

27464

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-000438

RECEIVED

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SC Court of Appeals

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

Appellants,

v.

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

Respondents.

RECORD ON APPEAL
VOLUME III of III

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-2229
Counsel for Appellants

Michael T. Rose
Mike Rose Law Firm, PC
409 Central Ave.
Summerville, SC 29483
(843) 871-1821
Counsel for Appellants

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Dr, Ste 200
Charleston, SC 29492
(843) 577-2026
Counsel for Respondents

G. Waring Parker
Town of Summerville
200 S Main St
Summerville, SC 29483
(843) 695-6510
Counsel for Respondents

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

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

Plaintiffs,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

MOTION TO DISMISS CASE AS MOOT

The Defendants request the Court dismiss this case on the grounds that it is now entirely moot. This is not a suit seeking monetary damages. This is a suit seeking declaratory and injunctive relief. While it is fundamental that a court should not exercise jurisdiction absent an actual justiciable controversy, this is particularly true in actions seeking injunctive and declaratory relief. Upon hearing the companion case of Croft v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021) involving the Plaintiffs' allegations of improper meetings of the Board of Architectural

Review, the South Carolina Supreme Court stated that a Court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Court refused to hear the very same questions related to the operation and activities of the Board of Architectural review that the Plaintiffs once again seek to raise in this action and in their pending motion for summary judgment.

The last vestige of potential relevancy of this suit was eliminated just recently in July of 2023. The Plaintiffs in this case continued to believe the instant suit remained relevant due to the open question of whether the Public Private Partnership Agreement was legally valid or invalid. It was likely that the issue of whether the agreement was valid or invalid was going to determine whether the pending lawsuit and arbitration would be addressed as an invalid contract or a valid contract which both sides claimed the other breached. But the Town of Summerville Town Council voted July 13, 2023 to resolve the case by way of a payment of Fifty Thousand Dollars and a mutual release. This represented a resolution less than expected legal costs. The settlement has been consummated with signatures on the settlement documents, payment and a stipulation of dismissal. Thus, the questions as to whether all or any part of the Public Private Partnership is valid or invalid are entirely moot.

The Plaintiffs' arguments relating to whether work of the Lawrence Group and the Planning Commission might have violated FOIA were rendered entirely moot by the adoption of a new Comprehensive Plan in 2020. The Plaintiff's argument relating to how the Board of Architectural Review might or might not have acted improperly were rendered moot by the project not going forward—and this is the very issue that was decided by the South Carolina Supreme Court in *Croft v. Town of Summerville*, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021).

Any issues relating to the existence or activities of the Summerville Redevelopment Corporation were rendered moot by it not going forward as to this or any other project and its dissolution in 2021.

Every single issue raised by the Plaintiffs is now entirely moot. This case should be dismissed on the grounds that there is no justiciable controversy and the matters raised by the plaintiff are MOOT.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin
Bar No.: 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com
Attorney for Town of Summerville and Town of
Summerville Board of Architectural Review

**FINAL AND COMPLETE MUTUAL RELEASE
READ CAREFULLY
THIS RELEASE ENDS ALL CLAIMS**

In consideration of the sum of Fifty Thousand Dollars to be paid by the Town of Summerville to Applegate & Co., Applegate & Co. does release and forever discharge the Town of Summerville, the recently dissolved Town of Summerville Redevelopment Corporation, their current and past employees, officials and attorneys from any and all claims, demands, damages, actions, causes of action, or suits at law or equity of whatsoever kind or nature, known or unknown, arising from the facts and legal arguments raised in a lawsuit or counterclaims in the action styled "APPLEGATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364.

In consideration of such release and mutual promises herein, the Town of Summerville on its behalf and on behalf of the recently dissolved Town of Summerville Redevelopment Corporation release Applegate and Co., its current and past employees, officers, shareholders, principals, and attorneys, and Cynthia T. Applegate from any and all claims demands, damages, actions, causes of action, or suits at law or equity of whatsoever kind or nature, known or unknown, arising from the facts and legal arguments raised in a lawsuit or counterclaims in the action styled "APPLEGATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364.

The parties understand that there may be facts about this matter which are incomplete or incorrect and the parties agree that they nevertheless wish to proceed forward with this settlement and that the discovery of additional information shall not be a defense to nor be cause for invalidating this agreement. Further, this release includes any claims that any party to this agreement exclusively owns or is entitled to compensation for the ideas, concepts, planning, designs, or data in connection with this project or any future project.

The parties agree that, within fifteen (15) days of the payment required herein, they will cause their attorneys to file a dismissal with prejudice of the action APPELLEGATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364, with each side to bear its own costs and attorneys fees.

**CAUTION, READ BEFORE SIGNING
THIS IS A FULL, FINAL AND COMPLETE RELEASE.**

DocuSigned by:

Cyndy Applegate

Applegate & Co. by its

President

7/7/2023

Ricky Waring
Town of Summerville
by Ricky Waring, Mayor
as authorized by vote of City
Council on July 13, 2023

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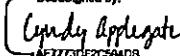
Cindy Applegate

cindyapplegate61@gmail.com

President

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If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

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To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at bambachl@mvalaw.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to bambachl@mvalaw.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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- Until or unless you notify SHI International Corp OBO Moore & Van Allen Pllc as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SHI International Corp OBO Moore & Van Allen Pllc during the course of your relationship with SHI International Corp OBO Moore & Van Allen Pllc.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
APPLEGATE & CO.,

Plaintiff,

vs.

TOWN OF SUMMERVILLE, and TOWN
OF SUMMERVILLE REDEVELOPMENT
CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2019-CP-18-00364

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

WHEREAS, that Plaintiff and Defendants have settled and compromised their differences pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure. Plaintiff and Defendants hereby dismiss and ends this action with prejudice as to all claims filed or which could have been filed against one another arising out of the subject matter of the within lawsuit. This is with the consent of all parties who appeared in this action, with each side to bear its own costs and attorney fees.

CLAWSON and STAUBES, LLC

Moore & Van Allen, PLLC

s/Timothy A. Domin

Timothy A. Domin
SC Bar No. 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Attorney for Defendants

s/E. Brandon Gaskins

E. Brandon Gaskins, Esq.
SC Bar No. 73274
78 Wentworth St.
Charleston, SC 29401-1425
Phone: (843) 579-7038
Attorney for Plaintiff Applegate & Co.

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COUNTY OF DORCHESTER

William Harbeson, James Stephen Greene, Jr., David Messinger, Homer P. Gonzalez, John Paul Flowe, Tara Adele Flowe, Robert Allen Owens, Troy Ray Hayes, Terrence L. Langley, Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, and South Carolina Public Interest Foundation,

Plaintiff,

VS.

Town of Summerville; Summerville Town Council; William C. Collins, individually and in his official capacity as former Mayor of the Town of Summerville; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, personally and in their capacities as members or former members of Summerville Town Council.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2016-CP-18-01128

AMENDED AFFIDAVIT OF LISA WALLACE

1. That my name is Lisa Wallace and I am the Town Administrator of the Town of Summerville and have been since July 2021. I started as the Clerk/Treasurer from 1996 to 2004. I was the Assistant Town Administrator from October 2004 to August 2011. (The prior version of this affidavit accidentally referenced my position as Assistant to the Town Administrator, an error which I only caught after the document was signed.) I was the Director of Administrative Services from August 2011 to December 2016.

2. I am familiar with the issues relating to the compensation and duties

of Mayor William "Bill" Collins. Williams Collins was sworn in as Mayor in June 2011. I worked directly with Mayor Collins during his term.

3. Prior to Mayor Collins being sworn in, the Mayor was Berlin Myers. During Myers' administration, Dennis Pieper resigned as Town Administrator effective March 24, 2011. (See Exhibit A) The position of Town Administrator was not immediately filled upon Dennis Pieper's resignation.

4. At that time, Section 2-62 of the Summerville Code of Ordinances provided "The Mayor shall have the power to give direction to the town administrator, or in the absence of the town administrator, to any of the department heads of the town as authorized by state law or town ordinances, or as delegated by the town council." (See Exhibit B, Resolution of July 11, 2011).

5. On July 11, 2011 a resolution was passed by Town Council referencing section 2-62 and delegating to the Mayor the temporary authority to exercise powers of the Town Administrator, which was then vacant. (See Exhibit B, Resolution of July 11, 2011). The Town Council also adopted an ordinance requiring the Mayor to give Town Council monthly reports. (See Exhibit C, Resolution of July 13, 2011.)

6. The Mayor, with my assistance, performed the duties of interacting with the department heads and others inside and outside the Town of Summerville as the Mayor. The Mayor was never officially named the Town Administrator by Town Council, although sometimes people would say that Collins was the "Town Administrator" or "acting as the Town Administrator" or even "Acting Town Administrator." However, the resolutions of July 11, 2011 and July 13, 2011 speak for themselves as to what Town Council did. (See Exhibits B and C).

7. Approximately two years later in July 2013, an ordinance was passed

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reflected in the records of the Town.)

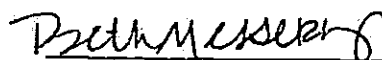
15. Rebecca Vance was terminated in June 2021 by vote of Council. (Again, I was not with the Town at that time, but I am aware of it as part of the general knowledge I have as the current Town Administrator.)

16. I became the new Town Administrator in July 2021. At the present time, I am the full time Town Administrator and now there is also an Assistant Town Administrator.

17. The issues being raised by this lawsuit regarding the compensation and duties of Mayor Collins are not relevant to the present operation of the Town of Summerville. Since Bill Collins left, there have been two new Mayors—Wiley Johnson and then Ricky Waring, the current Mayor. There have been changes in various ordinances relating to the power and duties of Mayor and Town Administrator. Summerville has hired three Town Administrators since Bill Collins' term— Martin, Vance and myself. Summerville has added the position of Assistant Town Administrator. Section 2-62 was substantially re-written to eliminate the portion about the Mayor having the powers of the Town Administrator in the absence of the Town Administrator. There have been several changes in the pay of the Mayor and Town Council.



Sworn before me:


Notary Public for South Carolina
My Commission Expires: 12/3/24

Town of Summerville

Dennis P. Pieper
Town Administrator

EXHIBIT

A

PENGAD 800-631-6309

ROA 0828

Also see Ord. # 11-70
(Amend org. structure)

RESOLUTION NO. *Adopted at July 11, 2011 Finance*
Committee
meeting

A RESOLUTION DELEGATING TO THE MAYOR OF THE TOWN OF SUMMERVILLE THE TEMPORARY AUTHORITY TO EXERCISE ALL THE GENERAL DUTIES, RESPONSIBILITIES, AND DELEGATION OF AUTHORITIES PROVIDED TO THE TOWN ADMINISTRATOR PURSUANT TO TOWN CODE, AND OTHER MATTERS RELATED THERETO.

