreated from the hotly contested battle, they were forced to leave their dead and wounded on the field. Local citizens removed the bodies of the two British officers killed in action and buried them at St. Helena Episcopal Church.



The battle is significant for a number of reasons:

1. If the British were successful in capturing Port Royal, they would have controlled the largest natural deep-water harbor south of New York.
2. Both Thomas Heyward Jr. and Edward Rutledge fought in the battle. It is exceedingly rare that two signers of the Declaration of Independence were involved in a battle as combatants.
3. This battle is one of the earliest documented use of black troops in the Revolutionary War. With the 4th Regiment of Artillery was Jim Capers, a South Carolina slave who became a true American hero.

Capers was born on September 23, 1742 in Christ Church Parish, South Carolina. In 1775, he was a slave at a plantation near Bull's Bay owned by Mr. Capers. On June 15 of that year, Capers enlisted as a drum major in the 4th Regiment of the South Carolina Militia, commanded by Francis Marion.

In the Revolutionary War, a regimental drummer was used, not just for music, but to transmit orders using the drum. Specific drumbeats transmitted orders and coordinated troop movements. A drummer goes into battle without a weapon and subjects himself to great peril. Jim Capers was an American hero by joining the cause of independence, even when he himself was a slave.

Capers fought in the Siege of Savannah, the Siege of Charles Town, and the battles of St. Helena, Port Royal Island, Georgetown, Camden, Biggin Church, and Eutaw Springs. It was at the Battle of Eutaw Springs that he received four wounds: two on his face and one on his head by a sword, and one in his side by a musket ball. His last battle was at Yorktown, Virginia, where he was present for the surrender of Cornwallis.

Capers was discharged on October 1, 1782, having served for seven years, five and one-half months, and he was discharged as a free man of color. After the war, Capers moved to Alabama, seeking new opportunities "in the west." He died in Pike County, Alabama on April 1, 1853, at the age of 110. On February 1, 2015, Jim Capers was recognized and honored with marker at his grave, placed by the Alabama Society of the Sons of the American Revolution.

Exhibit 6

April 1, 2021 Letter from the County Administrator to
Liz Mitchum

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

COUNTY COUNCIL OF BEAUFORT COUNTY
 OFFICE OF THE INTERIM COUNTY ADMINISTRATOR
 ADMINISTRATION BUILDING
 BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
 100 RIBAUT ROAD
 POST OFFICE DRAWER 1228
 BEAUFORT, SOUTH CAROLINA 29901-1228
 TELEPHONE: (843) 255-2023
 FAX: (843) 255-9403
www.beaufortcountysc.gov

CHERYL H. HARRIS
 EXECUTIVE ASSISTANT

ERIC GREENWAY
 INTERIM COUNTY ADMINISTRATOR

April 1, 2021

Ms. Liz Mitchum
 174 Boardwalk Drive, Suite K
 Ridgeland, SC 29936

RE: BILLBOARD LEASE AND EASEMENT AGREEMENTS ON PROPERTY IDENTIFIED AS PARCEL NUMBERS R100-020-000-047C-0000, R100-020-000-0047-0000 AND R100-020-000-0244-0000

Dear Ms. Mitchum:

On December 30, 2020, Beaufort County ("County") acquired property known as the Port Royal Island Battlefield from Mr. John Harris (Parcels #R100-020-000-047C-0000 and R100-020-000-0165-0000), Mr. Michael Kling (Parcel #R100-020-000-0047-0000) and a portion of Parcel #R100-020-000-0244-0000, which was donated by Smooth Seas, LLC.

The County is aware of two (2) easements and one (1) lease agreement on the aforementioned parcel numbers. This letter is to provide acknowledgement and action on these easements and lease agreement as follows:

1. The County acknowledges that Parcel #R100-020-000-047C-000 is subject to a perpetual billboard Easement on the south-east corner of the property immediately adjacent to Hwy 21. The Easement referenced in this paragraph is attached hereto as "Exhibit A". At this time the County intends to honor the terms and conditions of the Easement as recorded in the Register of Deeds.
2. The County acknowledges Parcel #R100-020-000-0047-0000 is subject to a billboard Lease agreement dated October 1, 1989 (Lease No. 40133) on the east boundary of the property immediately adjacent to Hwy 21. The aforementioned Lease is attached hereto as "Exhibit B". This Lease expired on October 1, 1992. As stated in paragraph seven of the said Lease, "After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year".

In accordance with the Lease terms, the County is hereby providing written notice that this Lease will be terminated as of October 1, 2021. According to the Lease terms, you will have thirty (30) days after the termination date to remove the billboard from the property.

3. The County acknowledges Parcel #R100-020-000-0244-0000 is subject to a term limited billboard Easement on the east boundary of the property immediately adjacent to Hwy 21. The Easement referenced in this paragraph is attached hereto as "Exhibit C". Section 4 of the Easement states,

Office of the Interim County Administrator

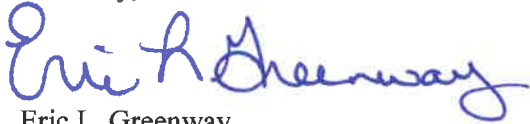
Ms. Liz Mitchum
April 1, 2021
Page 2

“Any and all Easements granted by Grantor to Grantee shall begin on September 10, 2015, and last for a term of twenty (20) years from such date until September 10, 2035. The Easement will automatically terminate on September 10, 2035 (the end of the twenty (20) year term) unless mutually extended by the parties in writing”.

At this time, the County intends to adhere to the terms of said Easement but will not be extending the Easement beyond the term date as provided for in the Easement. You will have thirty (30) days after the termination date to remove the billboard from the property.

If you have any questions or need to discuss this further, please do not hesitate to contact me at (843) 255-2023.

Sincerely,



Eric L. Greenway
Interim Beaufort County Administrator

ELG:bw

Enclosures

cc: Kurt Taylor, Beaufort County Attorney (via email)
Brittany Ward, Beaufort County Deputy Attorney (via email)
Robert Merchant, Acting Planning and Zoning Director (via email)
Stefanie Nagid, Passive Parks Manager (via email)
Kimberly Fleming, MCAS Government and External Relations Director (via email)

Exhibit 7

Beaufort County Ordinance No. 2020/12 (County Rule 30(b)(6) Dep. Ex. 7)

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

ORDINANCE 2020 / 12

AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF APPROXIMATELY 12 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND ALSO KNOWN AS THE PORT ROYAL ISLAND BATTLEFIELD; TO SELL A RESTRICTIVE EASEMENT TO THE UNITED STATES OF AMERICA ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000; TO ACCEPT THE DONATION OF A PORTION OF R100 020 000 0244 0000; AND TO GRANT A CONSERVATION EASEMENT TO THE SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND A PORTION OF R100 020 000 0244 0000.

WHEREAS, Beaufort County ("Buyer") established the Rural and Critical Land Preservation Program in 1999 with purposes which include providing for the purchase of fee simple interests in lands which are deemed critical for the protection of natural resources, historic and cultural significance, regional or local recreation potential, viewscales and lands suitable for public use; and

WHEREAS, in 2016, experts conclusively determined the specific location in northern Beaufort County of the Revolutionary War's 1779 Battle of Port Royal Island and a National Historic Marker has been placed near the battlefield; and

WHEREAS, sellers wishes to sell and buyer wishes to buy the real property identified as **R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000** also known as the Port Royal Island Battlefield, approximately 12 acres located in northern Beaufort County, on U.S. Highway 21 ("Property"); and

WHEREAS, the purchase of the Port Royal Island Battlefield has been demonstrated to meet the Critical Lands Criteria of the Rural and Critical Lands program; and

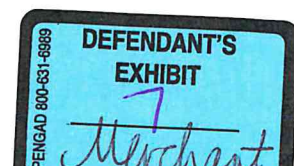
WHEREAS, the Port Royal Island Battlefield abuts Marine Corps Air Station Beaufort, property owned by the United States of America; and

WHEREAS, Buyer and the United States of America have entered into an agreement pursuant to 10 U.S.C. Section 2684a to acquire property interests that would be otherwise incompatible with the mission of Marine Corps Air Station Beaufort and otherwise meets the mutual objectives of the buyer and the United States of America; and

WHEREAS, the United States of America desires to purchase a Restrictive Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and

WHEREAS, the South Carolina Battleground Preservation Trust ("Preservation Trust") is a §501(c)(3) organization corporation established in 1991 dedicated to the preservation of South Carolina's historic battlegrounds and military sites and desires to protect the historic integrity of the Port Royal Island Battlefield as the holder of a conservation easement; and

WHEREAS, the Preservation Trust desires to purchase, through funds provided by a South Carolina Conservation Bank grant, a Conservation Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and



WHEREAS, the proposal to purchase the Port Royal Island Battlefield is for a fee simple purchase of \$1,820,000.00 plus reasonable closing costs; and

WHEREAS, funding for the purchase of Property comprised of \$544,537.00 from the Rural and Critical Land Preservation Program, \$352,963.00 from a South Carolina Conservation Bank grant and \$922,500.00 from the sale of a Restrictive Easement to the United States of America; and

WHEREAS, the seller of **R100 020 000 0165 0000** and **R100 020 000 047C 0000** has offered to donate to the buyer approximately 1.7 acres of land of **R100 020 000 0244 0000** that also includes a portion of the battlefield; and

WHEREAS, the American Battlefield Trust, the National Park Service, the South Carolina Battleground Preservation Trust and the South Carolina American Revolution Sestercentennial Commission are collaborating to commemorate South Carolina's involvement in the Revolutionary War with the establishment of the *Liberty Trail*, a heritage tourism and preservation initiative and the Port Royal Island Battlefield can be a part of the *Liberty Trail*; and

WHEREAS, the proposed purchase of the Port Royal Island Battlefield was presented to the Rural and Critical Land Preservation Board (RCLPB) at its January 9, 2020 meeting and the RCLPB unanimously recommended approval of the purchase; and

WHEREAS, the proposed purchase of the Property was presented to the Natural Resources Committee on March 2, 2020 and the Committee voted by a vote of 5-1 to recommend approval to Beaufort County Council of the purchase of the Port Royal Island Battlefield using Rural and Critical Lands program funds; and

WHEREAS, the project proposal and essential terms for the purchase and perpetual protection of the Port Royal Island Battlefield are included in the attached Project Summary Sheet (Exhibit "A") describing the fee simple purchase of approximately 12 acres of real property at a price less than the appraised value, the acceptance of a donation of approximately 1.7 acres of real property, the sale of a Restrictive Easement to the United States of America and the grant of Conservation Easement to the South Carolina Battleground Preservation Trust; and

WHEREAS, Beaufort County Council has determined that it is in the best interest of its citizens and residents of Beaufort County to authorize the execution and delivery of the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0165 0000** (Exhibit "B"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 047C 0000** (Exhibit "C"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0047 0000** (Exhibit "D"), the Restrictive Easement (Exhibit "E"), and the Conservation Easement (Exhibit "F") which are attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED by Beaufort County Council that the County Administrator is hereby authorized to:

1. Execute the Assignment of Real Estate Purchase and Sale Agreements as shown in Exhibit B, Exhibit C, and Exhibit D attached hereto; and
2. Execute the necessary documents for the purchase of approximately 12 acres of real property known as tax map serial numbers **R100 020 000 0165 0000**, **R100 020 000 047C 0000** and **R100 020 000 0047 0000** and also known as the Port Royal Island Battlefield; and

3. Sell a Restrictive Easement to United States of America and execute the Restrictive Easement as shown in Exhibit E attached hereto; and
4. Sell a Conservation Easement to South Carolina Battleground Preservation Trust and execute the Conservation Easement as shown in Exhibit F attached hereto F; and
5. Accept the donation of a portion of real property known as R100 020 000 0244 0000.

Adopted this 27th day of April, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: Joseph Passiment
Joseph Passiment, Chairman

ATTEST:

Sarah W. Brock

Sarah W. Brock, Clerk to Council

Third Reading: April 27, 2020 / Vote 10:1

Public Hearing: April 27, 2020

Second Reading: April 13, 2020 / Vote 9:2

First Reading: March 23, 2020 / Vote 10:0

Exhibit 8

Excerpts of the Transcript of the Reconvened Deposition of Eric Greenway, former County Administrator

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

NOTE: In accordance with the Court's Order entered October 24, 2024 in this case regarding the reconvened deposition of Eric Greenway, portions of the transcript of that deposition to be included as an exhibit to Defendant's Memorandum in Support of Its Motion for Summary Judgment are being filed under seal and/or submitted to the Court for in-camera review. As a result, there is no document attached to or that follows this cover page in the publicly filed version and it serves as a placeholder.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY

4 *CONFIDENTIAL*

5 DEPOSITION OF ERIC GREENWAY
6 VOLUME II

7 BEAUFORT COUNTY,

8 Plaintiff,

Case No. 2023-CP-07-01195

9 vs.

10 ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP,

11 Defendant.

12

13 DEPONENT: ERIC GREENWAY, VOLUME II

14 DATE: November 15, 2024

15 TIME: 9:59 a.m.

16 LOCATION: BYBEE & TIBBALS
17 MOUNT PLEASANT, SC

18 REPORTED BY: JESSICA BOLANOS
19 CLARK BOLEN
20 PO Box 12189
21 Charleston, SC 29405
22 843-762-6294
23 WWW.CLARKBOLEN.COM
24
25

1 A P P E A R A N C E S

2

3 ON BEHALF OF PLAINTIFF:

4

5 OFFICE OF THE BEAUFORT COUNTY ATTORNEY
6 BY: BRITTANY WARD
7 102 Industrial Village Road
8 Suite 1
9 Beaufort, SC 29901

10

11 -and-

12

13 LAW OFFICE OF SCOTT D. BERGTHOLD,
14 P.L.L.C.

15

16 BY: SCOTT D. BERGTHOLD
17 7446 Shallowford Road
18 Chattanooga, TN 37421

19

20

21 ON BEHALF OF DEFENDANT:

22

23 BYBEE & TYBALLS
24 BY: EVAN WILLIAMS
25 880 Johnnie Dodds Boulevard
26 Suite 2
27 Mount Pleasant, SC 29464

28

29 ON BEHALF OF DEPONENT:

30

31 MAYNARD NEXSEN
32 BY: RHETT RICARD
33 205 King Street
34 Suite 400
35 Charleston, SC 29401

36

37

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[REDACTED]

[REDACTED]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A horizontal bar chart with 20 rows. Each row has a small black square on the left, followed by a text label, and then a horizontal bar of varying length. The bars represent percentages, with the longest bar reaching 100% and others ranging down to approximately 10%.

Category	Percentage
1	95%
2	100%
3	90%
4	95%
5	90%
6	95%
7	90%
8	45%
9	95%
10	90%
11	95%
12	15%
13	25%
14	50%
15	100%
16	80%
17	95%
18	80%
19	85%
20	95%
21	80%
22	25%
23	95%
24	45%
25	25%

[illegible]

A horizontal bar chart titled 'Percentage of respondents who believe that the current administration is responsible for the current state of the world'. The chart displays data for three age groups (18-29, 30-49, 50+) and two genders (Male, Female). The x-axis represents the percentage, ranging from 0% to 100% in 10% increments. The y-axis lists the categories. The bars are color-coded: light blue for 18-29, medium blue for 30-49, and dark blue for 50+.

Category	18-29	30-49	50+
Male	75%	70%	65%
Female	70%	65%	60%
18-29	75%	70%	65%
30-49	70%	65%	60%
50+	65%	60%	55%

A horizontal bar chart consisting of 20 rows. Each row features a small black square on the left side, followed by a black bar of varying length and position. The bars are distributed across the width of the chart area, with some starting at the left edge and others indented. The lengths of the bars vary, with some being the longest (spanning most of the chart width) and others being the shortest (spanning only a small portion of the width). The bars are arranged in a way that they do not overlap vertically, but their horizontal positions and lengths are varied.

Row	Bar Length (approx. % of total width)
1	100
2	85
3	95
4	20
5	50
6	30
7	100
8	70
9	95
10	100
11	100
12	80
13	100
14	100
15	95
16	100
17	100
18	70
19	100
20	100
21	100
22	100
23	60
24	95
25	20
26	55

[illegible]

[illegible]

A horizontal bar chart with two bars. The first bar, representing the current government, is dark blue and extends to 85% on the x-axis. The second bar, representing the previous government, is light blue and extends to 15% on the x-axis. The y-axis labels are 'Current government' and 'Previous government'.

Government	Percentage
Current government	85%
Previous government	15%

Row	Bar Start (approx. %)	Bar End (approx. %)
1	0	100
2	0	75
3	15	95
4	0	78
5	0	25
6	25	100
7	0	80
8	0	90
9	0	96
10	0	70
11	15	78
12	15	30
13	15	92
14	0	88
15	0	100
16	0	45
17	15	30
18	15	94
19	0	40
20	15	100
21	0	85
22	0	96
23	0	82
24	0	96
25	0	50

[illegible]

[illegible]

Row	Bar Start (approx. %)	Bar End (approx. %)
1	0	95
2	0	25
3	15	48
4	35	100
5	0	88
6	35	95
7	0	68
8	35	100
9	0	83
10	0	100
11	0	88
12	0	25
13	35	100
14	0	81
15	35	100
16	0	91
17	0	94
18	0	87
19	0	74
20	0	100
21	0	83
22	0	55
23	35	100
24	0	100
25	0	35

Exhibit 9

Restrictive Easement recorded December 30, 2020, in the
Beaufort County Register of Deeds Office,
In Book 3953, at Page 1610

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

12/30/20
NCOE
Howell



BEAUFORT COUNTY SC - ROD
BK 3953 Pgs 1610-1621
FILE NUM 2020078102
12/30/2020 01:45:29 PM
REC'D BY oevans RCPT# 1010484
RECORDING FEES \$0.00

All correspondence pertaining to this Easement
must include reference to:
FILE NO: EI-12394
CONTRACT NO: N40085-21-RP-00038
Prepared by Department of the Navy
Naval Facilities Systems Command, Mid-Atlantic
9324 Virginia Ave, Norfolk, VA 23511

RESTRICTIVE EASEMENT

THIS GRANT OF EASEMENT, made this 30 day of December by and between Beaufort County, South Carolina having an address at 100 Ribaut Road, Beaufort, S.C., hereinafter referred to as the "county" or "Grantor", and the United States of America, acting by and through the Department of the Navy, Naval Facilities Systems Command Mid-Atlantic, hereinafter referred to as the "Grantee."

WITNESSETH:

WHEREAS, Grantor owns 13.88 acres of real property in fee in Beaufort County, South Carolina more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property is in the vicinity of Marine Corps Air Station Beaufort ("MCAS Beaufort"), a parcel of land owned and operated by the United States of America, the ("Installation"); and

WHEREAS, Grantor and Grantee have entered into an agreement pursuant to 10 U.S.C. Section 2684a to acquire property interests in the form of a restrictive easement of 12.19 acres which would otherwise be incompatible with the mission of the Installation and otherwise meets the mutual objectives of the Grantor and Grantee; and

WHEREAS, the Property possesses recognized historical and cultural significance due to the 1779 Revolutionary War Battle of Port Royal Island having taken place on the Property and abutting properties; and

WHEREAS, the American Battlefield Trust, the National Park Service, the South Carolina Battleground Preservation Trust and the South Carolina American Revolution Sestercentennial Commission have initiated a heritage and preservation initiative to recognize South Carolina's leading role in the founding of the United States through the "Liberty Trail," a statewide driving tour that tells the unique story of this campaign that secured victory in America's War for Independence; and

WHEREAS, Grantor supports the opportunity of the public to honor America's first veterans and desires to allow limited public access onto the Property in a manner that also minimizes activities that could otherwise be incompatible with the mission of the Installation; and

WHEREAS, the Installation, while concerned that the Property is subject to both elevated noise and increased aircraft accident potential, also recognizes and honors the sacrifices of South Carolinians who served to fight decisive battles in the founding of our nation; and

WHEREAS, it is in the best interest of the Installation to limit development on the Property and to require significant and substantive advance coordination for any known increases in usage, including exceptional circumstances where closure may be necessary; and

1 OF 9

[Signature] 12/30/20
Deputy County Attorney

ELECTRONICALLY FILED - 2025 Jun 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701195

WHEREAS, Grantor, acting through its governing body, the Beaufort County Council, finds that this grant of Restrictive Easement on the Property is in the best interests of Beaufort County, and the public in general inasmuch as the same furthers the government interest of fostering the general health and welfare of the citizens of and visitors to Beaufort County, South Carolina; and

NOW THEREFORE, in consideration of Nine Hundred Ten Thousand dollars (\$910,000.00) and the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys to the Grantee and its successors and assigns this Restrictive Easement (the "Easement") in perpetuity over the Property described in Exhibit "A", of the nature and character and to the extent set forth herein.

1. Purpose. It is the purpose of this Easement to prevent any improvement, development or use of the Property that would otherwise be incompatible with the mission of the Installation (the "Purpose").

2. Rights of Grantee. To accomplish the Purpose, the following rights are conveyed to the Grantee by this Easement:

a. To prohibit any development or use of the Property inconsistent with the Restricted Uses and Development Rights of paragraph 3 that would encumber, impede, limit or otherwise be incompatible with the mission of the Installation and the Purpose herein, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Section 6.

b. To enter upon the Property to cut down, top or trim any naturally occurring trees, plants, vines, and like obstructions extending more than 100 feet above ground level at Grantee's sole expense.

c. To enter upon the Property on an annual basis in order to monitor Grantor's compliance with the terms of this Easement or at any time upon an event of non-compliance with the terms of this Easement to enforce the terms of this Easement; provided that Grantee will provide at least ten (10) days' notice of such entry to Grantor: except when there is a threat of imminent harm of personal injury or property damage. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

d. To close or direct Grantor's closure of the gate installed on the Property if the Installation considers the public at heightened risk, with the understanding that the general intent of this agreement is to allow public access during daylight hours. The Installation shall notify Grantor as soon as practicable should the Installation determine a need to secure public access to the Property, which circumstantially may be prior to or after taking such action.

3. Restricted Uses and Development Rights. Any activity or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, and except as specifically permitted, the following activities and uses are expressly prohibited:

a. All activities EXCEPT (i.) silviculture and use of natural resources and (ii.) preservation and interpretation of historic resources (as those terms are defined below) are prohibited on the Property.

i. "Silviculture and Use of Natural Resources" means all silvicultural and other use of the Property's natural resources, including but not limited to timber harvesting (to include thinning and clearcutting of marketable timber), mechanical and chemical site preparation, reforestation, and all other activities associated therewith provided such uses are not inconsistent with the restrictions

contained in this Agreement or the Purpose. In connection with such uses, fencing may be installed, and maintained on the Property. Notwithstanding anything to the contrary contained herein, no single surface or mineral borrow pit greater in size than one (1) acre, shall be created or excavated on the Property. However, should such surface or mineral borrow pits made attract such a concentration of birds to the extent that they cause a training or operational hazard, or create a safety hazard or attractive nuisance, the Grantor, upon the request of the Grantee, shall remove or alter such excavations to the extent required to mitigate the training or operational hazard created. Such removal or alterations shall be at the sole cost of the Grantor.

ii. "Preservation and Interpretation of Historic Resources" means protecting the Property's historically significant features, including but not limited to restricting activities that could harm or otherwise cause injury to the archeological integrity of the Property or altering the topography or natural resources of the property in a manner that could harm or otherwise cause injury to the historic resources. In connection with such uses, fencing shall be installed and maintained on the Property in a manner consistent with Grantee's right of closure in paragraph 2(d).

b. Human Habitation. The Property, which includes one existing building, and one existing parking lot, may not be used for passive recreation; active recreation; educational events or other educational opportunities except for those expressly permitted below; human habitation; or transient stays, including but not limited to transient accommodations such as camping, cabins, trailers, RVs, tents, etc.

i. Limited Non-Commercial Public Access. The Grantor may (1) provide limited public access to the Property to allow researchers, scholars, citizens and students interested in historic preservation, interpretation, commemoration and education to visit the Property, and (2) allow the Property to be a Liberty Trail site so long as the total number of persons on the Property does not exceed 20 per day. Should Grantor wish to hold an event or ceremony for a group of more than a total of 20 persons per day, Grantor will notify the Grantee not less than sixty (60) days prior to the date that Grantor intends to allow the educational interpretive event. The notice shall describe the scope, specific location, number of people, length of event, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purpose and/or the restrictions on the use of the Property included herein. Notice should be provided to the Community Plans and Liaison Officer located at MCAS Beaufort via email and written notification. Failure of Grantor to give such notice shall be deemed a breach of the terms of this Agreement. Within thirty (30) days of receipt of the request, the Grantee will grant or withhold its approval in writing. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the event would be inconsistent with the Purpose and/or the restrictions on the use of the Property included herein, or would cause a training or operational hazard. If approval or disapproval is not communicated to Grantor within such 30-day period, approval is deemed granted.

c. Number and Location of Existing Structures.

i. Commercial Building. As noted in the Baseline Report, there is one (1) existing commercial building located on Beaufort County Parcel #R100 020 000 0165 0000 of the Property. This building may be repaired, improved or maintained so long as the building is used for no other purpose than for historic education and interpretation. Replacement of the building shall be permitted only upon Grantee's written approval. Grantor and its assigns and successors in interest shall provide Grantee written notice of Grantor's intention to undertake any such replacement construction, together with

information on its size, function, capacity and location, not less than sixty days (60) prior to the construction thereto in accordance with paragraph 5 below. The building may be demolished and removed from the Property in part or in whole.

ii. Parking Lot. There is one (1) existing parking located on Beaufort County Parcels #R100 020 000 0165 0000 and #R100 020 000 047C 0000. This parking lot may be replaced, repaired, improved or maintained so long as the parking is used for no other purpose than for permitted silvicultural and natural resources uses and the Property's historic education and interpretation uses. The parking lot may be demolished and removed from the site in part or in whole.

d. Setbacks. No structure, with the exception of fencing, may be located within 50 feet of any property line abutting the Installation.

e. Height Restrictions. The erection, construction, installation, alteration or cultivation, whether public or private, of any structure, building, antenna, tower, wire, tree or other obstruction, whatever its nature, extending more than 100 feet above ground level (AGL) or penetrating any MCAS Beaufort airspace is prohibited.

f. Lighting. All lighting equipment, to include floodlights and searchlights, and all protective lighting, such as streetlights, shall have positive optical control so that no light is emitted above the horizontal plane.

g. Other Operational & Training Hazards. No operations of any type are permitted that produce smoke, glare or other visual hazards, or encourage concentrations of birds, such as bird feeding stations, ponds (except as otherwise allowed herein) and mature crops left un-harvested, that may be dangerous for aircraft operating from the Installation. Prior to commencing controlled burns for agricultural purposes, habitat improvement and mitigation of fire hazards, Grantor must give as much reasonable prior notice to Grantee as is practical but in no event less than three (3) days' notice, and receive Grantee's approval, which will not be unreasonably withheld. Notice should be provided to the Community Plans and Liaison Officer located at MCAS Beaufort via email.

h. Construction. New construction of any structure or edifice, and any other additions to, or alterations of the Property are prohibited except for those improvements or alterations deemed to be reasonably necessary to the allowed uses of the Property defined within this paragraph 3, and to address any storm water management issues on or affecting the Property authorized pursuant to paragraph 4. Grantor and its assigns and successors in interest shall provide Grantee written notice of Grantor's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than sixty days (60) prior to the commencement thereto in accordance with paragraph 5 below.

i. Subdivision. Except for the already existing subdivision of the Property into three separate tracts identified on tax maps as R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000, no other division, subdivision or de facto subdivision of the Property is permitted, provided, however, that a lease of all or a portion of the Property for an authorized use under this Easement shall not be prohibited.

4. Reserved Rights. In addition to the above allowed uses, Grantor reserves to itself, and its successors and assigns, the following rights:

a. Controlling predatory and problem animals by the use of selective control techniques.

b. Establishing retention or detention ponds or impoundments to ameliorate storm water runoff on or affecting the Property. Grantor, in consultation with and with prior approval of Grantee, will be permitted to create such storm water impoundments on the Property, provided they are not enhanced for the attraction of waterfowl. However, should the impoundments or other improvements made attract such a concentration of birds to the extent that they cause a training or operational hazard, the Grantor, upon the request of the Grantee, shall remove or alter the impoundments or improvements to the extent required to mitigate the training or operational hazard created. Such removal or alterations shall be at the sole cost of the Grantor.

c. To erect and maintain a sign in a prominent location on the Property visible from a public road, bearing information indicating the property is protected by Grantor and the Grantee. Grantor shall be responsible for the costs of erecting and maintaining such signs or markers.

5. Notification and Approval Provisions.

a. Notice of Intent to Undertake New Uses and Construction. Whenever Grantor plans to undertake a new use or perform new construction or reconstruction on the Property, Grantor will notify the Grantee in writing by certified mail not less than sixty (60) days prior to the date that Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purpose and/or the restrictions on the use of the Property included herein. Failure of Grantor to give such notice shall be deemed a breach of the terms of this Agreement. Furthermore, should the Grantor undertake to make any improvements to control storm water runoff pursuant to paragraph 4 above, the provisions of this paragraph shall apply.

b. Grantee's Approval. Within twenty (20) days of receipt of the request, the Grantee will grant or withhold its approval in writing. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the use or construction proposed would be inconsistent with the Purpose and/or the restrictions on the use of the Property included herein. If approval or disapproval is not communicated in writing to Grantor within such 20-day period, approval is deemed granted.