WHEREAS, § 2-62 of the Town Code of Ordinances for the Town of Summerville provides that, in the absence of the Town Administrator, the Mayor shall have the power to give such direction to any of the department heads of the Town as well as powers designated by Town Council; and,

WHEREAS, pursuant to § 2-214 of the Code of Ordinances, the general duties, responsibilities, and delegation of authority are granted to the Town Administrator; and,

WHEREAS, the position of Town Administrator is currently vacant and Town Council finds it necessary to delegate to the Mayor, in addition to that power already granted to the Mayor pursuant to § 2-62 of the Code of Ordinances, those certain duties, responsibilities and delegation of authorities vested in the Town Administrator pursuant to § 2-214, until such time as a new administrator is appointed, in order to accomplish the most effective management of the Town for its day-to-day operations; and,

WHEREAS, Town Council finds it in the best interests and welfare of the citizens and taxpayers of the Town of Summerville to vest these duties, responsibilities, and delegation of authorities to the Mayor until the vacancy in the position is filled or other action taken;



BE IT HEREBY RESOLVED that Town Council, in a meeting duly assembled, hereby delegates and vests the Mayor of the Town of Summerville with those general duties, responsibilities and delegation of authorities of the Town Administrator as stated in § 2-214 of the Code of Ordinances for the Town of Summerville;

IT IS FURTHER RESOLVED that the previous appointment of Interim Administrator be, and hereby is, terminated;

IT IS FURTHER RESOLVED, that any authority or power granted to the position of Assistant Town Administrator, as might be provided in any job description or organizational chart of the Town, vesting the Assistant Town Administrator with temporary authority of the position of Town Administrator be, and hereby is, temporarily suspended.

Done this 11th day of July, 2011, at Summerville, South Carolina.

Finance Committee


William C. Collins, Mayor

Attested to:


Lisa Wallace, Clerk of Council

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ROA 0831

AN ORDINANCE

TO Amend Code of Ordinances, Town of Summerville, South Carolina, SECTION 2-69(a).

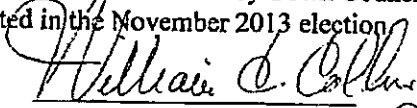
WHEREAS, S.C. Code Section 5-7-170 and Summerville Town Ordinance Section 2-68 require that any ordinance increasing the Mayor's salary shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance; and,

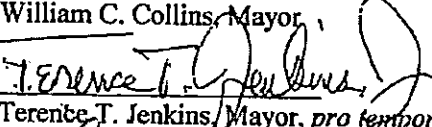
WHEREAS, The Town of Summerville is desirous of increasing the salary of the current Mayor to \$45,000.00 to be effective as of the first Wednesday in January, 2014; and,

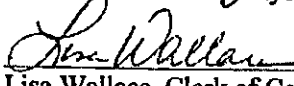
WHEREAS, The Town of Summerville is desirous that the increase in the current Mayor's salary to \$45,000 shall revert to \$15,000.00 on December 31, 2015 unless sooner addressed by Town Council after the seating of the three members elected in the November 2013 election.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor, Mayor, *pro tempore* and Town Council of the Town of Summerville in Council assembled that Section 2-69(a) of the Code of Ordinances, Town of Summerville, South Carolina, is hereby amended as follows:

- (1). The salary of the current Mayor is increased to \$45,000.00 effective as of the first Wednesday of January 2014; and,
- (2). The increase in the current Mayor's salary to \$45,000 shall revert to \$15,000.00 as of December 31, 2015 unless addressed by Town Council after the seating of the three members elected in the November 2013 election.


William C. Collins, Mayor


Terence T. Jenkins, Mayor, *pro tempore*


Lisa Wallace, Clerk of Council

FIRST READING: June 13, 2013
SECOND READING: July 10, 2013



ORDINANCE NO. 15-1107

**AN ORDINANCE AMEND CHAPTER 2, ARTICLE II, DIVISIONS 2 AND 3 OF
THE CODE OF ORDINANCES OF THE TOWN OF SUMMERVILLE
ENTITLED "MAYOR" AND "COUNCIL MEETINGS"**

BE IT HEREBY ORDAINED BY the Mayor and Council of the Town of Summerville, in a meeting duly assembled, that the Code of Laws of the Town of Summerville be hereby amended by amending sections 2-61, 2-62, 2-63, 2-64, 2-65, 2-66, 2-69, 2-94, and 2-97, 2-98, and 2-99 as follows:

Sec. 2-61. - To be chief executive officer.

The mayor shall perform the duties of chief executive officer of the town in a manner consistent with these ordinances and state law.

Sec. 2-62. - Direction of executive officers.

The mayor shall not have authority to give direction to the town administrator or to any of the division heads or department heads of the town unless such authority is given by a majority vote of town council.

Sec. 2-63. – Authority to add items to agenda.

During the finance committee meeting held prior to any regularly scheduled meeting, any two members of council shall have the authority to add any item to the agenda for all regular meetings of town council.

Sec. 2-64. — Inspection of books and records.

The mayor or any town council member shall have power to inspect such of the books, papers and records of the public officers of the town, and of the boards and committees under the



authority of the council, as may in the mayor's or council member's judgement be of assistance to the mayor or council member in the discharge of such officer's duties.

Sec. 2-65. – Authority to require officers to furnish reports.

The mayor and town council may together call upon any officer of the town and members of the boards to furnish, in writing, any information connected with any of their respective offices.

Sec. 2-66. – Suppression of riots and preservation of order.

It shall be the duty of the mayor to take prompt measures for the suppression of riots and for the preservation of good order in the town, for which purpose the mayor shall have the power to require all the town officers to aid and assist such officers.

Sec. 2-69. - Compensation of mayor and members of town council.

- (a) Mayor: The annual compensation for the Mayor shall be \$15,000 effective as of the first Wednesday, of January 2018; and
- (b) Council: The annual compensation of town council members shall be \$7,500.00.
- (c) Compensation of the mayor and town council shall be paid biweekly.

Sec. 2-94. - Required attendance. Modified

It shall be the duty of the council members to attend the regular meetings of the council and, when notified, to attend all special meetings called by the mayor or a majority of the council.

Sec. 2-95. - Presiding officer; quorum.

Immediately at the hour appointed for a council meeting, the presiding officer shall take the chair and, if a quorum is present, proceed to business. A majority of the seven members of the council (four) shall constitute a quorum.

Sec. 2-97. - Order of business.

The order of the proceedings of the council at regular meetings of the council shall be as follows:

- (1) Invocation and Pledge of Allegiance;
- (2) Public comments;
- (3) Approval of the minutes of the last regular meetings and any special meetings held subsequent to the last regular meeting;
- (4) Petitions for annexation;
- (5) Reports from committees;
- (6) Second reading of pending bills;
- (7) Introduction of bills and resolutions;
- (8) Miscellaneous business;
- (9) Adjournment.

Sec. 2-98. - Addressing council by member.

- (a) Every member of the council, when about to speak, shall address the mayor as "Mr. Mayor" or "Madam Mayor," as the case may be, and in speaking shall avoid all disrespect to the council and all personalities, and shall confine remarks to the subject under consideration.
- (b) Citizens addressing the council during the "public comments" portion of the meeting must provide their name and address and shall do so only after being recognized by the presiding officer. Public comments are limited to five minutes or less unless otherwise specifically authorized by the presiding officer. Citizens' remarks should be directed to the council itself, rather than the audience or specific individuals in the audience. The presiding officer may direct that extended comments are provided in writing.

2-99. – Recognition of speakers.

The member or citizen during public comments who shall rise or seek recognition of the chair first shall be first heard. If several members or citizens, during public comments, shall rise at the same time, the presiding officer shall determine who shall speak first.

Done this 10th day of February, 2016, at Summerville, South Carolina.

Attest:

Lisa Wallace
Lisa Wallace, Clerk of Council

Robert J. Jackson
Wiley Johnson, Mayor
Robert J. Jackson
Mayor Pro-Tem

First Reading: November 11, 2015

Second Reading: February 10, 2016

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ORDINANCE NO. 15-1108

**AN ORDINANCE AMEND CHAPTER 2, ARTICLE IV, DIVISION 2 OF THE
CODE OF ORDINANCES FOR THE TOWN OF SUMMERVILLE ENTITLED
"TOWN ADMINISTRATOR"**

BE IT HEREBY ORDAINED BY the Mayor and Council of the Town of Summerville, in a meeting duly assembled, that the Code of Laws of the Town of Summerville be hereby amended by amending sections 2-213, 2-214, and 2-215 as follows:

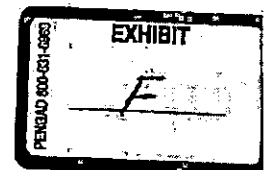
Sec. 2-213. - Supervision.

The town administrator reports directly to the mayor and town council as a whole. The administrator shall also compile information, investigate problems, perform administrative services and offer advice to the mayor and individual members of town council as requested by such councilmembers; provided, however, that in any situation where the administrator deems it appropriate, such request for administrative assistance may be presented to the entire town council for approval.

Sec. 2-214. - General duties, responsibilities and delegation of authority.

The town administrator performs such duties as directed by the mayor and council. Additional duties of the administrator include, but are not limited to, the following:

- (1) Supervise preparation of and submit to town council not later than November 1 of each year a balanced, proposed annual budget for the ensuing fiscal year.
- (2) Recommend organizational changes and assist in formulation of internal plans, programs and policies of the town for consideration of the town council.
- (3) Supervise all appointed division heads, department heads and their departments as well as any nondepartment head employees reporting directly to the administrator. Plan, direct, monitor and coordinate activities of all town departments and functions.