6. Enforcement and Remedies. In the event of breach by Grantor of any terms, conditions, or obligations created by this Easement, the Grantor shall be afforded sixty (60) days from the receipt of Grantee's notice of non-compliance to cure the subject breach, except where irreparable harm may result from any delay in curing a breach. The Grantee may grant a reasonable extension of time to complete the cure if it is determined by the Grantee to be necessary. In the event that the non-compliance is not cured within the sixty (60) day time frame, or extension of time if granted by the Grantee, the Grantee may:

a. take necessary actions to correct the non-compliance and upon request by Grantee. Grantor shall reimburse Grantee for its reasonable actual costs incurred to correct the non-compliance; and/or

b. institute mediation or other alternative dispute resolution strategy that is agreed to-by the parties; and/or

c. institute suits to enjoin any breach or enforce any term by injunction. The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. Enforcement of the terms of this Easement shall be at the discretion of the Grantee. No failure to the part of the Grantee to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

7. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership and maintenance of the Property.

8. Noise and Other Effects of Air Operations. Grantor does hereby fully waive, remise, and release any right or cause of action which Grantor, its successor and assigns, may have due to such noise, noise vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft from the Installation. Grantor represents and warrants that any lease of the Property will contain such waiver of claim by any lessee. Grantor specifically does not waive but retains all rights to causes of action, claims and rights to damages for any aircraft accident affecting the Property or persons thereon, including physical damages, such as contamination from fuel dumping, damage from falling aircraft components, etc. Furthermore, this waiver is with respect to operation of aircraft by or for purposes of the Installation. If the Installation is closed, and the base is converted to private, non-military use, this waiver shall terminate.

i. As used herein, the term "aircraft" shall mean any and all types of aircraft, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of noise levels, for the purpose of military training, and/or transporting persons or property through the air by whomsoever owned or operated.

9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including a leasehold interest. Grantor further agrees to give written notice to the Grantee of any such transfer at least 30 days prior to the date of transfer.

10. Notices. Any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor: Beaufort County Administrator
100 Ribaut Road Post Office Box 1228
Beaufort, SC 29901-1228
Attn: County Administrator

With a copy to: Beaufort County Attorney
25 Rue Du Bois Post Office Box 40
Beaufort, SC 29901-0040
Attn: County Attorney

To USA: Department of the Navy
NAVFACSYSCOM MID-ATLANTIC
9324 Virginia Ave.
Norfolk, VA 12511-3095
Attn: Real Estate Department

With copy to: Commanding Officer
P.O. Box 55001 Building 601, Room 219
Community Plans and Liaison Office
Marine Corps Air Station
Beaufort, SC 29904-5001

Or to such other address as either party may designate by written notice to the other.

11. Authority of Grantor. S.C. Code Ann. Section 4-9-30 (2) (1986) authorizes the Grantor to sell or otherwise dispose of real property owned by Grantor pursuant to the provisions set forth in S.C. Code Section 4-9-120 and 4-9-130 (1986). By Ordinance, the Beaufort County Council authorized the Beaufort County Administrator to execute this Restrictive Easement by and on behalf of the County of Beaufort.

IN WITNESS WHEREOF, Grantor has caused this instrument to be effective the day and year first written above.

WITNESSES:

GRANTOR:

T. Bendle Jr.
(Sign)

Beaufort County
By: Eric H. Greenway
Eric Greenway
Interim Administrator

Thomas A. Bendle Jr.
(Print Name)

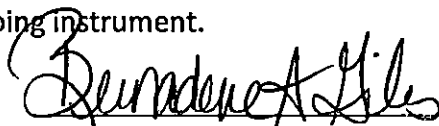
Brittany Ward
(Sign)

Brittany Ward
(Print Name)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The foregoing instrument was acknowledged before me this 30 day of December, 2020, before me the undersigned Notary, and I do hereby certify that the above named, Eric Greenway, Beaufort County Interim Administrator personally appeared before me and acknowledged the due execution of the foregoing instrument.



Notary Public
My Commission expires: 03/08/2029

WITNESSES:

GRANTEE:

United States of America, acting by and through
the Department of the Navy, Naval Facilities
Systems Command Mid-Atlantic

Pat Kitter

(Sign)

Patricia Kitter

(Print Name)

W. Seth Whitey

(Sign)

W. Seth Whitey

(Print Name)

STATE OF ~~SOUTH CAROLINA~~ VIRGINIACOUNTY OF ~~BEAUFORT~~ VIRGINIA BEACH

The foregoing instrument was acknowledged before me this 24 day of December, 2020,
before me the undersigned Notary, and I do hereby certify that the above named,
Amanda R.M. Pack on before of the United States of America, acting by and through the
Department of the Navy, Naval Facilities Systems Command Mid-Atlantic personally appeared before me
and acknowledged the due execution of the foregoing instrument.

Courtney Leigh Whitey

Notary Public

My Commission expires: 08-31-2022

EXHIBIT "A"

ALL THOSE certain pieces or parcels of land, situate, lying and being in Beaufort County, State of South Carolina, and being known as Lot 1 and Lot 2 as shown on a plat duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, as Plat Book 63 Page 133; Lot 4, as shown on a plat duly recorded in aforementioned Office of the Register of Deeds, as Plat Book 105 Page 191; and Parcel B, as shown on a plat entitled "Combination-Recombination Survey Prepared for Beaufort County Open Land Trust, Island of Port Royal", prepared by David S. Youmans, dated April 16, 2020.

Said pieces or parcels of land are shown on a plat entitled "Consolidation, As-Built, and Boundary Survey, Prepared for Beaufort County, Beaufort Tax Map 20, Parcel 47, 47C and 165", prepared by David S. Youmans, dated April 19, 2020, attached and described as follows:

BEGINNING at Concrete Monument along the western right-of-way of US Highway 21, said Monument being the southeast corner of aforementioned Lot 2 and the Point of Beginning; thence, along the southern property line of Lot 2, S 89°18'02" W , a distance of 14.37'; thence, S 89°18'02" W , a distance of 7.62'; thence, S 89°18'02" W , a distance of 369.88'; thence, S 89°44'00" W , a distance of 210.25'; thence, S 89°50'11" W , a distance of 313.16' to the southwest corner of said Lot 2; thence, along the western property line of said Lot 2, N 12°23'14" W , a distance of 120.26' to a point at the dividing line between said Lot 2 and Parcel A, as shown on aforementioned David S. Youmans plat; thence, along the said dividing line, N 12°06'13" W , a distance of 134.81'; thence, N 12°15'59" W , a distance of 155.46' to a point; thence, N 89°33'19" E , a distance of 89.52' to a point; thence, along the dividing line between the said Parcel A and Parcel B, N 50°42'45" E , a distance of 910.85' to a point along the said western right-of-way line of US Highway 21; thence, along the said western right-of-way line, S 11°53'54" E , a distance of 137.09'; thence, S 11°53'54" E , a distance of 447.02'; thence, S 11°58'31" E , a distance of 155.30'; thence, S 12°29'59" E , a distance of 254.95' to the POINT OF BEGINNING;

Containing an area of 604,717 Sq. Ft., or 13.88 Ac., more or less

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AFFIDAVIT

PESONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is known as:

ALL that certain piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina and being 6.11 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020 entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY".

TMP: 100-020-000-047C-0000

ALL that certain, piece, parcel or lot of land, with improvements thereon, situate, lying and being in Beaufort County, South Carolina and being 2.35 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY".

TMP: 100-020-000-0165-0000

ALL that certain, piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina and being 3.73 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY".

TMP: 100-020-000-0047-0000

3. Check one of the following: The deed is
 - (a)_____subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b)_____subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X_____exempt from the deed recording fee because (see Information section of affidavit): 12-24-40(sub-section 2)
 - (d) Exempt from Hilton Head Transfer fee: Under § 4-5-80(3) *Code of the Town of Hilton Head Island, South Carolina* (1983)

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a)_____The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

(b)_____The fee is computed on the fair market value of the realty which is _____.

(c)_____The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes___ or No___ to the following: A lien or encumbrance existed on The land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes,"

6. The deed recording fee is computed as follows:

(a)Place the amount listed in item 4 above here: _____

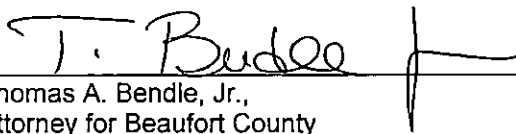
(b)Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c)Subtract Line 6 (b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by **Code Section 12-24-70**, I state that I am a responsible Person who was connected with the transaction as: attorney for Beaufort County.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Thomas A. Bendle, Jr.,
Attorney for Beaufort County

SWORN to before me this 30th
Day of December, 2020

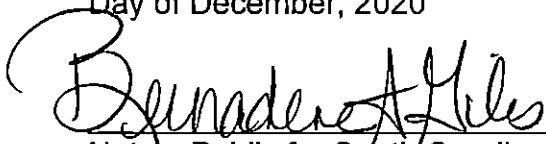

Notary Public for South Carolina
My Commission Expires: 3/8/2029

Exhibit 10

Conservation Easement recorded in the Beaufort County
Register of Deeds Office on January 13, 2021,
in Book 3958, at Page 2410

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

16
25
Howell Gibson DB

BEAUFORT COUNTY SC - ROD
BK 3958 Pgs 2410-2425
FILE NUM 2021002932
01/13/2021 10:38:47 AM
REC'D BY dbutts RCPT# 1012452
RECORDING FEES \$25.00

PROVISIONS OF THIS DECLARATION ARE SUBJECT TO ARBITRATION IN
ACCORDANCE WITH THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this 30 day of December, 2020, by **BEAUFORT COUNTY**, a political subdivision of the State of South Carolina (hereinafter, along with its successors and assigns, known as the "Grantor"), in favor of **SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST, INC.** (hereinafter "Grantee"), a South Carolina statutory not-for-profit Corporation which is a qualified Charitable Organization under Internal Revenue Code Section 501(c)(3), and a "qualified Organization" as defined in Internal Revenue Code Section 170(h)(3).

WHEREAS, Grantor is the sole owner of certain real property which is TMS #s R100 020 000 0165 0000, R100 020 000 047C 0000, R100 020 000 0047 0000 and a portion of R100 020 000 0244 0000 more particularly described as the Battle of Port Royal battlefield, located in the County of Beaufort, South Carolina, and is more particularly set forth on Exhibit A attached hereto (said real property sometimes hereinafter designated "the Protected Property"); and

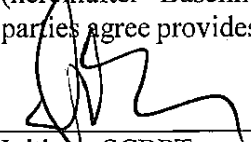
WHEREAS, the Protected Property possesses significant archeological, historical and cultural values (collectively "Conservation Values") of great importance to the people of this state and of this nation; and

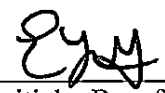
WHEREAS, on February 3, 1779, a British Major William Gardner led an infantry attack to occupy Port Royal Island. Learning of the British advance, Patriot General Benjamin Lincoln dispatched Brigadier General William Moultrie to meet this British threat. The Patriot troops lined up across the road and in an open field, just two hundred yards from the British troops. Moultrie deployed two six-pound guns commanded by Thomas Heyward Jr. in the middle of the road and one 2-pound gun in the woods on the right commanded by DeTreville. In the forty-five minute battle, Moultrie and Gardner disengaged just as both sides were about to run out of ammunition. Moultrie sent Captain John Barnwell and his Beaufort militia to pursue the retreating British; and

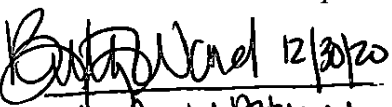
WHEREAS, the Port Royal battlefield will be one stop marketed on the South Carolina Liberty Trail, a statewide driving tour of Revolutionary War battles in South Carolina; and

WHEREAS, the Port Royal battlefield is eligible for listing on the National Register of Historic Places; and

WHEREAS, the specific Conservation Values of the Protected Property are documented in a report to be held on file at the offices of the Grantee and incorporated herein by this reference (hereinafter "Baseline Documentation"), which consists of maps and other documentation that the parties agree provides, collectively, an accurate representation of the Protected Property at the time


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Deputy County Attorney
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of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, in particular, the Protected Property is a significant Revolutionary War battlefield Beaufort County, South Carolina; and

WHEREAS, the Grantor and all successors in interest agree to preserve and protect the Conservation Values of the Protected Property in perpetuity. The Grantor shall coordinate and consult with the Grantee to develop and implement a plan to avoid, minimize or mitigate adverse effects to the significant portions of the site; and

WHEREAS, the Grantor and Grantee acknowledge that there is restrictive easement granted to the United States of America, acting by and through the Department of the Navy, Naval Facilities Engineering Command Mid-Atlantic, recorded on 12-30-2020. However, the Grantor desires placing additional protection on the Conservation Values of the battlefield on the Protected Property to take advantage of the battlefield expertise of the Grantee. Both the Grantor and Grantee acknowledge that this easement must work in concert with the restrictive easement; and

WHEREAS, the Grantor is willing to forego forever the right to exploit fully the economic potential of the Protected Property by encumbering the Protected Property with a Conservation Easement as herein set forth; and

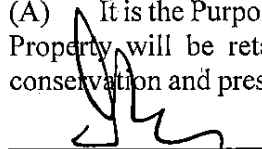
WHEREAS, by act of the Legislature of the State of South Carolina, as recorded in South Carolina Code (1976, as amended) Section 27-8-10 et seq. (The South Carolina Conservation Easement Act of 1991), the State of South Carolina recognizes and authorizes the creation of conservation restrictions and easements; and

WHEREAS, the Grantee has been authorized by its directors to effect the transactions contemplated herein;

NOW THEREFORE, in consideration of the above and of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to Section 170(h) of the Internal Revenue Code of 1986 and the laws of the State of South Carolina, as amended, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (hereinafter the "Easement"). **Grantor herein declares that the Protected Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements hereinafter set forth, which covenants, conditions, restrictions and easements shall be deemed to run with the land in perpetuity and to be a burden on the Protected Property in perpetuity.**

1. Purposes of the Easement.

(A) It is the Purpose of this Easement to assure the historic and cultural features of the Protected Property will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change of the Protected Property


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that will significantly impair or interfere with the Protected Property's conservation and preservation values.

(B) It is also the purpose of this easement to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property.

(Hereinafter the purposes stated in Section 1. (A) and (B), above, will be known as the Purposes of this Conservation Easement.)

2. Rights of Grantee. Subject to the reserved rights set forth in Section 5, below, Grantor hereby grants the following rights to the Grantee:

(A) **Right of Visual Access.** To have visual access to and view of the Protected Property; provided, that such right shall not be construed to permit general public access over or upon the Protected Property, except as specifically permitted herein.

(B) **Right to Document.** To take photographs, drawings or measurements documenting the historical, cultural, or architectural character and features of the Conservation Values and to maintain accurate records on the condition of the Conservation Values. Further, the Grantee may distribute pictures, drawings, images or stories of the Battle of Port Royal Island to magazines, newsletters, or other publicly available publications, or use them in any effort and activity for the preservation and conservation of South Carolina's heritage.