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- (4) Coordinates the activities of town government with all other agencies, including other town agencies, county, state and federal agencies.
- (5) Appoint, with the approval of the town council, division heads and department heads; and, with the prior approval of town council, suspend or dismiss division heads and department heads. Suspend other employees or dismiss employees after consulting with their department head.
- (6) Administer the annual budget after adoption by the town council. Administer the town personnel and purchasing policies. Reviews and approves policies and procedures for the town financial operations, investments, debt service and for the administrative functions and operational activities of the town, including police, fire, street, planning, stormwater, parks and recreation, vehicle maintenance and other functions of the town.
- (7) With the assistance of the finance director, monitor the financial condition of the town, estimate present and future financial needs, and report regularly to the town council on the financial condition and needs of the town.
- (8) Authorize changes in departmental budget line items, provided that the overall departmental appropriation does not change.
- (9) Review all legal matters affecting the town and serve as the primary point of contact with the town attorney.
- (10) Implement the policies and directives of the town council. Attend all council meetings unless excused by the mayor or unless out of town on town business or too ill to attend such meeting.
- (11) Delegate to other employees under the administrator's supervision the authority to exercise specific official duties and responsibilities as may be appropriate. With the approval of the mayor and council, the administrator may also designate a qualified

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- Sec. 2-215.- Authority.**

Done this 10th day of February, 2016, at Summerville, South Carolina.

Attest:

Second Reading: February 10, 2016

[illegible][illegible]

09/28/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
10/12/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
10/26/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
11/09/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
11/22/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
12/07/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
12/21/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
01/04/2018	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 379.40
01/18/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 86.38
02/01/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
02/15/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/01/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/15/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/29/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
04/12/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
04/26/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
05/10/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
05/24/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
06/07/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
06/21/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
07/05/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
07/19/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/02/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/16/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/30/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
09/13/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
09/27/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
10/11/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
10/25/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
11/08/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
11/21/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
12/06/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
12/20/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
01/03/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
01/17/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
01/31/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
02/14/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
02/28/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
03/14/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
03/28/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
04/11/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
04/25/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
05/09/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
05/23/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
06/06/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
06/20/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
07/03/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03

07/18/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
08/01/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
08/15/2019	Regular	100027	\$ 576.93	\$ 51.92	\$ 73.03
08/29/2019	Regular	100408	\$ 576.93	\$ 51.92	\$ 73.03
09/12/2019	Regular	100791	\$ 576.93	\$ 51.92	\$ 73.03
09/26/2019	Regular	101172	\$ 576.93	\$ 51.92	\$ 73.03
10/10/2019	Regular	101552	\$ 576.93	\$ 51.92	\$ 73.03
10/24/2019	Regular	101934	\$ 576.93	\$ 51.92	\$ 73.03
11/07/2019	Regular	102313	\$ 576.93	\$ 51.92	\$ 73.03
11/21/2019	Regular	102691	\$ 576.93	\$ 51.92	\$ 73.03
12/05/2019	Regular	103073	\$ 576.93	\$ 51.92	\$ 73.03
12/19/2019	Regular	103456	\$ 576.93	\$ 51.92	\$ 73.03
01/02/2020	Regular	103839	\$ 576.93	\$ 51.92	\$ 73.03
01/30/2020	Regular	104601	\$ 345.73	\$ 31.12	\$ 34.93

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ORDINANCE

21-0807

AN ORDINANCE TO DISSOLVE THE SUMMERVILLE REDEVELOPEMENT CORPORATION

WHEREAS, On May 28, 2014 the Summerville Redevelopment Corporation was formed by Town Ordinance #14-0502, and

WHEREAS, The Articles of Incorporation were filed with the Secretary of State on June 13, 2014, and

WHEREAS, At the July 8, 2021 meeting of the Redevelopment Corporation, unanimously voted to have Summerville Town Council dissolve the Summerville Redevelopment Corporation, and

WHEREAS, Summerville Town Council held a Public Hearing to receive public input regarding the dissolution of the Summerville Redevelopment Corporation on August 12, 2021 without any valid reason shown why the Summerville Redevelopment Corporation should not be dissolved, and

WHEREAS, Summerville Town Council finds that dissolution of the Summerville Redevelopment Corporation is appropriate for the following reasons:

- a. The purpose for which the Redevelopment Corporation was formed is no longer a viable project.
- b. The waste of unnecessary time spent on meetings, the expense of filing tax returns and obtaining insurance.
- c. The Redevelopment Corporation has no assets, and

WHEREAS, The Summerville Redevelopment Corporation is named as a defendant in the following law suits: Faye P. Croft, et al. v. Town of Summerville, et al., Case No.: 2015-CP-18-00713; and Applegate & Co. v. Town of Summerville, et al., Case No.: 2019-CP-18-00364. Accordingly, any monetary judgement which may be rendered in the trial of these cases will be the responsibility of the Town of Summerville to the same extent as if the judgement had been rendered against the Town.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF SUMMERVILLE IN COUNCIL ASSEMBLED THAT:

1. The above recitals are hereby incorporated into this ordinance to the same extent as if set out verbatim.
2. The Summerville Redevelopment Corporation is hereby dissolved.

3. The Town attorney shall file the Articles of Dissolution with the Secretary of State.
4. The Finance Director or Acting Financing Director shall file the necessary final tax returns with the Internal Revenue Service and State Department of Revenue if necessary.
5. Any judgement(s) rendered against the Summerville Redevelopment Corporation shall be the same as if rendered against the Town of Summerville, and

IT IS SO ORDAINED this 9 day of June, 2022.

Ricky Waring

Ricky Waring, Mayor

Attest:

Beth Messervy

Beth Messervy, Town Clerk

FIRST READING: 8/12/21

SECOND READING: 6/9/22

20-0904

AN ORDINANCE

TO ADOPT A COMPREHENSIVE PLAN FOR THE TOWN OF SUMMERVILLE, IN ACCORDANCE WITH
THE SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994
S.C. CODE OF LAWS ANN. § 6-29-510, et seq

WHEREAS, the 1994 State of South Carolina Comprehensive Planning Enabling Act (S.C. Code section 6-29-510 et. seq.) requires the development and adoption of a Local Comprehensive Plan that is reviewed and updated as mandated and designed to promote public health, safety, morals, convenience, prosperity of the general welfare as well as the efficiency and economy of the Town, and the Plan must be comprised of certain defined elements, and

WHEREAS, said Act requires the Local Comprehensive Plan be updated no less than every ten (10) years, and

WHEREAS, the Town of Summerville last updated its Comprehensive Plan in the year 2011, and

WHEREAS, the members of the Town's Planning Commission have unanimously recommended to Town Council the adoption as its Comprehensive Plan the document entitled "Summerville: Our Town, Our Future" dated August 18, 2020, and

WHEREAS, it appears to Council that the Plan is comprised of all required elements, is proper in all other material respects, and that the adoption of the Plan is in the best interest of the Town,

THEREFORE,

BE IT ORDAINED, by the Mayor and Council of the Town of Summerville, in Council assembled as follows:

1. Pursuant to Section 6-29-510, South Carolina Code of Laws (1976) et. seq., as amended, Council does hereby adopt, approve and ratify as the Town of Summerville Comprehensive, the document entitled "Summerville: Our Town, Our Future" dated August __, 2020.
2. That should any part of this Comprehensive Plan adopted by this Ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable and shall continue to be in full force and effect.
3. The above recitals above are hereby incorporated into this Ordainment to the same extent as if set out verbatim.

IT IS SO ORDAINED THIS 9 DAY OF October, 2020

Ricky Waring
Ricky Waring, Mayor

Attest:

Beth Messervy
Beth Messervy, Town Clerk

First Reading: September 10, 2020

Second Reading: October 8, 2020

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

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

Plaintiffs,

vs.

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

Defendants.

**AFFIDAVIT OF LISA WALLACE, TOWN
ADMINISTRATOR FOR THE TOWN OF
SUMMERVILLE**

1. That my name is Lisa Wallace and I am the Town Administrator of the Town of Summerville and have been since July 2021. I started as the Clerk/Treasurer from 1996 to 2004. I was the Assistant to the Town Administrator from October 2004 to August 2011. I was the Director of Administrative Services from August 2011 to December 2016.
2. I am familiar with the issues relating the matters in the above captioned case. I worked directly with Mayor Collins during his term, and I thereafter worked with

his successor Mayor Wiley Johnson before leaving and thereafter coming back to work as the Town Administrator and the current Mayor, Ricky Waring.

3. The Croft case was initiated in connection with the Plaintiffs' many objections to the Public Private Partnership Agreement (PPPA) concerning a joint project to build a hotel, parking garage, convention space and condominiums. The PPPA called for a convention center and parking garage to be built on public land owned by the Town of Summerville and a private boutique hotel and condominiums to be built on land that Applegate and Co. had under contract. In November 2015, it became apparent that the estimates for the "PUBLIC IMPROVEMENTS" provided by Applegate at the time the contract was being negotiated and signed were very inaccurate through no fault of the Town. The costs were going to be nearly double. Town Council was asked by Applegate and Co. to increase the contract price, but Town Council never voted to increase the amount it would pay for the "PUBLIC IMPROVEMENTS." Ultimately, Applegate and Co. sued the Town of Summerville and the Summerville Redevelopment Corporation making various claims for breach of contract, quasi-contract/unjust enrichment, tortious interference with prospective contractual relations, and promissory estoppel (See Amended Complaint.) This lawsuit was recently settled after a vote by Town Council on July 13, 2023 authorizing the settlement. The attached release has been executed by both sides. (See Exhibit A—Signed Release) The funds have been sent and received by Applegate's attorney and the matter has been dismissed with prejudice. (See Exhibit B—Stipulation of Dismissal).
4. Nothing related to the Public Private Partnership Agreement remains in effect. In

addition to signing a release with Applegate and Co., the Town of Summerville sold the property that it owned where the "PUBLIC IMPROVEMENTS" were to be built to a different developer that proposed and is moving forward with an entirely different project in which the Town has no ownership. The new owner has applied for and received conceptual approval from the BAR for the project without any lawsuits being lodged as to the process or result.

5. The Summerville Redevelopment Corporation was dissolved by Town Council June 9, 2022. A copy of the Ordinance is attached as Exhibit C. As indicated in the dissolution Ordinance, "the purpose for which the Redevelopment Corporation was formed is no longer a viable project." There is no present discussion to create a different Summerville Redevelopment Corporation.
6. The Town is not currently in discussion to build any hotels or convention centers. The Town is not in any discussions with developers about any "Public Private Partnerships."
7. I have already provided an affidavit in the Harbeson v. Town of Summerville case as to the changes in the leadership of the Town of Summerville and the way in which the Town is run differently than it was under Mayor William Collins, who was the Mayor at the time of the Public Private Partnership and the events alleged in the complaint. I am attaching that prior affidavit as Exhibit D.
8. To the extent the plaintiffs raise concerns about the procedure for related to work with the Lawrence Group creating a Master Plan, Comprehensive Plan, or "Vision Plan" in 2014 and 2015, the Town adopted an entirely new Comprehensive Plan which is available on www.summervillesc.gov. The new Comprehensive Plan was

formally adopted October 8, 2020. A copy of the Ordinance adopting the Comprehensive Plan is attached as Exhibit E without the voluminous Plan itself which is best viewed on the Town's website. There have been no lawsuits filed as to the process of creating or adopting the 2020 Comprehensive Plan.