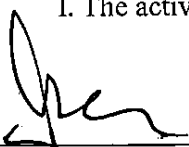
(C) **Right to Monitor.** To enter upon the Protected Property, over, upon and through adjacent lands of the Grantor or Grantor's successors or assigns, at reasonable times in order to monitor compliance with this easement and to further document natural, historic and archeological features of the Protected Property; provided, that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

(D) **Right to Prevent Inconsistent Uses.** To prevent Grantor, all subsequent owners, or third persons from conducting any activity on or use of the Protected Property that is inconsistent with the Purposes of this Conservation Easement.

(E) **Right to Require Restoration.** To require of Grantor, all subsequent owners, or third persons the restoration of such areas or features of the Protected Property that may be damaged by any prohibited activity or use, or any activity or use inconsistent with the purposes of the Easement.

(F) **Right of Discretionary Consent.** If, owing to unforeseen circumstances, any of the activities prohibited by this Conservation Easement are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the following limitations:

I. The activities do not violate the Purposes of this Conservation Easement.


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II. The activities either enhance or do not impair any significant conservation interests associated with the Protected Property.

III. The activities will not adversely affect the status of Grantee under any applicable laws, including Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

IV. In no case shall the Grantee or Grantor have the right or power to agree to any activities that would result in the termination of this Conservation Easement.

(G) **Right to Conduct Educational Visits.** The Grantee shall have the right, upon forty-eight (48) hours notice to the Grantor, to allow or to conduct visits to the Protected Property by individuals or groups interested in Revolutionary War history, or the history of Beaufort County provided that any such visit shall be during daylight hours.

3. Covenants of Grantor. Grantor covenants and agrees, for its successors and assigns, to do the following:

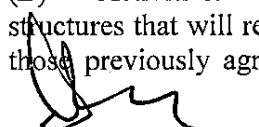
(A) **Preservation Plan.** Grantor has prepared a Preservation Plan for the Protected Property to which it shall adhere. Variations from the Preservation Plan shall be allowed only with the prior written permission of the Grantee and of the State Historic Preservation Office ("SHPO") or their successor agencies. A copy of the Preservation Plan is attached hereto as Exhibit B and is made a part hereof by reference thereto. The Preservation Plan and all other plans developed for the treatment of the Protected Property shall incorporate guidance provided by the Secretary of Interior's "Standards and Guidelines for Archaeological Documentation" (48 FR 44734-37) and the President's Advisory Council on Historic Preservation publication "Treatment of Archaeological Properties" (ACHP 1980). In addition, the Preservation Plan will be consistent with "South Carolina Standards and Guidelines for Archaeological Investigations (South Carolina Department of Archives and History, 2000; or as amended). The Preservation Plan may be implemented only after prior written approval of the Grantor and the SHPO.

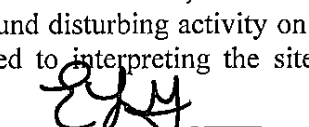
(B) **Site Preparation.** Grantee will assist and advise the Grantor to remove and clear brush, undercover and dead or dying trees from the area of the Protected Property; provided, however, that Grantor shall not remove any tree larger than four inches in diameter at breast height (4"DBH) without the prior written permission of the Grantee. Further, Grantor may grass the area of the Protected Property so cleared with grasses and other flora designed to impede soil erosion of the cleared area and as shall have been approved in advance in writing by the Grantee.

4. Prohibited Uses. Subject to the reserved rights set forth in Section 5, below, Grantor will not perform or permit the following acts or uses on, over or under the Protected Property:

(A) **Subdivision.** There shall be no subdivision of the Protected Property without the prior written consent of the Grantee.

(B) **Activities.** There shall be no residential, commercial or industrial uses, activities or structures that will result in any ground disturbing activity on the Protected Property, other than those previously agreed upon related to interpreting the site to the public through trails and


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interpretive signage without the prior written consent of the Grantee. Any removal of structures on the Protected Property shall be coordinated by the Grantee to allow for the investigation of ground disturbing activity to be surveyed and investigated by a qualified archaeologist.

(C) Structures. There shall be no construction or placement of temporary or permanent mobile homes, bridges, piers, radio or telecommunications transmission antennas, utility transmission poles or any other structures upon the Protected Property, other than those previously agreed upon except such utilities, walkways, paths or raised ramps and viewing platforms the placement, construction and materials of which shall have been approved in advance in writing by the Grantee.

(D) Signs. There shall be no construction or placement of any new advertising signs, billboards or other advertising materials on the Protected Property, except as provided in Section 5, below.

(E) Hunting. There shall be no hunting on the Protected Property.

(F) Dumps, USTs. There shall be no installation of underground storage tanks, or the placing, filling, storing, or dumping on the Protected Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk or waste on the Protected Property.

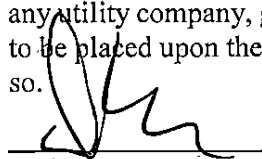
(G) Topography. There shall be no uses of the Protected Property that would adversely alter the topography of the Protected Property, except for construction of the improvements permitted in Section 5, below. The Grantor shall notify the Grantee prior to conducting, or allowing to be conducted, upon the Protected Property any activity that would disturb the topography of the Protected Property other than routine grounds keeping or planting as allowed herein.

(H) Roads. There shall be no paved or unpaved roads through the Protected Property except as those previously agreed upon as further described in Section 5.

(I) Lighting. There shall be no unshielded exterior lighting on any portion of the Protected Property of mercury vapor lights or other high powered exterior lights, defined as lighting in excess of 1750 lumen.

(J) Mining, Excavating Archaeological Sites. There shall be no mining, excavating, dredging or removing from the Protected Property of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit. There shall be no removal of artifacts of a historical nature, except with prior written permission of the Grantee.

(K) Utilities. The Grantor shall not place upon the Protected Property any electrical, telephone, water or sewer or other utilities or utility easements without the prior written consent of the Grantee. The Grantee shall not unreasonably withhold such utility consents as long as Grantor remains compliant with this agreement otherwise. If the Grantor receives notification from any utility company, governmental agency or other entity of proposed utilities or utility easements to be placed upon the Protected Property it shall so notify the Grantee as soon as practicable to do so.



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(L) Other Uses. There shall be no other uses of the Protected Property or activity which would impair significant conservation interests unless such use or activity is necessary for the protection of the Conservation Values that are the subject of this Easement.

5. Reserved Rights. Grantor reserves to itself, and to its successors and assigns and transferees of title to the Protected Property, all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited in Section 4, above, and that are not inconsistent with the Purposes of this Easement, including the following (collectively, the "Reserved Rights"):

(A) Routine Maintenance. The right to cut and remove grass or other existing vegetation on the Protected Property, and to perform routine maintenance and upkeep, provided that such maintenance is consistent with the purposes of this Easement and subject to the restrictions in Section 3 (C) and 4, above. The right to cut any tree when it is necessary to salvage timber damaged by insect, disease, hurricane, fire, wind or flood damage, or when cutting is necessary to prevent further timber damage by such agents or when a house or some other structure is in danger from a hazardous tree.

(B) Selective Clearing. The right to selective cutting or clearing of vegetation for habitat enhancement and protection, fire protection, road maintenance, tick control, the preservation of vistas, or otherwise to preserve the natural condition of the Protected Property, subject to the restrictions of Section 4, above, and Section 6, below.

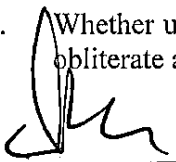
(C) Signs. The right to post "no trespassing" signs, and informational and directional signs. Signs may not exceed 12 inches by 18 inches in size, except for informational or interpretive signs, which may exceed such size, subject to the approval of the Grantee.

(D) Horticulture. The right to plant, grow and maintain decorative grasses, plants and trees upon the Protected Property incidental to residential use; provided, however, that the Grantor must obtain prior written approval from the Grantee to plant any trees.

6. Prior Approval and Notice to Grantee.

(A) The exercise of certain rights reserved by the Grantor under Section 5, above, is subject to the prior approval by or notice to Grantee of such proposed activity when so specifically stated in Section 5, which approval shall not be unreasonably withheld. In evaluating each Grantor request, the Grantee shall take into account the following considerations:

- I. Whether use of the site for the proposed activity would materially and adversely impair the historic qualities of the Protected Property that are visible to the general public;
- II. Whether use of the site for the proposed activity would unnecessarily fragment, harm or obliterate an archaeologically or historically significant site;


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- III. Whether use of the site for the proposed activity would create an unreasonable amount of impervious surface;
- IV. Whether the proposed activity or use of the site for the proposed activity would otherwise materially and adversely affect the Purposes of this Conservation Easement.

(B) Other Criteria, depending on Conservation Values of the Property:

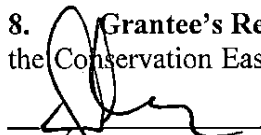
- I. Any request for Grantee approval of an activity or notification of a new activity as permitted shall be accompanied by a reasonable description of the nature, scope, location, timetable, and any other material aspect of the proposed activity, in sufficient detail to permit Grantee to evaluate and monitor such activity. Grantee shall respond within thirty (30) days of such notice or approval will be deemed to have been granted;
- II. The Grantor shall give the Grantee notice of any change of possession, ownership or control of the Protected Property or any portion thereof within thirty (30) days of such change, including without limitation, notice of any planned lease or sale of the Protected Property or any lot; and
- III. The Grantor shall keep the Grantee reasonably informed as to activities being conducted on the Protected Property which are within the scope of this Conservation Easement and as to the identity of any third parties who are conducting or managing such activities.

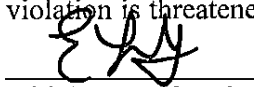
7. **Arbitration.** In the event there is a disagreement between the Grantor and the Grantee as to whether or not:

- I. The Grantor has acted unreasonably in the exercise of any discretionary power reserved by the Grantor, such as approving certain requests made by the Grantee; or
- II. The Grantee has acted unreasonably in the exercise of any discretionary power granted to the Grantee, such as approving certain requests made by the Grantor

(collectively "Arbitration Issues"), the Grantor and Grantee will attempt amicable resolution of the Arbitration Issues. In the event that amicable resolution is not reached within a time deemed reasonable by the Grantee, the Arbitration Issue shall be resolved by a committee made up of three individuals who have reasonable experience with conservation easements and land uses of similar properties. One individual shall be selected by the Grantee, one individual shall be selected by the Grantor, and the other individual shall be selected by the two individuals selected by the Grantee and Grantor. All shall be members of the American Arbitration Association. The arbitration committee shall determine by majority vote the Arbitration Issue. The determination of the committee shall be binding upon the Grantor and the Grantee. Only Arbitration Issues shall be subject to the South Carolina Uniform Arbitration Act. In the event that a dispute includes issues in addition to an Arbitration Issue, the matter shall not be subject to arbitration.

8. **Grantee's Remedies.** If Grantee determines that Grantor is in violation of the terms of the Conservation Easement or that a violation is threatened, the Grantee shall notify the Grantor


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of the violation or threatened violation and request voluntary compliance. In the event that voluntary compliance is not agreed upon within a time deemed by the Grantee to be reasonable, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of the Easement, to restore the portion of the Protected Property so injured.

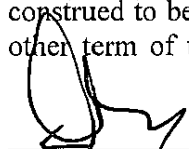
If Grantor fails to cure the violation within thirty (30) days after receipt of the notice thereof from Grantee (or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, if Grantor shall fail to begin curing such violation within said thirty (30) day period, or fail to continue diligently to cure such violation until finally cured), Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of the Conservation Values of the Protected Property, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's ability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its legal and equitable remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to seek the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

9. Costs of Enforcement. If Grantee prevails in any action to enforce the terms of this Easement, any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and reasonable attorneys' fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's cost of suit, including without limitation, reasonable attorneys' fees, shall be borne by Grantee.

10. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or


Initial – SCBPT


Initial – Beaufort County

omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

11. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, trespass by third persons, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

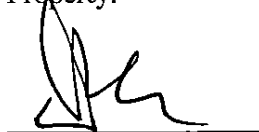
12. Access. No right of public access to any portion of the Protected Property is conveyed by this Easement, except as expressly provided herein.

13. Costs, Liabilities and Taxes. Grantor and the successors in title to the Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including, but not limited to, the maintenance of general liability insurance coverage.

Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the indemnifying party on the Protected Property.

14. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by mutual consent in writing by both the Grantor and Grantee and recorded at the Beaufort County Register of Deeds. Unless otherwise required by applicable law at the time, on the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and after satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made after the date of this grant, which amount shall be reserved to Grantor) in accordance with their respective percentage interests in the fair market value of this Protected Property. All such proceeds received by Grantee shall be used in a manner consistent with the conservation purposes of this grant.

15. Condemnation. If all or part of the Protected Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be respectively entitled to compensation in accordance with applicable law. In the event that the property taken, in whole or in part, is valued subject to the easement, the Grantor shall receive any and all compensation. In the event that the property taken, in whole or in part, is valued in fee simple without consideration of the easement, any compensation should be allocated between the Grantor and Grantee in accordance with their respective percentage interests in the fair market value of this Protected Property.


Initial – SCBPT


Initial – Beaufort County

16. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided no amendment shall be allowed that will adversely affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended. Any such amendment shall be consistent with the purposes of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements permitted by this Easement on its effective date, and shall not permit any impairment of the Conservation Values of the Protected Property. Any such amendment shall be recorded in the official land records of Beaufort County, South Carolina. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

17. Assignment. In the event that Grantee cease to exist or exists no longer as a tax-exempt, non-profit corporation, qualified under Section 501(c)(3) and 170(h)(3) of the Internal Revenue Code of 1986, as amended, then this Easement shall automatically become vested in a similarly qualified conservation organization, qualified under Section 501(c)(3) and 170(h)(3) of the Internal Revenue Code of 1986, as amended.

18. Transfers. Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantor transfers any lot or other interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any such interest at least twenty (20) days prior to the date of such transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

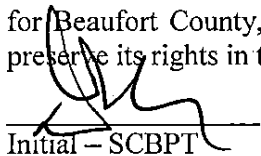
19. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first-class mail, postage pre-paid, addressed as follows:

To Grantor: Beaufort County
c/o County Administrator
100 Ribaut Road
Beaufort, South Carolina 29902

To Grantee: South Carolina Battleground Preservation Trust, Inc.
c/o Executive Director / CEO
Post Office Box 80668
Charleston, South Carolina 29416-0668

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

21. Recordation. Grantee shall record this instrument in a timely fashion in the RMC office for Beaufort County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.


Initial – SCBPT


Initial – Beaufort County

22. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this DEED OF CONSERVATION EASEMENT is recorded in the RMC office for Beaufort County, South Carolina, after all signatures have been affixed hereto.

23. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of South Carolina and in the jurisdiction of Beaufort County, SC.

24. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid should be favored over any interpretation that would rend it invalid.

25. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

26. Entire Agreement. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

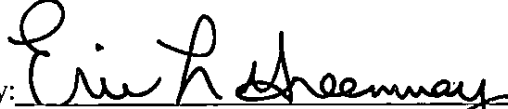
By Execution of this Conservation Easement, the Grantee accepts this Conservation Easement and the rights and obligations recited herein.

GRANTOR HEREBY WARRANTS and represents that the Grantor is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, if any, and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

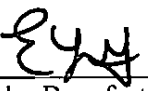
**Remainder of Page Intentionally Left Blank
Signatures on Following Pages**

IN WITNESS WHEREOF, of Grantor and Grantee have set their hands to multiple duplicate original copies of this Conservation Easement under seal on the day and year first above written.

Grantor:

By: 
Eric L. Greenway


Initial – SCBPI


Initial – Beaufort County

Beaufort County Administrator

Witness:

T. Bendle Jr
Signature

Thomas A. Bendle Jr.
Printed Name

witness 2 :

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Witness:

Eric L Greenway
Signature

Eric L Greenway.
Printed Name

Brittany Ward
Brittany Ward

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this 30 day of December, 2020 by Ashley M. Jacobs, its Beaufort County Administrator.

Eric L. Greenway

Benadene A. McEl (SEAL)
Notary Public for the State of South Carolina
My commission expires: 03/08/2029

Date: 12/30/2020

Accepted by Grantee:

SOUTH CAROLINA BATTLEGROUND
PRESERVATION TRUST

By: [Signature]
Douglas W. Bostick, Its Executive Director

[Signature]
Initial - SCBPT

[Signature]
Initial - Beaufort County

Witness:

Leslie N. Howard

Signature

Leslie N. Howard

Printed Name

Witness:

Megan Williams

Signature

Megan Williams

Printed Name

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this 8 day of January, ~~2020~~ ²⁰²¹ by the SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST, Grantee, by and through its duly authorized officer Douglas W. Bostick, its Executive Director / CEO.

BLH

(SEAL)

Notary Public for the State of South Carolina

My commission expires: 06-17-2025

Date: Jan 8, 2021



[Signature]

Initial – SCBPT

[Signature]

Initial – Beaufort County

EXHIBIT A
The Protected Property

ALL that certain piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina and being 6.11 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020 entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY". Said plat is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 155 at Page 114.

SUBJECT TO an existing outdoor advertising sign, an easement around the sign for maintenance and a non-exclusive, twenty-five (25') foot, access easement as described in Book 3493 at Page 1406-1413 and better shown on that plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 155 at Page 114.

SUBJECT ALSO TO any and all easements, covenants, restrictions, or otherwise, that are of record with the Office of the Register of Deeds for Beaufort County, South Carolina, including but not limited to that certain Restrictive Easement from Beaufort County, South Carolina to the United States of America that is of record with the Office of the Register of Deeds for Beaufort County, South Carolina, having been recorded on December 30, 2020 in Records Book 3953 at Page 1610.

TMP: 100-020-000-047C-0000

AND ALSO, ALL that certain, piece, parcel or lot of land, with improvements thereon, situate, lying and being in Beaufort County, South Carolina and being 2.35 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY". Said plat is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 115 at Page 114.

SUBJECT TO any and all easements, covenants, restrictions, or otherwise, that are of record with the Office of the Register of Deeds for Beaufort County, South Carolina, including but not limited to that certain Restrictive Easement from Beaufort County, South Carolina to the United States of America that is of record with the Office of the Register of Deeds for Beaufort County, South Carolina, having been recorded on December 30, 2020 in Records Book 3953 at Page 1610.

TMP: 100-020-000-0165-0000

AND ALSO, ALL that certain piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina, and better described as being 1.69 acres, designated on that plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY", thereafter recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 155 at Page 114.

A Portion of TMP: 100-020-000-0244-0000

AND ALSO ALL that certain, piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina and being 3.73 acres as shown on a plat prepared by David S. Youmans, RLS dated April 19, 2020, revised October 7, 2020, with a final revision date of December 1, 2020, entitled "CONSOLIDATION, AS-BUILT, AND BOUNDARY SURVEY PREPARED FOR BEAUFORT COUNTY". Said plat is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 155 at Page 114.

SUBJECT TO any and all easements, covenants, restrictions, or otherwise, that are of record with the Office of the Register of Deeds for Beaufort County, South Carolina, including but not limited to that certain Restrictive Easement from Beaufort County, South Carolina to the United States of America that is of record with the Office of the Register of Deeds for Beaufort County, South Carolina, having been recorded on December 30, 2020 in Records Book 3953 at Page 1610.

TMP: 100-020-000-0047-0000


Initial – SCBPT


Initial – Beaufort County

EXHIBIT B
Preservation Plan

The Grantor agrees to preserve the Protected Property "as is." Grantor shall make no material changes or alterations to the topography of the Protected Property and shall not give any other individual or entity permission to make such changes. The Grantor maintains the right to conduct routine maintenance and upkeep. The Grantor maintains the right to remove vines and invasive species of plants that may compete with the trees upon the Protected Property.

Small trees less than four inches in diameter at breast height (4" DBH) and underbrush on the ground may be removed. Trees in excess of four inches in diameter at breast height (4" DBH) may not be removed without the prior written permission of the Grantee.

Decorative grasses, plants, and trees may be planted on the Protected Property with prior written permission of Grantee.

There shall be no structures, temporary or permanent, placed or constructed upon the Protected Property, except such walkways or paths, the placement, construction, and materials of which shall have been approved in advance in writing by the Grantee. Foot traffic on the Protected Property shall be limited to the established public walkways and paths.

There shall be no metal detecting or digging on the Protected Property, however, the Grantor shall not be responsible for constantly enforcing this restriction.

The Protected Property will be used for educational and recreational purposes as outlined in Section 5 – "Reserved Rights." The Grantee shall have the right to conduct educational visits to the Protected Property as provided for in Section 2, part (G).

The Grantee agrees to serve as an advisor to the Grantor on the proper care and use of the battlefield.


Initial – SCBPT

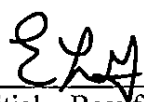

Initial – Beaufort County

Exhibit 16

Transcript of August 13, 2024 Motion Hearing

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF BEAUFORT) C.A. NO. 2022-CP-07-01195

BEAUFORT COUNTY	)
	)
Plaintiff,	)
versus	)
	)
ADAMS OUTDOOR ADVERTISING,	)
LIMITED PARTNERSHIP	)
Defendant.	)

H E A R I N G

DATE: August 13, 2024
TIME:
LOCATION: South Carolina Circuit Court 14
JUDGE: Robert J. Bonds

TRANSCRIBED BY: Lynda Monroe

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES:

Scott D. Bergthold, Esq.
Law Office of Scott D. Bergthold
2290 Ogletree Aveneu, Suite 106
Chattanooga, Tennessee 37421

Attorney for the Plaintiff,

Gaillard T. Dotterer, III, Esq.
Bybee & Tibbals
880 Johnnie Dodds Boulevard, Suite 2
Mount Pleasant, South Carolina 29464

Attorney for the Defendant,

Rhett D. Ricard, Esq.
Maynard Nexsen
205 King Street, Suite 400
Charleston, South Carolina 29401

Attorney for Eric Greenway

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDING

2 THE COURT: All right. Beaufort County versus Adams
3 Outdoor Advertising. All right. I'm happy to hear from
4 moving parties.

5 MR. DOTTERER: Good morning, Your Honor. Gilly
6 Dotterer here for Adams Outdoor Advertising. We actually
7 have two motions before you this morning. I understand the
8 first motion was just a motion (inaudible). That's been
9 resolved. I spoke with Plaintiff's counsel earlier. And so
10 I will submit a proposed order to your chambers or to your
11 queue reflecting that.

12 THE COURT: All right. Is that correct?

13 MR. BERGTHOLD: That's correct, Your Honor.

14 THE COURT: Okay.

15 MR. DOTTERER: So the next motion is a motion to
16 reconvene deposition of Eric Greenway who was the
17 administrator for Beaufort County during the time period
18 relevant to the case.

19 Mr. Greenway was deposed in November of 2023 and
20 objected to several questions based on Fifth Amendment
21 privilege against self-incrimination. The deposition was
22 suspended without objection by Plaintiff's counsel or counsel
23 from Mr. Greenway and with leave to determine whether or not
24 Court intervention would be necessary.

25 THE COURT: I'm sorry. I was trying to write something

Argument by Mr. Bergthold

1 prohibited without approval if it was even approvable, they
2 knew it was prohibited without approval from the County and,
3 nonetheless, they allowed it to happen and Judge (inaudible)
4 said no, they needed to give the written notice that the
5 zoning ordinance or the Community Development Code requires.
6 That was affirmed by the Court of Appeal.

7 But here's the point. Mr. Greenway has already
8 testified about and been thoroughly cross-examined about
9 everything regarding those two billboards and they haven't
10 shown any need to examine him in this case about the exact
11 same facts.

12 The second count of our complaint for injunction is
13 even cleaner. It's a pure legal issue. When the County
14 purchased some land in 2021, at the Port Royal Iron
15 Battlefield site, there were three buildings on it, all of
16 them owned by Adams. And one of them had a 35- or 50-year
17 lease and the other one -- two of them were allowed to stay.
18 One of them was an annual renewal that went back to 1989 and
19 the case law is very clear, we cited it in our complaint,
20 that under South Carolina law there is a lease that purports
21 to give only one side the right of renewal, perpetually, and
22 that is a lease that is terminable at-will as long as you
23 give reasonable notice to the other party.

24 So in early 2021 Mr. Greenway, then the County
25 administrator, wrote a letter to Adams and said hey, we

1 recently purchased this land, it has these three billboards
2 on it, these two billboards are allowed to stay because of
3 legal arrangements regarding those two, the last billboard,
4 which is in the middle of the three, is on a lease and we
5 terminate that lease seven months from now, October 1 of
6 2021.

7 So it's a purely legal question there. There's nothing
8 to examine anybody about on that question of whether the
9 lease was, you know, a perpetual right that is terminable at-
10 will in South Carolina under the *Carolina Cable Network*
11 *versus Albert Cable* case from the Supreme Court in 1994 at
12 316 S.C. 98.

13 So here we are, years later. We've had three rounds of
14 discovery. The last year, three months of discovery, have
15 all been about, you know, their third set of discovery
16 requests. They've taken the depositions of the 30(b)(6)
17 witnesses of the County many months ago and what they're
18 saying is we need to interfere with a SLED investigation
19 that's going on I guess with Mr. Greenway which, frankly, and
20 they admit it in their papers, nobody knows the scope.

21 THE COURT: You mean, that you think they actually are
22 trying to deliberately interfere with it?

23 (Crosstalk.)

24 MR. BERGTHOLD: No, I don't think they're (inaudible).

25 THE COURT: You said --

1 MR. BERGTHOLD: No, I think they're --

2 THE COURT: (Inaudible).

3 MR. BERGTHOLD: -- I think they're trying to get him --

4 THE COURT: Stop.

5 MR. BERGTHOLD: Oh, sorry.

6 THE COURT: Thank you. We're going to take a break.

7 We'll be at ease.

8 (Whereupon, a brief recess was had from 1:29 p.m. to
9 1:41 p.m.)

10 THE COURT: Counsel, you can continue your argument,
11 please.

12 MR. BERGTHOLD: Your Honor, I apologize for my
13 misstatement. I apologize to my opposing counsel. What I
14 meant to say was that they're seeking to take a deposition
15 while Mr. Greenway's still under criminal investigation.
16 After confirming with this counsel, that's still pending.

17 Our only point or our only dog in the fight here, Your
18 Honor, is the deposition originally taken on November 2nd,
19 2023, raised all these objections not from the County but
20 from Mr. Greenway and his outside counsel and we're not sure
21 why it took 11 months to bring a motion to bring this to the
22 Court to force him to testify but we don't see anything in
23 the case that he hasn't already testified about other than
24 this one legal issue I'm -- whether the lease is terminable
25 by the County and so for that reason, we oppose the motion to

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, Beaufort County, South Carolina, on the 13th day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 15, 2024

Lynda Monroe

Lynda Monroe, Transcriber

Exhibit 40

March 9, 2020 Emails Between the Beaufort County Council Chairman and a Council Member (County Rule 30(b)(6) Dep. Ex. 6)

Defendant's Memorandum in Support of Its Motion for Summary Judgment

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

From: Passiment, Joseph <jpassiment@bcgov.net>

Sent: Monday, March 9, 2020 10:57 AM

To: Dawson, Gerald <gdawson@bcgov.net>

Subject: Re: Reconsideration Requested for Port Royal Island Battlefield - ATAX and HTAX Funding Awards for 2020

After listening to you I agree that this is in the best interest of the property owner to sell a piece of property that is worth a lot less and is looking for the county to bail him out. I am now a no vote.

Joe Passiment
Beaufort County Council
District 6
jpassiment@bcgov.net
843-941-3605

On Mar 9, 2020, at 10:45 AM, Dawson, Gerald <gdawson@bcgov.net> wrote:

Joe,

I voiced my concerns last week about the deal surrounding this project. The bottom line is, the proposed land acquisition Council will purchase has the old Harris Pillow building on it. The building has asbestos in it and is of no use to the County or the public. The County will have to foot the cost of demolition and disposal of materials. This is a sweet heart deal for the owner(s) of the building.

Thank You,
GDawson

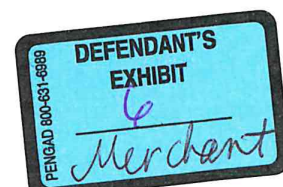
From: barbara@openlandtrust.com <barbara@openlandtrust.com>

Sent: Monday, March 9, 2020 9:41 AM

To: Passiment, Joseph <jpassiment@bcgov.net>; Howard, Alice G. <ahoward@bcgov.net>;
sturodman@gmail.com; Greenway, Eric <egreenway@bcgov.net>; Dawson, Gerald
<gdawson@bcgov.net>

Subject: Reconsideration Requested for Port Royal Island Battlefield - ATAX and HTAX Funding Awards for 2020

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.



Dear Councilman Passiment,

The Beaufort County Open Land Trust submitted two HTAX grant applications in the 2019-2020 application window ending on December 31, 2019. One of the proposed projects, Capers Creek Access for Reconstruction Era National Park, was recommended for full funding. The other project, the Port Royal Island Battlefield Property Purchase received a score of zero by the County staff scoring committee and was not recommended for funding. County Council will hear first reading of the ordinance approving those ATAX/HTAX recommendations tonight.

I question the reason given for the zero score on the ATAX/HTAX recommendation list for the Battlefield project. I also request reconsideration of funding the project as requested in the grant application. The reason provided for the "zero score" does not appear to relate to the criteria established for the grants. The reason provided for the zero score is "It appears that the Battlefield will become Beaufort County property. There is a building located on the property ***that would require maintenance or demolition as well as the general maintenance*** of the 12.16 acres." All of those statements are facts included in the application. If the property is purchased and owned by Beaufort County, the County will have ongoing expenses as a result of owning the property. However, the ordinance does not exclude a project for consideration of funding for the sole reason that there may be associated ongoing expenses. Furthermore, the HTAX request is for purchase of the property, not funding for demolition or for ongoing maintenance.