9. There are no pending lawsuits for alleged Freedom of Information Act violations against the Town of Summerville other than this lawsuit raising meetings in 2014 and 2015 that involve meetings of the BAR related to this project which is no longer viable and the activities related to the planning documents referenced above which have been replaced by the 2020 Comprehensive Plan.


Lisa Wallace

Sworn to before me this

2nd day of August, 2023

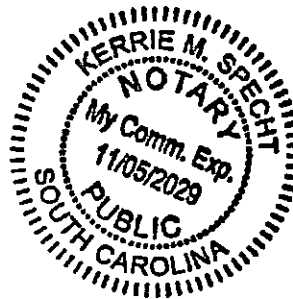
Kerrie M. Specht (SEAL)

Notary Public for South Carolina

Kerrie M. Specht

(print notary's name)

My Commission Expires: Nov. 5, 2029



STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

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

Plaintiff/Counterclaim Defendant,

vs.

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

Defendants/Counterclaim Plaintiffs,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF THEIR MOTION TO
DISMISS AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

For the reasons set forth herein, Defendants respectfully request that this Court deny Plaintiffs' Motion for Summary Judgment and dismiss this case in its entirety on the grounds that it is moot.

Facts

This matter relates to a failed project. The Town of Summerville, the Summerville Redevelopment Corporation (SRC) and Applegate and Co. entered into a "Public Private

Partnership Agreement” (PPPA) to construct “The Dorchester”—a boutique hotel, meeting/event space, condominiums, and a parking garage complex in Summerville, South Carolina. Summerville would own and pay to build the event space and parking garage and the developer would own the boutique hotel and sell the individual condominium units.

The Dorchester project failed because of unanticipated construction costs that became evident in November 2015. (See Affidavit of Lisa Wallace, Filed August 3, 2023 with Motion to Dismiss). The idea of the project lingered for a few months as Applegate sought to get the Town to agree to an increase in the contract price. The Town did not agree to any contract increase. Litigation commenced between the Applegate and Co. on one side versus the Town and SRC. There were claims and counterclaims involving alleged breach of contract, promissory estoppel, and quantum meruit. The trial of that lawsuit was stayed pending the outcome of this action because the parties including the Developer and Town agreed that it was likely this Croft case could impact which causes of action were viable—breach of contract if the contract was valid versus quantum meruit and promissory estoppel if the contract was not valid. However, that lawsuit between the Developer and Town was settled by the Town last month—in July 2023—and the case was dismissed with prejudice August 1, 2023.

Arguments

I. PLAINTIFF’S CLAIMS FOR RELIEF ARE MOOT

Every single issue raised by the Plaintiffs’ lawsuit is now entirely moot and this case should be dismissed on the grounds that there is no justiciable controversy. This

case was originally filed to stop the Dorchester PPPA project. It was filed in December 2014 as matter 2014-CP-10-7739. It was dismissed pursuant to Rule 40(J), and upon being restored, it was given this new case number. The suit, as amended, alleges various deficiencies in the PPPA contract itself and in steps leading up to the PPPA contract. The issues raised by the Plaintiffs go back as far as the contract with a consulting company hired to create an amendment to the Comprehensive Plan, which would ultimately be called a "Vision Plan" which was a planning document addressing many areas of the Town. The Plaintiffs also dispute the circumstances giving rise to the creation of the Summerville Redevelopment Corporation, the advertising for and entering into the PPPA contract, the terms of the PPPA contract, the Board of Architectural Review process for approval of the project's design, the lack of Planning Commission review of the project and other alleged defects related to the Dorchester Project.

The project failed as of approximately November 2015 as a result of errors in estimates of the cost of the project which the Town contended were the fault of the developer. Those revised number nearly doubled the cost of the "PUBLIC IMPROVEMENTS" that the Town of Summerville would own, but the costs were capped by the terms of the PPPA to \$5.2 million dollars. Once the project failed, the only relevancy of this case was the fact Applegate brought both an arbitration demand and a lawsuit against the Town and the Town brought counterclaims. Whether the PPPA was void *ab initio* was still relevant to that proceeding as a finding that the contract was invalid would potentially restrict the types of claims and counterclaims that could be brought. After being unable to secure summary judgment in the suit between Applegate and the

Town, the Town voted on July 13, 2023, to secure a release in exchange for Fifty Thousand (\$50,000) Dollars. (See Affidavit of Lisa Wallace of August 2, 2023—Exhibit A.) A stipulation of dismissal with prejudice of that suit was filed August 1, 2023. (Affidavit of Lisa Wallace Exhibit B.) The settlement of that lawsuit eliminated the last possible relevancy of this lawsuit and any issues relating to the legality of the Dorchester project. In addition to the project not going forward and the lawsuit being resolved:

- (1) The Town sold the property to a different developer in a straight sale without any joint ownership or joint development deal;
- (2) The developer who bought the property has proposed an entirely different building and different design;
- (3) The developer who bought the property has recently secured initial approval from the BAR as to the new project and there are no pending lawsuits or appeals related to the approval of the new project by the BAR;
- (4) The Town dissolved the Summerville Redevelopment Corporation which entered into no other projects other than the PPPA;
- (5) There is not currently pending or contemplated public-private partnership agreements relating to any new development;

It is noteworthy that even plaintiff's challenges to things like the Master Plan Advisory Committee which resulted in a "Vision Plan" which was adopted as an amendment to the Comprehensive Plan were replaced by a subsequent Comprehensive Plan adopted in October 2020. There are no pending lawsuits about that Comprehensive Plan or the process that created it.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). If there is no actual controversy, the court will not decide moot or academic questions." *Id.*

The Court need not look far for precedent. In Croft v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021), a companion case to the present one, the issue on appeal to the South Carolina Supreme Court was related to the claims made by these same plaintiffs that (1) there were violations of FOIA by virtue of meetings of less than a quorum of the BAR, (2) that the BAR held a meeting in a room that was too small, (3) that the BAR failed to allow public comment at one meeting, (4) that the PPPA agreement was illegal and ultra vires (5) that the BAR lacked proper procedures and rules and other arguments. Many of these are the same arguments that the Plaintiff wants to assert again today. The South Carolina Supreme Court held the matter was moot and that neither the "capable of repetition, yet evading review" exception or the public importance exception were applicable as to this very same project. Furthermore, there is no evidence that issues that the issues raised by the Plaintiffs related to this project are a widespread practice anywhere else in the State. Most of the issues raised by the Plaintiff are quite specific to this project—the particular meetings that led up to it and that involved it, the details of the contract. Now that the project is dead, those issues are moot.

II. **MANY OF THE ISSUES RAISED BY THE PLAINTIFF WERE ALREADY DECIDED BY JUDGE DICKSON'S ORDER OF JANUARY 16, 2016.**

The Plaintiff's Second Amended Motion for Partial Summary Judgment is technically the sixth motion for partial summary judgment filed by the Plaintiffs. After this case was restored after a dismissal pursuant to Rule 40J, the Plaintiffs filed a Motion For Partial Summary Judgment (December 15, 2022), then a First Amended Motion for Partial Summary Judgment (January 26, 2023), and then a Second Amended Motion for Partial Summary Judgment (May 8, 2023). However, before this case was dismissed and restored pursuant to Rule 40J, the Plaintiffs filed three motions for partial summary judgment in this same case. The first motion filed April 13, 2015, was withdrawn. The second motion filed October 21, 2015, and third motion for partial summary judgment filed December 1, 2015, were heard by the Honorable Edgar W. Dickson. Judge Dickson issued an Order filed January 18, 2017, denying Plaintiffs Second and Third motions for summary judgment in this same case. Judge Dickson also denied Plaintiffs' Motion to Reconsider his January 18, 2017, Order without a hearing. The section headings of the Order filed January 18, 2017, provide:

- I. *THE ADOPTION OF THE REDEVELOPMENT PLAN WAS PROPER.*
- II. *LACK OF PUBLICATION DOES NOT VOID THE CONTRACT AB INITIO*
- III. *THE CONTRACT WAS EXEMPT FROM THE TWO WEEK PUBLICATION BY VIRUTE OF BEING A "PROFESSIONAL SERVICE" CONTRCT*
- IV. *THE SRC. [Summerville Redevelopment Corporation] WAS NOT REQUIRED TO RE-SOLICIT DESIGN PROPOSALS FOR THE PROJECT, SINCE IT ACCEPTED BY AGREEMENT SERVICES PROVIDED BY THE TOWN*

There is a long-standing rule in this State that one judge of the same court cannot overrule another. See *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950).

This court should not revisit these issues and should not overrule Judge Dickson's Order. This is the Plaintiffs' second attempt to argue many of these same issues or issues that were subsumed by what was previously argued. A case restored pursuant to Rule 40J of the South Carolina Rules of Civil Procedure does not qualify the plaintiffs for a second bite at the apple arguing the same issues.

III. **THERE ARE NO SUPPORTING DOCUMENTS FILED FOR THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.**

The Plaintiffs have not filed with the Court any documents in support of their motions for partial summary judgment. Supporting materials shall be filed with the motion or not later than 10 days before the hearing on the matter. The Rules of Civil Procedure then require the responding party to file their materials in opposition no less than two days before the hearing. As of this moment this memorandum is being filed, two days prior to the hearing, no materials in support of the Plaintiffs' motion have been filed with the Court—other than the materials filed in the 2014 action for motions heard by Judge Dickson. The Defendants have filed an affidavit of Lisa Wallace, Town Administrator, addressing, *inter alia*, that the project is dead, that the lawsuit is resolved, that the SRC is dissolved, that the land is sold, that another developer has secured initial BAR approval without challenge, and that there are no contemplated plans to enter another Public Private Partnership. The Defendants would also rely upon the affidavits submitted before the partial summary judgment motion before Judge Dickson.