Below is the provision of the Local HTAX ordinance establishing the permitted use of hospitality tax funds:

Sec. 66-534. - Permitted uses of hospitality tax funds.

(a)The county council is hereby authorized to utilize the funds collected from the imposition and collection of the hospitality tax and other funds deposited into "The County of Beaufort, South Carolina, Hospitality Tax Account." The revenue generated by the hospitality tax must be used exclusively for the following purposes:(1)Tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;(2)Tourism-related cultural, recreational, historic facilities, or land acquisition;(3)River/beach access and renourishment;(4)Highways, roads, streets, bridges and boat ramps providing access to tourist destinations;(5)Advertisements and promotions related to tourism development;(6)Water and sewer infrastructure to serve tourism-related demand; and(7)The operation and maintenance of those items provided in (a)(1) through (a)(6) above, including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.(8)For all other proper purposes including those set forth herein.(b)Authorization to utilize any funds from the "County of Beaufort, South Carolina, Hospitality Tax Account," shall be by ordinance duly adopted by the county council for the County of Beaufort, South Carolina.

(Ord. No. 2005/9, § 4, 3-28-2005)

I will point out that Sec. 66-534(a) permitted funding items (1), (2), (3) and (4) could all be County-owned buildings, facilities, land, rivers/beaches, highways, streets, roads, bridges or boat ramps that would require "***maintenance as well as ... general maintenance...***" All of these allowed expenditures could require ongoing maintenance expenses by the County. Therefore, I do not

understand why the proposed purchase of property that would be owned by the County and will have ongoing maintenance expenses does not meet the criteria established in the above ordinance.

The purchase of the Port Royal Island Battlefield Property is a highly leveraged project that is planned to be a site on the SC Liberty Trail and would be an important asset in the County's heritage tourism plans. It is the only definitively located Revolutionary War battlefield in Beaufort County. The Beaufort County Open Land Trust submitted a comprehensive application outlining the transactions involved and the partners that are participating in the proposed purchase. The application and supplementary materials are attached to this email.

I respectfully request that you reconsider the 2020 Local HTAX funding recommendations provided by County staff, review the attached materials and consider recommending full funding for the Port Royal Island Battlefield project as requested in the Open Land Trust's Dec. 2019 HTAX grant funding application.

Thank you.

Barbara G. Holmes

Director of Land Protection

Beaufort County Open Land Trust

P.O. Box 75

Beaufort, SC 29901

Office: (843) 521-2175

Cell: (843) 367-3780

barbara@openlandtrust.com

<HTAX PRI BCOLT Supplementary Explanations 12.31.19.pdf>

<Submitted Application 12.31.19.pdf>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO: 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff/Counterdefendant,	)	
	)	
v.	)	
	)	
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP,	)	
	)	
Defendant/Counterclaimant.	)	
	)	

**BEAUFORT COUNTY’S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

This case is about three billboards used by Defendant Adams Outdoor Advertising Limited Partnership (“Adams”). Adams rebuilt two of them contrary to County law, and refuses to remove a third one from County land after its lease expired.

The Beaufort County Community Development Code (“CDC”) prohibits new billboards, prohibits re-erection of billboards, and limits maintenance on existing billboards to “painting or refinishing the surface of the sign face or sign structure.” (Ex. 22 at 6, CDC § 5.6.50(B)(2).¹) “Any structural or other substantive maintenance to a sign,” like replacing old, rotting poles, “shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation.” (*Id.*)

In April 2021, Adams ignored these provisions and instructions from County staff, and illegally rebuilt two billboards near 3589 Trask Parkway. Adams drove brand *new* poles into the ground in *new* holes about six feet in front of where the billboards had stood for decades. Adams took the billboard faces off of their rotting poles and mounted the faces on those new poles. The County Administrator saw this work in progress and told Adams to stop, but Adams continued. By law, both billboards are deemed abandoned and shall be removed at Adams’s expense.

Thus, Count One seeks a declaration authorizing the County to remove and dispose of the two billboards that Adams illegally re-erected, as well as an injunction prohibiting Adams from impeding such removal and requiring Adams to pay the actual removal costs. *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 866 S.E.2d 562 (2021) (holding local government is entitled to injunction upon showing an ordinance violation).

¹ When Adams illegally rebuilt two billboards in April 2021, the billboard regulations were codified in CDC § 5.6.50(A) and (E). (*See* Ex. 12 at 1-2.) They were later recodified CDC §§ 5.6.50(A) and (B), with subsection (B) tracking the former subsection (E). (Ex. 22 at 6-7.) The County is seeking prospective relief, so it cites the current version.

Second, Adams uses a billboard located on County-owned property that was allowed there by a previous land owner on a year-to-year lease. The County notified Adams in writing on April 1, 2021 that the lease would be terminated as of October 1 that year. Adams had 30 days thereafter to remove the billboard, but it has refused to do so for years, claiming that it has an indefinite right of renewal. Adams is wrong. *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-03, 447 S.E.2d 199 (1994) (“Plainly, the contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs* [v. *City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)], this contract can only be construed as terminable at will. Where the contract is terminable at will, reasonable notice from either party is all that is required to terminate the agreement.”).

So on Count Two, the County seeks a declaration that the lease terminated on October 1, 2021, that the sign materials left on the County’s land no longer belong to Adams, and that the County may remove the sign materials. The County also seeks an injunction prohibiting Adams from impeding the County’s removal of the sign.

Adams’s defenses and counterclaims fail as a matter of law. Adams asserts 18 affirmative defenses, many of which are boilerplate and none that Adams can establish. *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003) (“It is well established that a party pleading an affirmative defense has the burden of proving it.”). There is no genuine issue of material fact on Adams’s defenses, so summary judgment for the County is proper.

Adams also asserts four counterclaims. The first two counterclaims contend that the South Carolina Highway Advertising Control Act (“HACA”) and related SCDOT regulations forbid the County from enforcing local billboard repair authorization requirements in CDC § 5.6.50(B)(4)(c). The Magistrate Court rejected this preemption argument in 2021 (Ex. 13 at 5),

The Court of Appeals affirmed the Circuit Court judgment on July 3, 2024 (Case No. 2022-000681), agreeing with the Circuit Court that the County issued citations sooner than the CDC allowed. Remittitur issued December 12, 2024 after the Supreme Court denied certiorari.

D. Adams maintains a billboard on County property at Port Royal Island Battlefield (“PRIB”) for years after the County terminates its lease.

In December 2020, the County acquired Parcel # R100-020-000-0165-0000 (alternatively designated as R100-020-000-0047-0000) (“Property”) as part of the Port Royal Island Battlefield (“PRIB”). (See Ex. 20, Property Title.)

Adams operated a billboard on the Property under Lease No. 40133 between Adams and a previous land owner. (See Ex. 15, Lease No. 40133; Ex. 17, Sept. 29, 2021 Letter acknowledging “lease agreement with a predecessor of Adams (i.e., Peterson Outdoor)”.) The lease provided that after the original three-year term, the lease would:

continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

(Ex. 15.)

As for Adams’ sign and other materials on the Property, the lease provided:

All materials and displays placed upon the property by Lessee shall remain Lessee’s property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

(Ex. 15.)

On April 1, 2021, the County provided written notice of termination to Adams, informing Adams that Lease No. 40133 would be terminated as of October 1, 2021. (Ex. 16 at 1, April 1, 2021 Letter to Liz Mitchum.) The April 1 letter also told Adams that it would have 30 days after the termination date to remove the billboard from the property. (*Id.*)

Adams's Vice President and General Counsel, Richard Zecchino, responded to the County's letter on September 29, 2021 (two days before the lease would expire). Zecchino argued that the lease could be terminated only by the lessee (Adams) because the lease refers to "termination by 'Lessee to Lessor'." (Ex. 17 at 1.) Zecchino asserted that the lease would automatically renew on October 1 and would "continue doing so into the future unless and until Adams" decides otherwise. (*Id.*)

The County responded, citing *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-103, 447 S.E.2d 199, 201-202 (1994), in which the South Carolina Supreme Court held that a contract that appears to confer an indefinite right of renewal must be construed as terminable at will by either party upon reasonable notice. (Ex. 18.) The County emphasized that "[t]he continued presence of Adams's billboard on County property is unlawful." (*Id.*)

The County gave Adams six-month's notice that it was terminating the lease. The lease subsequently terminated on October 1, 2021. But more than three and a half years later, Adams has not removed its sign materials and displays from the County's property.

E. Adams complains of a potential ordinance violation by a different billboard operator, and the County takes enforcement action.

During discovery, Adams looked for instances of the County not enforcing its billboard regulations on other violators.

Adams alerted the County to a potential code violation from a billboard at 3492 Trask Parkway (the "3492 Billboard"). (See Defendant Adams Outdoor Advertising Limited Partnership's Amended Answer to Amended Complaint and Counterclaims (filed Dec. 8, 2023) ("Adams CCLM") at 31, ¶¶ 78-80.)

So the County began investigating this claim. On February 7, 2024, the County sent a letter to the owner of the 3492 Billboard, Holy Trinity Classical School, explaining that the billboard

B. Because the County lawfully terminated Adams’s lease on the PRIB billboard in 2021, the Court should authorize the County to dispose of it. (Count Two)

The County is entitled to relief under Count Two against the Adams billboard illegally remaining on its land.

In late 2020, the County acquired a parcel of land on which Adams maintained a billboard pursuant to a lease. On April 1, 2021, the County provided written notice of termination to Adams, informing Adams that the sign lease would be terminated as of October 1, 2021. (Ex. 16 at 1, April 1, 2021 Letter to Liz Mitchum.) The April 1 letter told Adams that, as provided in the lease, it would have 30 days after the termination date to remove its sign from the County’s land.

Adams has not removed its billboard on the County’s property. It asserts that it has a unilateral right to renew the lease perpetually. Because that is contrary to South Carolina law, the Court should declare that the lease has been terminated and that the County may dispose of the sign.

Signs and sign materials are considered the personal property of the sign company that erected them. *Creative Displays, Inc. v. South Carolina Hwy. Dept.*, 272 S.C. 68, 72, 248 S.E.2d 916, 917 (1978). Local governments have the same rights as other land owners to terminate a lease for property they own. *See City of Whitewater v. Vivid Inc.*, 412 N.W.2d 519, 522 (Wis. 1987) (“If a landlord chooses not to renew a lease and the landlord happens to be a municipality, a tenant’s interest is clearly not compensable under traditional principles of law.”).

Perpetual contracts are disfavored in South Carolina; they are upheld “only where the perpetual nature of the agreement is an express term of the contract.” *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 101, 447 S.E.2d 199, 201 (1994) (citing *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)). The fact that a lease allows for successive renewals does not show “an intent of the parties to create a perpetual lease.” *Dobyns v. S.C. Dept. of*

Parks, Recreation & Tourism, 325 S.C. 97, 101 n.7, 480 S.E.2d 81 (1997). Words such as “perpetual,” “perpetuity,” or “forever” are necessary to find a perpetual lease. *Id.*

Lease No. 40133 says that the lease continues from year to year, unless the lessee (Adams) terminates it at least 30 days before the end of the lease year. (Ex. 15.) Adams asserts that this prevents the land owner, Beaufort County, from ever terminating the lease. Adams is mistaken.

When a contract attempts to give one party an indefinite right of renewal, the “contract can only be construed terminable at will.” *Carolina Cable Network*, 316 S.C. at 102, 447 S.E.2d at 202. “Where the contract is terminable at will, reasonable notice from either party is all that is required to terminate the agreement.” *Id.* at 102-103, 447 S.E.2d at 202.

In *Carolina Cable Network*, the contract provided for an initial term of one year, “with the right of renewal by Carolina Cable Network at its expiration.” 316 S.C. at 102, 447 S.E.2d at 201. The Court found that the indefinite duration made the contract terminable at will, explaining:

Alert [the other party] argues that this seemingly perpetual right of renewal is sufficient to make the terms of the agreement ambiguous and, therefore, terminable at will. This assertion is correct. Plainly, the contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs*, *supra*, this contract can only be construed as terminable at will.

Id. at 102, 447 S.E.2d at 202.

Thus, under *Carolina Cable Network*, Lease No. 40133 is terminable at will, so either party may terminate it by providing reasonable notice. *Id.* at 102-03, 447 S.E.2d at 202.

The County sent Adams a written notice of termination on April 1, 2021, giving notice that the lease would terminate six months later, on October 1, 2021. (Ex. 16.) By any measure, this notice is plainly reasonable. (*Cf.* Ex. 15 (allowing written notice of termination to be “served not less than thirty (30) days before the end” of a lease year.) The lease states that “All materials and displays placed upon the property by Lessee shall remain Lessee’s property, and Lessee may

remove the same at any time during the term or extended term of this agreement **or within thirty (30) days after termination or cancellation of this agreement.**” (Ex. 15 (emphasis added).)

Adams refused to remove its billboard within 30 days after termination, so it forfeited its control over the billboard and other materials—its personal property. *Creative Displays, Inc.*, 272 S.C. at 72, 248 S.E.2d at 917. The County is thus entitled to a declaration that the lease terminated on October 1, 2021, that the sign materials and displays that Adams left on the County’s land no longer belong to Adams, that the County may disconnect electric service and remove and dispose of the sign materials and displays in the County’s sole discretion, and an injunction prohibiting Adams and those in active concert or participation with it from impeding the County’s removal and disposal of the sign.

C. Adams’s underdeveloped affirmative defenses are makeweight.

The Court should dismiss Adams’s meritless “kitchen sink” affirmative defenses.

Failure to state a claim. Adams has not moved to dismiss the County’s claim under South Carolina Rule 12(b)(6) or 12(b)(8). Such a motion would fail in any case because the County *has* stated a claim for which relief can be granted, for all of the reasons stated above, and there is no other action for the same claims currently pending between the parties.

Waiver. “Waiver is a voluntary and intentional abandonment or relinquishment of a known right. It may be express or implied by a party’s conduct.” *Skipper v. Perrone*, 382 S.C. 53, 62, 674 S.E.2d 510, 514 (Ct. App. 2009) (internal citations omitted). As for Count 1, the County has vigorously enforced its ordinances and litigated in this Court for the removal of Adams’s illegal billboards. Likewise, as to Count 2, the County has asserted, and not waived, its right to remove Adams’s billboard off of its land. There is no waiver.

Estoppel. Adams has, likewise, failed to satisfy, or even assert that it meets, the elements for any estoppel theory, whether equitable or promissory. *See Rodarte v. University of South*

asserting that the County unreasonably delayed in filing suit, or that Adams was prejudiced as a result of such delay.

Unjust enrichment. The assertion is incoherent. Unjust enrichment is an equitable doctrine that permits a plaintiff to recover money or property that the defendant has unjustly retained. *Dema v. Tenent Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 678 S.E.2d 430 (2009). Adams does not support this claim with any allegation that the County has unjustly retained Adams's property. On the contrary, the County returned a check for \$750 that Adams had sent to the County after Adams's lease had terminated. (Ex. 18, Dec. 1, 2021 Letter.)

Failure to provide notice. This defense fails because the Magistrate Court held that Adams "received actual notice of the violation and had actual knowledge of the location of the violation." (Ex. 13 at 4.) This Court (Dukes, J.) did not disturb that finding, but found that the County could not cite Adams for a criminal offense before following the steps outlined in CDC § 9.4.40 and 9.4.50. The County's alleged procedural misstep in citing Adams is irrelevant to the County's right to a *civil injunction* based on Adams's violations of CDC § 5.6.50.

Failure to join necessary parties. Adams does not identify any parties that the County allegedly failed to name in this suit under Rule 19, SCRPC. This defense has no merit.

Material breach of contract by plaintiff. The County has not breached the contract to which it is a successor in interest (Ex. 15). The original term of the contract ended October 1, 1992 and was extended each year until October 2021. (*Id.*)

Thus, Beaufort County was well within its rights, as discussed above, to not extend the contract. *See Carolina Cable Network*, 316 S.C. at 102, 447 S.E.2d at 202.

Recovery of attorneys' fees and costs. The County has substantial justification for its action, as described in its amended complaint and in this brief. The County is entitled to relief

under the CDC, and to recover any attorney's fees allowed under the governing law applicable to this case.

No damages/Failure to mitigate damages. The County does not seek damages in this suit. It seeks declarations authorizing the removal of three billboards, injunctions prohibiting Adams from interfering with the billboard removals, and an order requiring Adams to reimburse the County for future costs to remove and dispose of the two billboards near 3589 Trask Parkway.

Ripeness. Courts “have explained ripeness by defining what is not ripe, stating ‘an issue that is contingent, hypothetical, or abstract is not ripe for judicial review.’” *Jowers v. South Carolina Dep’t of Health and Env. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). There can be no suggestion that the issues here are contingent, hypothetical, or abstract. Adams’s misguided ripeness argument was based on the appeal of the citations, but that appeal has concluded.

II. The County is entitled to summary judgment on Adams’s meritless counterclaims.

A. Adams lacks standing for its preemption claims, which fail anyway. (Counterclaims 1 and 2)

Adams asserts that the HACA abrogates, i.e., preempts, the Beaufort County CDC. Adams seeks a declaratory judgment to that effect in its First Counterclaim. In its Second Counterclaim, Adams relies on its spurious preemption argument to assert that the ordinance “is in conflict with South Carolina law and therefore unconstitutional.”

Adams lacks standing for its claims against the CDC. The sole provision that Adams challenges is CDC § 5.6.50(B)(4)(c) (the “replacement cost” rule). Adams suffers no injury from that provision because Adams never applied to the County seeking a decision under that rule, the County never issued a decision under that rule, nor is there a claim that Adams *will* seek a decision under that rule. *Cf. Adams Outdoor Ltd. P’ship v. Beaufort County*, 105 F.4th 554, 564-

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

BEAUFORT COUNTY, South Carolina,

Civil Action No. 2022-CP-07-01195

Plaintiff,

vs.

**DEFENDANT’S NOTICE OF MOTION
AND MOTION TO RECONSIDER**

ADAMS OUTDOOR ADVERTISING
LIMITED PARTNERSHIP,

Defendant.

TO: THE ABOVE-NAMED PLAINTIFF AND ITS COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Defendant Adams Outdoor Advertising Limited Partnership (“Adams” or “Defendant”), by and through its undersigned counsel, respectfully moves this Court, pursuant to Rule 59(e), SCRCF, to reconsider and alter or amend certain rulings in its June 25, 2025 Order entered in this case, based upon the following grounds.

On June 25, 2025, the Court entered a Form 4 Order (the “Order”) ruling on the cross-motions for summary judgment filed by Adams and Plaintiff Beaufort County, South Carolina (“Plaintiff” or the “County”). Specifically, the Court granted summary judgment to the County on its second cause of action and denied the parties’ motions with respect to all other causes of action.

Adams requests that the Court reconsider and alter or amend that part of the Order granting summary judgment to the County on its second claim, which seeks to terminate the lease between the parties. In relevant part, the Order held as follows:

[T]he Court respectfully grants summary judgment as to the contract between the parties and terminates this agreement at the end of the current term based on *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994).

June 25, 2025 Order at p. 1.

- I. **First**, respectfully, *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994) does not have any bearing on or application to the case at hand.

1. That is because the Lease at issue gives both parties,¹ the lessor (the County) and the lessee (Adams),² an express right of termination.

2. *Carolina Cable Network* is only relevant to leases which only give one party a right of termination or otherwise create a unilateral “indefinite right of renewal.” See County’s June 6, 2025 Br. in Supp. of Mot. Summ. J. (“County Br.”) at p. 14 (“[in] *Carolina Cable*[,] the South Carolina Supreme Court held that a contract that appears to confer an indefinite right of renewal must be construed as terminable at will by either party upon reasonable notice[.]”); see also County Br. pp. 21-22.

3. The County would like this Court to adopt its mistaken interpretation of the Lease to find that the Lease somehow provides Adams with a “unilateral right to renew the lease perpetually.” County Br. p. 21.

4. **The Lease does not provide Adams with a unilateral or indefinite right of renewal**, does not provide Adams with a unilateral right of termination, and it does not constitute or give rise to a perpetual contract.

5. **In extremely clear and unambiguous language, the Lease provided the County with a right of termination.** A screenshot of the relevant portion of the Lease is copied below:

¹ For convenience, a copy of the lease at issue is attached hereto as **Exhibit 1** (the “Lease”). A copy was also filed as Exhibit 2 to Adams’ June 6, 2025 Memorandum in Support of its Motion for Summary Judgment (“Adams’ Supp. Mem.”), and designated by the County as Exhibit 15 for purposes of the cross-summary judgment motions. See May 30, 2025 Designation of Exhibits (the exhibits listed therein being referred to as “County MSJ Ex. __” herein).

² **The County does not dispute that it took title to its real property at issue subject to the Lease.** County MSJ Ex. 16 p. 1 at ¶ 2 (“The County acknowledges Parcel #R100-020-000-0047-0000 is subject to a billboard lease agreement dated October 1, 1989 (Lease No. 40133) on the east boundary of the property immediately adjacent to Hwy 21.”).

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

Ex. 1. Because the Lease's text size is small due to its formatting, an enlarged version of this clause of the Lease (referred to herein as the "County's Termination Right") is attached hereto as **Exhibit 2**, and the text is copied below:

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent.

Ex. 1 (emphasis added). To reiterate, the Lessor under the Lease is the County.

6. The County's Termination Right is only four paragraphs above the provision in the Lease providing Adams with such a right (Ex. 1), but it appears that the County overlooked it in filing its claim and advancing its "unilateral perpetual right of renewal" arguments.

7. And this is the only argument the County has ever advanced in this case (and even before, when it attempted to terminate the Lease in violation of the same) — the contention that because the Lease allegedly provides Adams with "an indefinite right of renewal, the 'contract can only be construed terminable at will.'" County Br. p. 22 (quoting *Carolina Cable*, 316 S.C. at 102, 447 S.E.2d at 202).

8. However, as our South Carolina appellate courts have held, if a right of termination is contingent on an event, such as building construction, rather than a certain calendar date of the term expiration, the lease still sufficiently describes its duration such that the contract is not perpetually renewable and is not terminable at will.

The trial court also incorrectly relied on *Carolina Cable Network*, to find the tee-time schedule was terminable at will by either party. In *Carolina Cable*, the plaintiff sought redress for a contract which contained the following clause: "[The] period covered by this agreement is one year with the right of renewal by [the plaintiff] at its expiration." [*Carolina Cable*,] at 102, 447 S.E.2d at 201. After

analyzing this provision, the *Carolina Cable* court announced that a unilateral perpetual right of renewal in a contract is not valid.

In this case, we are not dealing with a unilateral perpetual right of renewal. ... Just because the rights of the parties were keyed to membership levels rather than calendar time does not mean that the schedule should be considered an indefinite period. ... **“a contract which ... provides that it will terminate upon the occurrence of a specific event is not deemed perpetual in duration and is not terminable at will.”**

Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship, 331 S.C. 385, 391-92, 503 S.E.2d 184, 187-88 (Ct. App. 1998) (emphasis added) (internal citations omitted).

9. Because the Lease provides that the County can terminate upon the occurrence of a specific event, the Lease does not create a perpetual right of renewal and it is therefore not terminable at will. Accordingly, the County has not asserted, and cannot assert, a plausible basis under which it could prevail on its second cause of action.

II. **Second**, through contracts that the County entered into after it purchased the Leased Property,³ it waived and voided its right to terminate the Lease because it agreed in those third-party contracts to perpetually prohibit any construction on the Leased Property.

10. This is a matter of contract law and the finding only requires three proven facts:

- i. Under the Lease, the County’s ability to terminate or cancel the agreement is contingent on it erecting a building on the Leased Property. *See supra*; Exs, 1, 2.
- ii. Under the Restrictive Easement and Conservation Easement, two contracts the County entered into after taking title to the Leased Property, the County agreed to perpetually restrict the property such that no construction is allowed thereon.

³ The “Leased Property” or “Kling Parcel” refers to the former 3.73-acre parcel adjacent to Trask Pkwy that previously bore TMS No. R100-020-000-0047-000, which, apart from Adams’ billboard, remains vacant. *See Adams’ Supp. Mem.* pp. 3-4, Ex. 4 (Plat referenced in County’s Deed to the Leased Property); *see also* County MSJ Ex. 20 (County’s Deed).

iii. As a result,⁴ **the County is prohibited from constructing a building on the Leased Property, meaning it is forbidden from exercising the express right of termination under the Lease.**

11. Accordingly, **the County knowingly and voluntarily waived, relinquished, and extinguished its right to terminate the Lease.**

12. The County's second claim requests a two-part declaration: (a) that the County terminated the Lease; and (b) the County can therefore remove Adams' billboard from the Leased Property.

13. Because the County contractually agreed to void its termination right, its claim fails as a matter of law and Defendant Adams Outdoor Advertising Limited Partnership is entitled to summary judgment on the same.

WHEREFORE, Defendant Adams Outdoor Advertising Limited Partnership respectfully requests that this Court reconsider its June 25, 2025 Order, and alter or amend the same as set forth herein. This Motion is supported by the grounds set forth herein, the governing South Carolina Rules of Civil Procedure, statutory and common law, any memoranda in support of this Motion and exhibits, affidavits, or other materials attached thereto that will be filed prior to the hearing on the Motion, and such other matters as the Court deems appropriate. The instant motion is timely filed under Rule 59(e), SCRCP, and the undersigned hereby certifies and affirms, pursuant to Rule 11, SCRCP, that consultation with opposing counsel regarding the matters contained in this motion would serve no useful purpose.

[Signature Follows]

⁴ See **Exhibit 3** and **Exhibit 4** (at pp. 4-5 (¶¶ 4(B), (C), (G)), Ex. B (Preservation Plan)) attached hereto, copies of the Restrictive and Conservation Easements, respectively; *see also* Adams' Supp. Mem. pp. 3-6 (discussing the same), Exs. 9, 10 (copies of same).

Respectfully submitted,

s/Evan P. Williams

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843.881.1623

*Attorneys for Defendant Adams Outdoor
Advertising Limited Partnership*

July 3, 2025

Mt. Pleasant, South Carolina

Exhibit 1

Lease Agreement

Defendant's Notice of Motion and Motion to Reconsider

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas



Post Office Box 738, US 601 North
Orangeburg, SC 29115 / (803)534-2449

SIGN LEASE

CITY Beaufort
COUNTY Beaufort
ZONING _____

UNIT NO. 40082
UNIT NO. 40083
LEASE NO. 40133

THIS AGREEMENT made and entered into by and between ** Mr. L. Paul Trask **
hereinafter referred to as "Lessor", and PETERSON OUTDOOR ADVERTISING CORPORATION of South Carolina, hereinafter referred to as "Lessee",

WITNESSETH: THAT

Lessor does herewith lease to Lessee for a term of (3) Three years years beginning October 1, 1989 and expiring
October 1, 1992, the premises known and described as follows:

Hwy 21 n/o Beaufort, 2.75 mi n/o S.C. Hwy 116.

The consideration for the lease contract is ~~\$1000~~ (\$1500.00) Fifteen hundred dollars ###

**see addendum for first yr. paymt. per year, rental, payable by Lessee paid annually in advance

The property is leased for the purpose of construction, operation and maintenance of an outdoor advertising display. Lessee is herewith granted the sole and exclusive right to display advertising copy on the premises. Lessee is granted the right to ingress and egress over the said premises for the purpose of constructing, maintaining, operating, removing or replacing said display.

An Easement is hereby granted to the Lessee and/or the electric utility company to establish electrical service, if required, to this location.

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

Should the view of said space become obstructed, or should Lessee's enjoyment for display advertising purposes be prevented or impaired in any way or by any means or if such activity becomes unprofitable within the sole judgement of Lessee, then Lessee shall have the right to cancel this agreement by giving Lessor sixty (60) days advance written notice. In such event Lessor agrees to refund to Lessee the unearned rent paid in advance.

If at any time the erection, placement, posting, painting, illumination or maintenance of its signs on the demised premises is prohibited by any law, ordinance or authority, or building permits are either not obtained or revoked, or if such activity becomes unprofitable within the sole judgement of Lessee, Lessee may terminate this lease by giving Lessor thirty (30) days advance notice of such termination. Lessor shall thereupon return to Lessee any rent paid in advance for the unexpired term.

Lessee does herewith indemnify and agree to hold Lessor harmless against all claims or damages to person or property by reason of accidents resulting from the negligence or willful acts of Lessee's agents, employees or workmen in the construction, maintenance, repair or removal of its signs.

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

In the event the property leased hereunder shall become the subject matter of condemnation proceedings instituted by any governmental authority, lessee shall be entitled to be compensated, from the total condemnation proceeds paid by the governmental authority, for the loss of Lessee's sign, and the loss of advertising income to Lessee resulting from the condemnation of the property leased hereunder; Lessor shall immediately notify Lessee of the institution of any condemnation proceedings upon the property leased hereunder. Lessor shall have no authority whatsoever to release the governmental authority from the payment of condemnation proceeds to lessee for losses sustained by Lessee as a result of the institution of said condemnation proceedings.

This lease is assignable by Lessor or Lessee and shall be binding upon the heirs, successors and assigns of both Lessor and Lessee.

Lessee agrees to pay promptly the rentals provided herein, Lessor warrants title and agrees that the right to cancel as provided above shall not be exercised for any other display advertising purposes. Lessor warrants that he as owner, agent or tenant has the full right and authority to enter into this agreement.