IV. **THE PLAINTIFFS' POSITIONS ON THE 167 SUBPARTS OF ITS SECOND AMENDED MOTION FOR SUMMARY JUDGMENT ARE WITHOUT MERIT.**

The plaintiffs' Second Amended Motion for Partial Summary Judgment consists of

167 numbered paragraphs. Some of these are mere conclusions. Some are essentially repeats. Many have already been addressed by Judge Dickson's Order.

A. Plaintiffs' Arguments 1-3

These are mere conclusions without supporting arguments.

B. Plaintiffs Arguments 4-12

The Plaintiff argues that certain meetings by staff and/or officials in anticipation of the Master Plan Advisory Committee discussion were in violation of FOIA.

Arguments 10, 11, 12 reference meetings between a consultant and groups of less than a quorum of Town Council. It will be a recurring argument of plaintiffs that when less than a quorum of a public body meets, it is a subcommittee of the public body and that FOIA requires public notice, agenda, and public meeting. But that is not what FOIA states. FOIA requires that a meeting of a quorum of a public body be noticed, with an agenda, and be public. However, this does not apply to a meeting of less than a quorum. Numerous other jurisdictions throughout the country hold that informal meetings of groups of less than a quorum do not violate FOIA or open meetings requirements. See, e.g., City of Gary v. McCrady, 851 N.E.2d 359 (Ind. Ct. App. 2006) ("The legislature has specifically defined 'meeting' under the Open Door Law as requiring a majority of the governing body; thus, without a majority present, no meeting occurs for purposes of the Open Door Law."); Hispanic Educ. Comm. v. Houston Indep. Sch. Dist., 866 F. Supp. 606 (S.D. Tex. 1995) (school district board of trustees, meeting in numbers less than quorum, did not violate Open Meetings Act; "limiting board members' ability to discuss school district issues with one another outside formal

meetings would seriously impede the board's ability to function," reasoning that "with fewer than a quorum present, nothing can be formally decided; without a formal decision, no act is taken. Without action, there is no illegality"); Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983) ("it is important that the rule not be so restrictive as to lose the public benefit of personal discussion between public officials"); Britt v. County of Niagara, 82 AD.2d 65 (N.Y. Sup. Ct. 1981) (the statutory requirement of a quorum is paramount; where no quorum was present at the meetings, there was no violation of the law). To adopt a contrary rule would require that if any two members of a public body wished to communicate about a matter of concern, they would have to notice a public meeting for such a discussion. If this were the case, the wheels of government would quickly grind to a halt. This argument was specifically raised and litigated in the case of Croft v. Town of Summerville, with the Court of Appeals agreeing that meetings of less than a quorum are not subject to FOIA public meeting requirements. Croft v. Town of Summerville, 428 S.C. 576, 837 S.E.2d 219 (Ct. App. 2019) and the Supreme Court vacating on the grounds of mootness. 433 S.C. 473, 860 S.E.2d 352 (2021)

Within Argument 4., and other arguments, the Plaintiffs even apply this to staff by calling any meeting of staff a "committee." Once again, this extreme interpretation is not supported by FOIA. And Plaintiffs want to declare that any meeting of staff or a combination of staff and public officials is a "committee" that must be noticed as a public meeting with an agenda. This is an even more extreme interpretation of FOIA whereby staff meetings are somehow de-facto committees that must have notice,

agenda, and public meeting.

The record shows that the meetings relating the Master Plan Advisory Committee were for the purposes of the consultants gathering information before having a public meeting. Even if such meetings were in violation of FOIA, the remedy for a FOIA meeting violation is that there must be a public meeting. It does not mean that the decision is undone and can never be addressed again. Case law has not declared the remedy for a meeting in violation of FOIA is barring the officials from forever considering the same or related issues. The proper remedy would be a public meeting, public consideration of the proposal, and a public vote. Because that is exactly what happened after any alleged non-public meetings, the alleged FOIA violation is not grounds for reversing or invalidating the later decision. To be clear, this is not a situation where there was a mere ratification of some action taken in a non-public meeting. Simple ratification was rejected as sufficient basis to validate an illegal decision in Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995) (rejecting public ratification of an ordinance adopted with no discussion immediately after an hour-long executive session). That decision was affirmed on other ground by the Supreme Court in Piedmont Pub. Serv. Dist. v. Cowart, 324 S.C. 239, 478 S.E.2d 836 (S.C. 1996). And with respect the Master Plan, which would ultimately become the "Vision Plan," there were multiple public meetings including public charettes to give the public access and input. Again, the Town would reiterate its mootness position as the ultimately result of a Master Plan/Vision Plan has been replaced by the most recent Comprehensive Plan and the Redevelopment Plan rendered irrelevant by

the dissolution of the SRC.

C. Plaintiffs' Arguments 13-29

All these arguments relate to the BAR members being given an opportunity to meet in groups of less than a quorum to see the preliminary plans of the developer. This is one of the exact issues raised on appeal *Croft v. Town of Summerville*, case that was appealed to the South Carolina Court of Appeals which ruled in favor of the Town and Board of Architectural Review on this issue, only for the decision to be vacated by the Supreme Court on the issue of mootness. Defendants would reiterate the arguments and citations above—meetings of less than a quorum of a public body are not required to be public meetings. The Town would reiterate its position on mootness. The project is not going forward, thus the BAR meetings concerning its design are irrelevant. Again, it was on the very issue of the BAR appeal that the South Carolina Supreme Court has already found the issues raised to be moot.

D. Plaintiffs' Argument 30

The Plaintiffs claim that there was a meeting after one meeting of the BAR. In reality, after a meeting of the BAR, and before the BAR members had left the room, one of the BAR members wanted to "clear the air" about documents including personal notes produced by another member in response to a subpoena that had not been served on the Town Attorneys and at least two board members made comments that the notes about them were not correct. This whole discussion as described would have been completed quickly and really involved the Board members' personal feelings about what had been written by one Board member in his personal notes. The discussion

was not about the substance of any application, but rather about comments made in private notes by one board member about two other board members. None of these discussions resulted in a decision of any type. Again, it is not clear how the Plaintiffs are able to say this resulted in any harm or how there is any way to really prevent a board member from saying something after a meeting before everyone has left the room. The Town would reiterate its position on mootness. The project is not going forward, thus the BAR meetings concerning its design are irrelevant.

E. Plaintiffs' Arguments 31-32

Plaintiff claims that there was a "Town Annexation Committee" without public notice. While the word committee was in the title, the evidence showed this was simply a group of business owners and citizens who volunteered to discuss with Town officials the obstacles and perceptions that may act as a barrier to annexation by property owners who are not yet in the Town. No decisions were made at this meeting.

F. Plaintiffs Argument 33

The Plaintiffs contend that there were meetings of the Business License Committee without public notice or meetings. There is no evidence to support this position.

G. Plaintiffs Argument 34

Plaintiffs argue that they were not allowed to inspect BAR applications. The evidence shows that the BAR staff complied with all FOIA requests within the time provided by FOIA and sometimes allowed immediate access where staff was available. There is no evidence of a FOIA violation here. The project is not going forward, thus

the BAR applications concerning its design are irrelevant.

H. Plaintiffs' Argument 35

Plaintiffs argue that the BAR did not allow public comment in one meeting of January 5, 2015. If the January 5, 2015, transcript is reviewed, the BAR chairman did not stop anyone from speaking. He also did not ask for comments. There were eight BAR meetings regarding this project and one where comment was not allowed. So, there was extensive public input before and after that meeting. The right to speak at a public meeting is not guaranteed by FOIA. And, even if there was an error, the remedy would not be that the project could never be considered again—it would have to be voted again at the next meeting. And that is what happened. Finally, the Town would reiterate its mootness position as the project is not going forward, all BAR matters related to its design are irrelevant.

I. Plaintiffs' Argument 36

Plaintiffs argue that one BAR meeting was held in a room that was smaller than the total number of persons who wanted to attend. There is no requirement that all persons who want to attend a public meeting must be accommodated. If there was, opponents could force any meeting to be cancelled just because they bring more people than there are seats. The Town would also reiterate its position on mootness. The project is not going forward, thus the BAR meetings concerning its design are irrelevant.

J. Plaintiffs' Argument 37-38

Plaintiffs argue that the Planning Commission did not pass a resolution approving the Master Plan/Vision Plan. What they fail to say is that the Planning Commission

heard the matter in a public meeting, with a proper agenda, and voted publicly to vote in favor of the Master Plan/Vision Plan. The Plaintiffs' argument is that the Planning Commission was required to use the word "resolution" when it made the motion to approve. But there is no precise meaning for the word "resolution" in the context of the statute requiring the Planning Commission to pass a "resolution." A motion to approve the plan is a type of statement of approval that is sufficient. Again, as to mootness, this document has since been entirely replaced by a new Comprehensive Plan which was also reviewed and passed by the Planning Commission in a public meeting.

K. Plaintiffs' Argument 39

The Plaintiffs claim that the Master Plan/Vision Plan did not expressly refer to "maps and other descriptive materials." The document clearly contains maps, diagrams, and other descriptive materials.

L. Plaintiffs' Arguments 45-69 and 73

Plaintiffs argue that the decision to enter a Public Private Partnership with Applegate and Co. and developer violated procurement laws. First, the Town is not restricted to only those set forth in ordinance. Second, as a contract for professional services, the matter was entirely exempt from the procurement code. In addition, Applegate secured an exclusive option on the property that surrounded the Town's property making it a sole-source situation where the only way to accomplish the project was by working with him. Finally, Applegate was the only entity or person to submit a proposal. (For all these points: See Affidavit of William Collins of July 9, 2015, filed 8-10-2015 and Affidavit of Lisa Wallace of July 9, 2015, filed 8-10-2015 in this action prior

to it receiving a new number under Rule 40J. Finally, these arguments were heard as a motion for summary judgment by Judge Dickson and denied. Judge Dickson's Order specifically addresses these points and concluded that the contract was one for "professional services" which is entirely exempt from competitive bidding requirements. The Town would also reiterate its mootness position that the contract not going to be performed and the lawsuit concerning who breached it has been settled.

M. Plaintiffs Arguments 70

Plaintiff attempts to go back in time a step further to argue that the contract with the Lawrence Group to assist with the creation of the Master Plan/Vision Plan was improperly entered because it had to be competitively bid. The Lawrence Group provides professional consultation to governmental entities in creating, among other things, comprehensive plans and related materials. Clearly this is a professional service and is not required to be competitively bid. The Town went through a process of advertising for and soliciting proposals. It then evaluated those bids and selected the best one taking into consideration price and quality. A professional services contract is not one to award to the lowest bidder. As a professional services contract, it is entirely exempt from the Town's procurement code. Once again, the Town would reiterate its position that this is now entirely moot as the work done by the Lawrence Group in creating a Master Plan/Vision Plan/Redevelopment Plan has been entirely replaced by the most recent Comprehensive Plan.