Lessor empowers Lessee with full authority to act as agent for Lessor in all matters necessary to the erection of said advertising display.

**\$3000.00 for first year - 10/1/89 to 10/1/90
\$1500.00 for each year thereafter.

PETERSON OUTDOOR ADVERTISING CORPORATION

Signature L. Paul Trask

Lessor Mr. L. Paul Trask

Address Box 4160

Sumter, S.C. 29903

Telephone (803) 524-0269

This 11/14 day of 1989

Witness _____

Witness _____

Notary _____

By _____ Lessee

Witness _____

Witness _____

Notary _____

Exhibit 2

Enlarged Version of the County's Termination Right in the Lease

Defendant's Notice of Motion and Motion to Reconsider

Beaufort County, South Carolina

v.

Adams Outdoor Advertising Limited Partnership

Civil Action No. 2022-CP-07-01195
Beaufort County Court of Common Pleas

EXHIBIT 2
THE COUNTY'S TERMINATION RIGHT IN THE LEASE

**PETERSON
OUTDOOR**

ADVERTISING CORPORATION

Post Office Box 738, US 601 North
Orangeburg, SC 29115 / (803)534-2449

CITY Beaufort

COUNTY Beaufort

ZONING _____

UNIT NO. 40082

UNIT NO. 40083

LEASE NO. 40133

SIGN LEASE

THIS AGREEMENT made and entered into by and between Mr. L. Paul Trask and
hereinafter referred to as "Lessor", and PETERSON OUTDOOR ADVERTISING CORPORATION of South Carolina, hereinafter referred to as "Lessee",
WITNESSETH: THAT

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

The consideration for the lease contract is \$\$\$ (\$1500.00) Fifteen hundred dollars \$\$\$

Lessee adendum for first yr. paymt. per year, rental, payable by Lessee paid annually in advance

The property is leased for the purpose of construction, operation and maintenance of an outdoor advertising display. Lessee is herewith granted the sole and exclusive right to display advertising copy on the premises. Lessee is granted the right to ingress and egress over the said premises for the terms hereof for the purpose of constructing, maintaining, operating, removing or replacing said display.

An Easement is hereby granted to the Lessee and/or the electric utility company to establish electrical service, if required, to this location.

In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent. The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed in lieu of eminent domain to any entity acting as or on behalf of any public entity which has the power of eminent domain.

Should the view of said space become obstructed, or should Lessee's enjoyment for display advertising purposes be prevented or impaired in any way or by any means or if such activity becomes unprofitable within the sole judgement of Lessee, then Lessee shall have the right to cancel this agreement by giving Lessor sixty (60) days advance written notice. In such event Lessor agrees to refund to Lessee the unearned rent paid in advance.

If at any time the erection, placement, posting, painting, illumination or maintenance of its signs on the demised premises is prohibited by any law, ordinance or authority, or building permits are either not obtained or revoked, or if such activity becomes unprofitable within the sole judgement of Lessee, Lessee may terminate this lease by giving Lessor thirty (30) days advance notice of such termination. Lessor shall thereupon return to Lessee any rent paid in advance for the unexpired term.

Lessee does herewith indemnify and agree to hold Lessor harmless against all claims or damages to person or property by reason of accidents resulting from the negligence or willful acts of Lessee's agents, employees or workmen in the construction, maintenance, repair or removal of its signs.

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

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In the event the property leased hereunder shall become the subject matter of condemnation proceedings instituted by any governmental authority, lessee shall be entitled to be compensated, from the total condemnation proceeds paid by the governmental authority, for the loss of Lessee's sign, and the loss of advertising income to Lessee resulting from the condemnation of the property leased hereunder; Lessor shall immediately notify Lessee of the institution of any condemnation proceedings upon the property leased hereunder. Lessor shall have no authority whatsoever to release the governmental authority from the payment of condemnation proceeds to lessee for losses sustained by Lessee as a result of the institution of said condemnation proceedings.

This lease is assignable by Lessor or Lessee and shall be binding upon the heirs, successors and assigns of both Lessor and Lessee.

Lessee agrees to pay promptly the rentals provided herein, Lessor warrants title and agrees that the right to cancel as provided above shall not be exercised for any other display advertising purposes. Lessor warrants that he as owner, agent or tenant has the full right and authority to enter into this agreement.

Lessor empowers Lessee with full authority to act as agent for Lessor in all matters necessary to the erection of said advertising display.

AWD \$3000.00 for first year 10/1/85 to 10/1/90
\$1500.00 for each year thereafter.

PETERSON OUTDOOR ADVERTISING CORPORATION

By _____
Witness _____
Witness _____
Notary _____

Signature L. Paul Trask
Lessor Mr. L. Paul Trask
Address Box 4160
Beaufort, S.C. 29905
Telephone (803) 524-0263
This 21 day of July 19 89
Witness _____
Witness _____
Notary _____

R. p. 322

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO: 2022-CP-07-01195
	)	
BEAUFORT COUNTY, South Carolina,	)	
	)	
Plaintiff/Counterdefendant,	)	PLAINTIFF’S NOTICE OF MOTION
	)	AND MOTION TO RECONSIDER
v.	)	
	)	
ADAMS OUTDOOR ADVERTISING	)	
LIMITED PARTNERSHIP,	)	
	)	
Defendant/Counterclaimant.	)	
	)	

TO: THE ABOVE-NAMED DEFENDANT AND ITS COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE THAT Plaintiff Beaufort County, by and through its undersigned counsel, respectfully moves this Court, pursuant to Rules 54(a) and 59(e), SCRCF, to reconsider and amend the rulings in its June 25, 2025 Order.

The Court entered a Form 4 order “granting summary judgment as to the contract between the parties and terminates this agreement at the end of the current term based on *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994)” but finding genuine issues of material fact as to “all the remaining matters.”

The County asks the Court to hold that under *Carolina Cable Network*, the County’s April 1, 2021 notice that the lease would terminate on October 1, 2021, was valid and effective.

The County also respectfully observes that no genuine issues of material fact have been identified on the remaining issues in the case. Because no genuine fact issues exist, and the County is entitled to judgment on the remaining legal issues under governing law, the County respectfully asks the Court to enter a final summary judgment in its favor.

I. The Court should hold that the County's April 2021 notice of termination validly terminated the lease as of October 1, 2021.

Adams's motion for reconsideration argues that the County had an express right of lease termination, and that no implied right of termination can exist where there is an express right. There is no support for that argument, and in fact, *Carolina Cable Network v. Alert Cable TV, Inc.*, directly refutes it. Adams also argues that the County contracted away its express right of termination. That is wrong, but it is also irrelevant because *Carolina Cable Network* holds that the implied right of termination exists independent of the express right. Thus, the County's valid April 2021 notice of termination became effective October 1, 2021, the date set in the notice.

In *Carolina Cable Network*, the parties had an agreement for Carolina Cable Network (CCN) to provide advertising to Alert's customers "for one year with the right of renewal by Carolina Cable Network" at its expiration. 316 S.C. at 102, 447 S.E.2d at 201. Alert had the express right to cancel the agreement, however, if CCN did not pay for the use of its services, or if CCN misused Alert's equipment or office space. *Id.* at 102, 447 S.E.2d at 201-202.

This arrangement continued until Alert became dissatisfied with the below-market contract rate and tried to get CCN to accept an agreement with a price increase. 316 S.C. at 100-101, 447 S.E.2d at 201. Rather than accept the new agreement, CCN said that it would exercise its unilateral renewal option. Alert gave notice it was terminating the agreement 24 days before the next renewal. Litigation ensued and resulted in a jury verdict for damages in CCN's favor. *Id.*

The Supreme Court reversed. It held that the contract containing an "indefinite right of renewal" must be construed as terminable at will. *Id.*, 316 S.C. at 102, 447 S.E.2d at 202.

Here, Adams claims the contract confers upon it a perpetual right of renewal. The Supreme Court is clear that such contracts are terminable at will, upon reasonable notice from either party. The County gave six months' notice in 2021, so the termination was effective October 1, 2021.

Adams does not argue that the County did not give it reasonable notice of termination. Instead, it misreads *Carolina Cable Network* to hold that a contract can confer an implied right of termination only when the contract contains no express right of termination.

Fatal to its argument is that Alert—the County’s counterpart in *Carolina Cable Network*—had the *express* right to terminate the agreement on specified conditions, yet the Court held that because the contract purported to give CCN an indefinite right of renewal, and thus be of indefinite duration, “this contract can only be construed as terminable at will.” *Id.*

The Court rightly rejected Adams’ argument. To follow *Carolina Cable Network*, rather than find that the contract terminates in October 2025, the Court should hold that the contract was terminated effective October 1, 2021, and that the County may remove the sign.

Adam’s motion for reconsideration raises two arguments, neither of which has merit.

First, Adams *now* claims that the lease “**does not provide it with a unilateral or indefinite right of renewal**, does not provide Adams with a unilateral right of termination, and it does not constitute or give rise to a perpetual contract.” (Adams Mot. Reconsider at 2.)

This complete about-face ignores the facts. In response to the County’s April 1, 2021 notice of termination, Adams’s General Counsel, Richard Zecchino, wrote the County (Ex. 17), stating:

I direct your attention to the following language in the Lease, which reads:

After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written termination **by Lessee to Lessor**, served not less than thirty (30) days before the end of such term or additional year.

Pursuant to the clear and unambiguous bolded and underlined language above, the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams. And, as you might expect, Adams has no desire or intention to terminate the Lease at this time. Accordingly, as of October 1, 2021, the Lease has automatically extended for another year on the same terms, and will continue doing so into the future unless and until Adams—as the Lessee—decides to provide notice of termination.

(Ex. 17 at 1.)

Thus, this entire dispute arose precisely because Adams took the position that the lease *does* “provide it with a unilateral or indefinite right of renewal,” *does* “provide Adams with a unilateral right of termination,” and *does* “give rise to a perpetual contract.”

Because Adams relies on a contract purporting to give an indefinite right of renewal, *Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship*, 331 S.C. 385, 503 S.E.2d 184 (Ct. App. 1998), is inapposite. *Prestwick* distinguished *Carolina Cable Network*, stating “[i]n this case, we are not dealing with a unilateral perpetual right of renewal.” 331 S.C. at 391, 503 S.E.2d at 187.

In block quoting from *Prestwick*, Adams bolds and underlines a quotation originally from an Illinois case, *Jespersen v. Minnesota Min. and Mfg. Co.*, 681 N.E.2d 67, 70 (Ill. App. 1997). But even *Jespersen* reaffirmed that “it is well established that contracts of perpetual duration are terminable at will by the parties,” *id.*, and that “where one party has the option or decision to either comply with the contract or not, the duration of the contract is indefinite and terminable at will.” *Id.* at 71. Because the alleged “specific event” in *Jespersen* was not an “objective event,” but rather one over which one party had complete control, the contract was held to be of indefinite duration and terminable at will by either party. *Id.* at 70 (“The events in section 4.01 cannot be considered objective events that would have had the effect of making the agreement sufficiently definite in duration. Rather, section 4.01 indicates an indefinite duration of the agreement based upon Jespersen’s complete control over the occurrence of those events.”).

Second, Adams argues that the County contracted away its right of express termination under the lease. But *Carolina Cable Network* makes it clear that having an express right of termination on specific grounds does not negate the implied right of termination that exists when a contract is renewable at will by one party and is thus of indefinite duration. 316 S.C. at 102,

447 S.E.2d at 202. So Adams’s claim that the County contracted away, or waived, its express right to terminate upon erecting a building upon the leased property is entirely irrelevant because the perpetual right of renewal given to Adams makes the contract of indefinite duration and thus terminable at will.¹

Thus, the Court should reaffirm its grant of summary judgment to the County on this issue, with the modification that the lease was effectively terminated October 1, 2021, and that the County can remove the billboard from its property and dispose of it.

II. There are no genuine issues of material fact that Adams rebuilt its two billboards in April 2021, and the County is entitled to judgment as a matter of law.

The Court should grant the County summary judgment as to its Count One claims for removal of the two billboards that Adams illegally rebuilt in April 2021.

Beaufort County’s Community Development Code (“CDC”) prohibits new billboards. (County Ex. 22 at 4, CDC § 5.6.20(A); *id* at 6, § 5.6.50(A) (“New off-premises signs / commercial billboard signs are prohibited.”).)

The CDC also prohibits any work on a sign “so as to improve the structural integrity of the billboard structure.” (*Id.*, CDC § 5.6.50(B)(2).) Moreover, “[a]ny structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void and shall result in removal of the sign without compensation.” (*Id.*)

¹ Although the Court need not reach the issue, it also bears noting that the County did *not* contract away its right as the owner of the property to remove the billboard. Under the easements, the County can demolish and remove non-historical structures (e.g., its building and parking lot) (Adams Ex. 9 at 4, ¶ c.i.-c.ii.), and expressly retained “all rights accruing from its ownership of the Protected Property” not expressly prohibited by the easements or inconsistent with their stated purpose of preserving the historical and cultural significance of the Port Royal Island Battlefield site. (Adams Ex. 10 at 6 (Section 5. Reserved Rights).) There is no argument that the billboard has any historical or cultural significance.

2290 Ogletree Ave., Suite 106
Chattanooga, TN 37421
(423) 899-3025 Phone
sbergthold@sdblawnfirm.com

*Attorneys for Plaintiff/Counterdefendant
Beaufort County*

CERTIFICATE OF SERVICE

I, Brian Hulbert, hereby certify that the below listed parties were served a copy of the foregoing document via electronic filing and via electronic mail on July 7, 2025.

Jeffrey S. Tibbals (SC Bar 72628), jst@bybeetibbals.com
Evan P. Williams (SC Bar 101981), ewilliams@bybeetibbals.com
Gaillard Dotterer, gdotterer@bybeetibbals.com
Bybee & Tibbals, LLC

Mark Moore, Esq., MMoore@maynardnexsen.com
Rhett Ricard, Esq., RRicard@maynardnexsen.com
Carl Petkoff, Esq., CPetkoff@maynardnexsen.com
Maynard Nexsen

/s/ Brian Hulbert
Brian Hulbert (SC BAR #68537)
Beaufort County Attorney

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 04 2026

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Steven DeBerry, Circuit Court Judge
Circuit Court Case No. 2022-CP-07-01195

Appellate Case No. 2025-001618

Beaufort County, South Carolina,

Respondent,

v.

Adams Outdoor Advertising Limited Partnership,

Appellant.

RULE 210(g) CERTIFICATE

I, the undersigned counsel for Appellant, pursuant to Rule 210(g), SCACR, certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Evan P. Williams

Evan P. Williams (S.C. Bar No. 101981)
ewilliams@bybeetibbals.com
BYBEE & TIBBALS, LLC
1100 Queensborough Blvd., Suite 202
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*Attorney for Appellant Adams Outdoor
Advertising Limited Partnership*

May 4, 2026