N. Plaintiffs' Argument 73

Plaintiffs argue that the Town failed to name a Town Administrator from March

10, 2011, to April 25, 2016, and that allowing William Collins to run the Town in the absence of a Town Administrator was in error. This is extensively addressed in the currently pending motion in *Harbeson v. Town of Summerville*, 2022-CP-18-01819, to be heard this same day and the Defendants would incorporate by reference the memorandum prepared in support of the Town's position—including its position that this is now entirely moot.

O. Plaintiffs Arguments 74-90, 93

The gist of these arguments relate to alleged deficiencies in adoption of the Master Plan/Vision Plan that were adopted by the Summerville Redevelopment Corporation (SRC) as a "Redevelopment Plan." Because a "redevelopment plan" is required in connection with the powers of a redevelopment corporation, the Plaintiffs believe that if this is undermined, then the contract with Appelgate would be invalid. These issues were addressed by Judge Dickson in both Sections 1 and 4 of his Order. Judge Dickson's heading of the first section of his Order states: "*THE ADOPTION OF THE REDVELOPMENT PLAN WAS NOT IMPROPER AS A MATTER OF LAW.*" Town Council itself found in creating the SRC that there existed blighted areas or conservation areas within the Town and those findings are binding as those of the elected officials with direct knowledge of their community. The Redevelopment Area was the entire Town and there is nothing prohibiting that the area of jurisdiction from being the whole Town. There is nothing in the law that say that the redevelopment corporation can only exist in areas that are blighted. In addition, it may include areas that are areas to be "conserved." Conservation is a broad term that includes not only

preserving historic areas, but also preserving natural areas, open areas such as parks, improving and protecting drainage infrastructure to prevent flooding, and cultural resource conservation.

The plaintiff attempts to make numerous alleged technical violations into a basis for invalidating every activity done after an alleged technical violation. Generally, only substantial compliance is required. The Defendants would again reference the Order of Judge Dickson: *"Further, the Community Development Law read as a whole and considering its ultimate purpose of encouraging redevelopment should not be interpreted as a statute creating a list of pitfalls, hurdles, and obstacles that must be overcome, even if arbitrary based on the facts of the matter. Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (S.C. 1994) ("language must be construed in the light of the intended purpose of the statute"). The intent of the law is to encourage governments and developers to work together to address blighted areas. It would be inconsistent with the purpose and intent of the law to declare that every deviation from the statute is a ground for voiding a contract. Given the complexities of the statute, such an interpretation would result in developers running away, not towards, projects with redevelopment commissions."*

P. Plaintiffs' Argument 91 and 92

The Plaintiffs argue that the Dorchester Hotel project had to be brought to the Planning Commission for review as to compatibility with the Comprehensive Plan. However, as Judge Dickson noted, the Vision Plan, which was adopted as an amendment to the Comprehensive Plan specifically referenced this project. This was

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

Q. Plaintiffs' Arguments 94-117

Plaintiffs again raise a variety of arguments alleging that the SRC was required to create its own Request for Proposal or Request for Bid and that adoption by the SRC of the Town's activities was improper. This was addressed by Judge Dickson's order *"The Court holds the SRC was not required to re-solicit design proposals for the subject property, as this task was already performed by the Town and the SRC accepted by agreement these administrative services."* Further, it is quite absurd that the Plaintiffs are suggesting that the SRC is required to repeat activities already performed by the Town—even though the voting members of the SRC are the very same Town Council members who run the Town. The Defendants would once again reiterate their position on mootness here—the SRC is dissolved, and the project is not going forward. There is no relevance to this inquiry.

R. Plaintiffs Arguments 118-121

These are not even arguments. Of themselves, these sentences do not entitle anyone to any relief. Perhaps the Plaintiffs believe they set up predicates for other

arguments, but those will be addressed in turn.

S. Plaintiffs Argument 122

The Plaintiffs argue that indemnification clauses in the PPPA in favor of the Developer against, for example, environmental contamination violate the South Carolina constitution of giving of credit of the State. First, there is no constitutional provision against a redevelopment corporation from giving credit and they are expressly authorized to give loans. Second, if an indemnity clause is invalid, there are severability clauses in the PPPA that would come into play and those could simply not be enforced while keeping the rest of the contract. Finally, this has always been an entirely hypothetical inquiry as no demand for indemnity was made nor were there ever any circumstances giving rise to an identifiable claim for indemnity that the parties discussed prior to cost increases killing the project. Once again, the Defendants would reiterate their position on mootness here.

T. Plaintiffs Arguments 123-163

These contain a variety of arguments that the PPPA contained terms that benefited only private interests and/or that various provisions contained potential risks that could result in more financial liabilities to the Town and SRC.

As to public purpose, this project would have created a meeting/event space and a parking garage that would have been owned by the Town. That is sufficient public purpose to satisfy any public purpose test. And the Town was only to pay for the "PUBLIC IMPROVEMENTS" —up to \$5.2 million dollars.

As to whether the terms of the contract were risky, the extent to which certain

terms were favorable or unfavorable are questions does not serve as a basis for invalidating a contract. Plaintiffs argue that there were unacceptable risks in the contract. There is always risk and uncertainty of things going poorly. The most obvious risk of an unexpected price increase for the "PUBLIC IMPROVEMENTS" was addressed with a \$5.2 million cap.

U. Plaintiffs Argument 142 and 143

In addition to the above arguments, these deserve special consideration. The Plaintiffs contend that because the document is described as a public-private partnership, the actual relationship of the parties was that they were in a partnership and that this exposed the Town and SRC to liabilities and violated the provision of the South Carolina's Constitution which prohibits public entities from being a "joint owner of . . . any company." A review of the PPPA makes clear that the term "partnership" in the title does not describe a jointly owned entity. The PPPA "partnership" merely a description of a private entity and public entities working together. There was to be no sharing of profits or losses. The land under the event space and parking garage as well as those facilities were to be owned by the Town. The land under the hotel would be owned by the Developer. Boundaries of the property were to be adjusted to the extent that the event space or parking garage went over any property line onto what was private property. This is another absurd "form over function" argument where the plaintiffs argue that the use of the term partnership creates an actual partnership entity.

V. Plaintiffs Arguments 164-167

These points argue that the SRC did not approve the final design prior to

submission to the BAR and thus this deprived the SRC of the right to have its own input on the project. Of course, this ignores the reality that the SRC was created by Town Council and the voting members of the SRC were the same as the voting members of Town Council. Town Council approved of the design that was ultimately approved by the BAR. The suggestion that the submission to the BAR was invalid because the SRC did not hold a separate meeting for the same people to vote to approve the same drawings is another extreme technicality the Plaintiffs want to say invalidates the entire agreement and process. The other point is that this doesn't go to the validity of the contract, merely to whether the BAR should have approved a particular design. One of Applegate's arguments after the deal fell apart was that potentially he could have done a different design within the \$5.2 million cap and that some other design should have been considered once it was determined that the approved design could not be built for the contract maximum of \$5.2 million. So, even if this particular design was not specifically approved by the SRC (but was approved by the same voting members in a Town Council meeting), this would not invalidate the contract itself. Once again, the Defendants would reiterate their position on mootness as the building that was approved will not be built because the land has been sold to a different developer, who has proposed and secured approval for a different project and the SRC has been dissolved.

Conclusion

This entire case is moot. The PPPA contract is dead. The involved property is sold to another developer who is doing an entirely different project on its own. The only

remaining vestige of relevancy was the fact that there was a lawsuit remaining between the Town and the Developer alleging claims and counterclaims with breach of contract. Trial in the other case has been stayed pending the outcome of this case because this action could potentially have determined whether the causes of action would be for breach of contract or something like quantum meruit or promissory estoppel which would not have required a valid contract. The Town got an opportunity to resolve that case for \$50,000 and seized that opportunity in July 2023 and then promptly moved to have this case dismissed as moot. Even if the Court were to consider the case on the merits, the Court should not grant summary judgment in favor of the Plaintiffs who have submitted no supporting materials and raise a variety of technicalities in the face of summary judgment already having been denied by Judge Dickson.

s/Timothy A. Domin

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com

s/G. Waring Parker

G. Waring Parker
Town of Summerville
200 South Main Street
Summerville, SC 29483
Phone: (843) 695-6510
Fax: (843) 873-5062
Email: gparker@summervillesc.gov
Attorneys for Respondents

Charleston, South Carolina
August 22, 2023

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Faye P. Croft, personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Croft; Heyward G. Hutson; James Stephen Greene, Jr.; Brian Peacher; Robert Klinger; Mary Becker; Summerville Preservation Society and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Plaintiffs, v. Town of Summerville; William C. Collins, in his capacity as Mayor; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, in their capacities as members of Town Council; Town of Summerville Redevelopment Corporation; Town of Summerville Planning Commission; Town of Summerville Board of Architectural Review, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT Civil Action No.: 2022-CP-18-01494 PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
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INTRODUCTION

The Defendants seek to dismiss this case that raises numerous issues related to the Town of Summerville's failure to comply with the state's Community Development Law, Procurement Code, Freedom of Information Act, and Comprehensive Planning Enabling Act, arguing that since the public private partnership that the Town pursued with a private developer failed, all of the Town's malfeasance outlined in the extensive complaint¹ is nonjusticiable because it is moot.

¹ For a review of the facts of this case and the causes of action pled, see Plaintiffs' Second Amended Complaint dated March 14, 2018.

These issues are fully justiciable by this court, however, since there still exists a very real case or controversy between the parties across multiple factual issues and causes of action. The failure of the underlying project does not render this case moot.

If the sole object of this lawsuit were to stop the project, there might be some merit to the Defendants' argument. The relief sought by the Plaintiffs, however, is a declaration that the actions taken by the City were unlawful and wrong. The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of the project, because the issue of whether the Town violated numerous state and local laws is still very much in controversy. Despite the failure of the project, the Town has not conceded that it did anything wrong or violated any provision of state or local law as pled in the Complaint. As a result, there remains a justiciable controversy for this Court to decide.

Further, even if the Court were to conclude the case is moot, it should decide this case given the public importance of the issues and the need for future guidance for this other municipalities in this State. Also, given that these issues are certainly capable of repetition and yet evade review given the fact that the duration of contracts may be short, or projects may fail, but the issues surrounding them remain and need resolution, the Court should proceed to decide these issues and provide a remedy to these citizens who have brought this important action for decision.

STANDARD FOR SUMMARY JUDGMENT

This case is not appropriate for summary judgment.

Rule 56(c), SCRCRCP, provides that a circuit court may grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360,

362 (Ct. App. 2013) *citing Bovain v Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (quoting Rule 56(c), SCRCPP).

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "... [W]here the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." Bass v. Gopal, Inc., 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) (citing Hancock v. Mid-South Mgm't Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

ARGUMENT

Courts may only consider cases where a justiciable controversy exists. See Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Curtis, 345 S.C. at 567, 549 S.E.2d at 596 (quoting Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court could take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. Curtis, 345 S.C. at 568, 549 S.E.2d at 596 (citations omitted).

Despite an issue's mootness, "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis, 345 S.C. at 568, 549 S.E.2d at 596. The seminal case in our state defining this exception to the mootness doctrine is Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947). In Ashmore, the plaintiff sought to enjoin a government body from issuing bonds to fund the construction and maintenance of a new auditorium. Id. at 85, 44 S.E.2d at 91. The trial court denied the request for injunction. Id. An election was held in which the voters approved the sale of bonds, thereby rendering the issue moot. Id. The court nevertheless decided the case was justiciable because the issues raised were of substantial public importance, opining:

If this were an ordinary case, our opinion might well stop here. . . . But the case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments; and raised on the record are earnestly argued public questions of importance. The last stated factor brings into play the principle, now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest. Id. at 96, 44 S.E.2d at 96-97; see also Berry v. Zahler, 220 S.C. 86, 89, 66 S.E.2d 459, 461 (1951) (reaffirming the "exception to the rule of rejection without decision of academic questions" articulated in Ashmore); People ex rel. Wallace v. Labrenz, 411 Ill. 618, 622, 104 N.E.2d 769, 772 (1952) ("Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature [***28] of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question."); 20 [*554] Am. Jur. 2d Courts § 47 (2003) ("Courts may decide moot issues or cases where such a decision would be in the public interest").

The South Carolina Supreme Court has found exceptions to the mootness doctrine in public interest cases much like this one:

In Sloan v. Greenville Cty., 356 S.C. 531, 551-55, 590 S.E.2d 338, 349-51 (Ct. App. 2003), the court found against a mootness argument where the issue was likely to recur by evade review. That case challenged the selection of contractors by Greenville County under the procurement code. The court found that, by design, the procurement code's exception allowing use of design-build source selection accelerates the process of awarding public works contracts and the ultimate completion of the projects themselves. Though the plaintiffs initiated the actions in the present case within one week after the contracts were executed or the County's written determination was filed, construction on all three projects was complete prior to the beginning of trial in this case. Because the fundamental inquiry in this case concerns the validity of using an expedited procurement process, though, the court found that it was improbable that similar challenges could navigate the litigation process before the question became a purely academic one. The court found an exception to the mootness doctrine and allowed the case to proceed to trial.

In S.C. Pub. Interest Found. v. S.C. DOT, 421 S.C. 110, 121-22, 804 S.E.2d 854, 860-61 (2017), the court concluded that the issue of whether the SCDOT could inspect bridges inside private, gated communities is one that is capable of repetition, yet will generally evade review. Just as here, with the Town of Summerville, the court found the DOT capable of repeating their actions in the future, "especially since they maintain their conduct was lawful." In fact, the DOT said they would inspect private bridges in the future, the very activity challenged by the Plaintiff. Moreover, the court found, this issue is one which will typically become moot before it can be reviewed, because inspection of roadways and bridges can typically be completed long before a court can review the propriety of the action. As a result, even though the court found the activity

giving rise to this appeal is moot, the court found the controversy capable of repetition yet generally evading review.

In Sloan v. DOT, 365 S.C. 299, 306, 618 S.E.2d 876, 880 (2005), the plaintiff contended the respondents violated S.C. Code Ann. § 57-5-1620 by awarding construction contracts to someone other than the lowest qualified bidder (i.e., using the Design/Build process). The DOT contended it had other statutory authority to use the Design/Build procurement methods and, in any event, it does not matter because it awarded the contracts to the lowest bidders complying with § 57-5-1620. The court disagreed with that argument. The court found the fact that these three contracts were awarded to the lowest bidder was irrelevant. As discussed above, the issue in this specific case is moot because the contracts have been awarded and fully performed. However, as discussed above despite this mootness as to these three contracts, we have determined we should address the issue of whether the DOT should have followed § 57-5-1620 in awarding other contracts.

In Byrd v. Irmo High Sch., 321 S.C. 426, 430-32, 468 S.E.2d 861, 863-64 (1996), the plaintiff challenged a student's suspension by the school. The school district argued that the court lacked jurisdiction because the issues were rendered moot by events occurring after the filing of the appeal. The school argued that the student served the suspension, had since returned to school, and that the suspension has been cleared from the student's record. The Supreme Court found that even if it is assumed that the issue in the present case was moot, it was an issue that is capable of repetition, but which would evade review. The court observed that short-term student suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate. Therefore, the court concluded that the case clearly fit into the evading review exception of the mootness doctrine, even if it were not otherwise appropriate for the Court to address this appeal.

In this case, the fact that the developer and City are not proceeding under this PPPA does not resolve the issues brought by the Plaintiffs. The Plaintiffs have spent much time and resources to bring before the Court the City's failure to abide by the Community Development Law, the Comprehensive Planning Act, the Freedom of Information Act, and the state Procurement Code in the Town's pursuit of this project. These issues are not made moot even if the project is not going forward, because the Town has not conceded it did anything wrong, and the issue of the violations of these statutes is very much in controversy.

If the sole object of this lawsuit were to stop the project, there might be some merit to the Defendants' argument. The relief sought by the lawsuit, however, is the declaration that the actions taken by the City were wrong. The Court is fully capable of providing the relief requested by the Plaintiffs despite the failure of the project, because the issue of whether the Town violated numerous state and local law is still very much in controversy. Despite the failure of the project, the Town has not conceded that it did anything wrong. As a result, there remains a justiciable controversy for this Court to decide.

Further, even if the Court were to conclude the case is moot, it should decide this case given the public importance of the issues and the need for future guidance for other municipalities in this state. In addition, these issues are certainly capable of repetition and evade review given the fact that the duration of public private contracts may be short, or projects may fail, but the issues surrounding them remain and need resolution.

If state or local governments could avoid having their actions adjudicated as lawful or unlawful based on the length of a term of office of the official involved, the duration of the contract complained of, or the City's ability to reverse or "undo" the claimed unlawful conduct, government could render itself almost beyond review by the courts. That is not the purpose of the justiciability doctrine or its corollary, the concept of mootness.

These matters are of public importance, involving public funds, open government, and the sound administration of contracts with local government. As stated in the cases cited above, it is important for the courts to consider the government's action in light of the law and decide, for future guidance for this and other local governments, whether the Town complied with, or violated, the Community Development Law in establishing its Redevelopment Commission and in undertaking the Applegate Public Private Partnership, whether its public private partnership violated the state and local procurement code, and whether its conduct in various proceedings surrounding this project violated the Freedom of Information Act.

There are too many issues of too much importance to grant summary judgment in this case, so near trial, based on the concept of mootness.

The Plaintiffs respectfully request that this motion be dismissed.

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder (S.C. Bar #7895)
andy@austengowder.com
Austen and Gowder, LLC
1629 Meeting Street, Suite A
Charleston, South Carolina 29405
Phone: 843-727-2229

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

August 23, 2023

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER * TRANSCRIPT OF RECORD

-----X
 FAYE P. CROFT, et al., *
 Plaintiffs, *
 vs. * Case No. 2022-CP-18-01494
 TOWN OF SUMMERVILLE, et al., *
 Defendants. *

-----X
 WILLIAM A. HARBESON, et al., *
 Plaintiffs, *
 vs. * Case No. 2022-CP-18-01819
 TOWN OF SUMMERVILLE, et al., *
 Defendants. *

-----X
 August 24, 2023

B E F O R E:

The Honorable Jennifer B. McCoy, Presiding Judge

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

Andrew Gowder, Jr., Esq.
 Michael Rose, Esq.
 Attorney for the Plaintiff
 Timothy A. Domin, Esq.
 Attorney for the Defendant

Recorded by: Webex Recording

Transcribed by: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE CLERK: The next case up is 2022-CP-18-01494.
This is Faith Croft versus Town of Summerville, and it's a
motion to dismiss filed by the defendant.

THE COURT: Okay. Good morning.

MR. GOWDER: Good morning, Your Honor.

THE COURT: Is this some sort of, let's see,
companion case with the Harbeson matter? Why don't y'all
catch me up on this a little bit. I'm totally unfamiliar
with these matters, so...

MR. GOWDER: No, Your Honor, they're not companion
cases at all. They do --

THE COURT: They're not companion cases at all?

MR. GOWDER: No. They both involve the Town of
Summerville, some of the same citizen plaintiffs, but
other than that, they're not related.

THE COURT: Is one or the other under the
administrative power of Judge Cothran?

MR. GOWDER: They both are, Your Honor.

THE COURT: They both are. Okay.

MR. GOWDER: Yes, ma'am.

THE COURT: And where is the order -- do y'all have
a copy of that order?

MR. GOWDER: Your Honor, I can provide it to you. I
think I may have done that in one of my emails to you over

1 the last week, but I can certainly send it to you again.

2 THE COURT: I tell you -- and you know what? I
3 can't do the back and forth on the email. Nothing is
4 preserved on the record.

5 MR. GOWDER: I understand.

6 THE COURT: So is it -- let me just look it up the
7 old-fashioned way. Just give me a moment.

8 MR. DOMIN: You may not have to do it the
9 old-fashioned way, because they entered the order as it
10 related to many cases involving some of the same litigants
11 and attorneys. So --

12 THE COURT: They may not have filed it separately
13 under each action. Is that what you're telling me?

14 MR. DOMIN: Yeah. Let me see if I can...

15 THE COURT: Well, let me look.

16 MR. GOWDER: Your Honor, if you'd like, I can email
17 it to you now, but -- if that's helpful.

18 THE COURT: If you have it, sure, that would be
19 great.

20 MR. GOWDER: Okay.

21 MR. DOMIN: I have got it now, too, if you need it.

22 THE COURT: Either way.

23 MR. GOWDER: Tim, go -- I mean, I'd be happy -- it
24 would take me a minute to find it. If you have got it, if
25 you could send it.

1 MR. DOMIN: Yeah, I was able to find it.

2 MR. GOWDER: Great.

3 MR. DOMIN: I just sent it to you, Judge, and CC'd
4 just Andy and put order as the re: line.

5 THE COURT: Thank you.

6 MR. DOMIN: Oh, you know, I may have sent you the
7 wrong thing, Judge. Oh, no, that is correct.

8 MR. GOWDER: No, it's the right one.

9 MR. DOMIN: I apologize.

10 THE COURT: I haven't quite gotten it yet, but
11 that's not unusual.

12 MR. GOWDER: You sent the right one, Tim.

13 MR. DOMIN: Thank you.

14 THE COURT: I think it goes through 20 filters
15 before it will finally show up in my in-box. Here we go.
16 All right.

17 So it's McFadden, not Cothran.

18 MR. GOWDER: Well, Your Honor, if you look at the
19 last sentence, when the chief administrative judge --

20 THE COURT: Oh --

21 MR. GOWDER: -- [indiscernible] it changed.

22 THE COURT: I'm sorry. Thank you. So now it's
23 Cothran. Yeah, I see this was way back in 2019. Okay.
24 All right. I follow. So, essentially, it's just under
25 their purview for administrative reasons; is that correct?

1 MR. GOWDER: That's correct.

2 THE COURT: That's what I believe was done. "For
3 the sole purpose of administering these cases." Okay.
4 All right. Well, here we are. Happy to hear from y'all.

5 The first motion up is, as stated, Faye Croft versus
6 Summerville. This is the Town of Summerville's motion to
7 dismiss. Is that correct?

8 MR. DOMIN: That is correct, Your Honor.

9 THE COURT: All right. Happy to hear from you.

10 MR. DOMIN: Your Honor, Tim Domin here on behalf of
11 the defendants. This is a motion to dismiss the case as
12 moot. This matter involved a challenge to what has been
13 called a public-private partnership agreement, or PPPA,
14 that involved the Town of Summerville as well as a private
15 developer joining together on some land that the Town of
16 Summerville owned and the developer controlled the
17 adjacent property.

18 The plan was to build a hotel event space, parking
19 garage, and condominiums. The developer was an Applegate
20 and Company. The Town of Summerville was a party to this
21 agreement as well as a redevelopment corporation, which
22 the Town was authorized to create, which was called the
23 Summerville Redevelopment Corporation.

24 The plaintiffs in this case filed this action to
25 challenge the project generally. They challenged the

1 contractual advertisement for the project, the terms of
2 the contract, alleged the contract was ultra vires and
3 void ab initio, alleged that the Board of Architectural
4 Review had acted improperly in various respects, alleged
5 that the formation of the Summerville Redevelopment
6 Corporation was done improperly, alleged that the mayor
7 was improperly handling the matter as a Town
8 Administrator. By the way, that is the overlap with the
9 Harbeson case, which we'll get to in a moment.

10 Your Honor, the lawsuit was originally filed in
11 Charleston County somewhat inexplicably because the real
12 estate involved in most of Summerville is involved -- is
13 located in Dorchester County.

14 It was filed in December of 2014. It was -- we
15 filed a motion of change of venue, and then that was
16 ultimately consented to, to move to Dorchester, which is
17 why the original case had a 2015 number.

18 So this case is over 8-1/2 years old, and a lot has
19 happened in 8-1/2 years that render this case entirely
20 moot. So what has happened? Well, the first thing that
21 happened was that the cost estimates for the project came
22 in November 2015 too high, almost double what the cost was
23 as far as the max in the contract. And as a result, the
24 developer asked the Town to put extra money in the
25 project. The Town did not ever agree to put extra money

1 into the contract. And, therefore, that resulted in the
2 project breaking down and failing, not going forward.

3 Lawsuit was brought by the developer versus the Town
4 and the Summerville Redevelopment Corporation, and
5 counterclaims were made by the Town and Redevelopment
6 Corporation.

7 Your Honor, that effectively signalled the end of
8 this project but lest there be any question at all that
9 the project is dead since the time of filing and more
10 recent years, the land where this project was going to be
11 built, the Town piece of the land was sold to an entirely
12 different developer who has a different project. That
13 different developer has gone ahead and received
14 preliminary approval from the Board of Architectural
15 Review with no lawsuits being filed.

16 The Summerville Redevelopment Corporation has been
17 dissolved, as there is no need for it; it was created
18 really for the purposes of addressing this project and
19 there was no benefit to the Town of keeping it, so it was
20 dissolved by the Town.

21 There are no other PPPA projects or joint
22 development projects that are currently contemplated or
23 under consideration. Even the predicate acts that the
24 plaintiff alleges, like the creation of an amendment to
25 the master plan -- the master comprehensive plan, which

1 was called a vision plan, which they have some arguments
2 relating to the formation of that back in the 2014 time
3 frame, that has been replaced by an entirely new
4 comprehensive plan.

5 Your Honor, this case has been trucking along with
6 the only remaining relevancy was that the plaintiffs were
7 trying to get a court order saying that the contract would
8 be void ab initio. And everybody more or less conceded
9 that there could be some relevancy of that to the lawsuit
10 that was pending between Applegate and the Town. Because,
11 if the contract was invalid, that could effect the
12 remedies that would be available to the parties. There
13 would be no breach of contract action available if there's
14 no contract or there potentially could be a quantum meruit
15 action or something of the type.

16 So, in July of 2023, the Town seized on an
17 opportunity to settle what was claimed to be a
18 multi-million-dollar lawsuit by the developer for \$50,000.
19 Town Council voted on that, signed the release in July of
20 2023, stipulation of dismissal was filed August 1, 2023,
21 and respectfully, the last shred of potential relevancy of
22 this case ended with that release and termination of that
23 lawsuit.

24 Now, Your Honor, it should be made clear, this is a
25 case that was filed seeking declaratory and injunctive

1 relief. This is not a case for monetary damages. Your
2 Honor, it is very clear under South Carolina law that,
3 even with the declaratory, there has to be a valid case or
4 controversy. There has to be some live controversy. In
5 fact, this is something that's jurisdictional and could be
6 raised at any time. If there is no case or controversy,
7 the Court should not expend judicial resources deciding a
8 matter for the academic purpose of trying to decide who is
9 right.

10 Now, the case that I want to cite you to is the case
11 of Croft vs. The Town of Summerville. That sounds awfully
12 familiar because it's the same name as this case, and that
13 case was decided by the South Carolina Supreme Court in
14 2021.

15 What was that case? That case was a companion to
16 this case whereby the plaintiffs challenged the decision
17 of the Board of Architectural Review saying that they did
18 improper things, including secret meetings, which was the
19 same allegation that is included in this case. They
20 didn't follow proper procedures or have proper procedures,
21 which is the same allegation in this case. Also that the
22 contract is void ab initio and that the Board of
23 Architectural Review should have not considered the matter
24 because it was void ab initio, the same issue raised in
25 this case.

1 We got up to the South Carolina Supreme Court. The
2 Supreme Court asked us, "Is this project going forward?"
3 Mr. Gowder and I said to the Court it did not appear that
4 the project was going forward, lawsuits had been commenced
5 over the matter, and it was not going to happen.

6 The Court said, "Well, it seems like this matter is
7 moot." And they issued a decision that said, "This matter
8 is moot. We are dismissing it and vacating the decision
9 of the Court of Appeals that had been rendered in the
10 case," which was in favor of the Town.

11 The Court specifically addressed the capable of
12 repetition but evading review and said, "Well, that's not
13 like this." There's a case involving three-day
14 suspensions from school for students, and they cited that,
15 and that's been cited by Mr. Gowder in his opposition
16 brief. That's not similar. That's something that's
17 always going to be over by the time that you get to court,
18 so that's a reasonable example of capable of repetition
19 but evading review.

20 They also addressed the public importance exception
21 which, again, Mr. Gowder has raised and said this does not
22 rise to the level of public importance.

23 Now, I want to make sure that the Court understands,
24 the public importance is that this is something widespread
25 that's happening. This is something that's big for the

1 whole state that we really need to decide and get straight
2 and/or this is something that's happening regularly; it's
3 part of the standard operating procedure.

4 The Supreme Court said, "We're not going to find
5 that here." And, again, some of the very same
6 allegations, including the contract, was void ab initio
7 were at issue in that appeal to the Supreme Court.

8 So, in this case, the plaintiffs have withdrawn just
9 yesterday their motions for summary judgment or I should
10 say their motions for partial summary judgment, which
11 raised over 160 points for partial summary judgment. In
12 other words, it wouldn't resolve the case. That's partial
13 summary judgment.

14 Now, the Town was opposed to that, ready to argue
15 that. They have dismissed those motions. But the point I
16 want to make, Judge, is that this is a case that, at a
17 minimum, would take a week to try and might take three
18 weeks to try, and the plaintiffs are asking for this Court
19 to not declare this as moot because they think they should
20 be entitled to an answer on questions that they raise
21 which have long since become moot and certainly the last
22 bit of relevancy was removed by the settlement of the
23 case.

24 Plaintiffs, I think, are going to raise some cases
25 involving SCDOT procurement. The difference there is that

1 SCDOT procurement -- and I think there's a City
2 procurement case from Greenville they want to cite -- that
3 was how they were going to do their work and that was
4 going to happen again and, in fact, one of the
5 construction projects was completely built by the time
6 that the litigation was heard.

7 There's no evidence here that the Summerville Town
8 Council is set to do this again. Nothing like this has
9 been done again since the action was filed eight -- over
10 eight and a half years ago. There's no projects in the
11 pipeline. There's no evidence that other cities are
12 rushing to do something anywhere similar to this.

13 So there's no public importance exception here that
14 would fit, and the Court needs to end this case and end it
15 now.

16 Your Honor, we would respectfully ask for you to
17 grant our motion to dismiss on the grounds of mootness,
18 and we do have affidavits supporting the factual
19 statements that I made, particularly the affidavit of Lisa
20 Wallace who recounts the death of the contract, the
21 reasons for that, and the changes that have occurred in
22 the Town and also the things that we're not contemplating
23 another project like this, nothing has been done like this
24 since we -- since this litigation started.

25 Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 Mr. Gowder, happy to hear from you.

3 MR. GOWDER: Thank you, Your Honor. May it please
4 the Court? Andy Gowder for the plaintiffs. I'm here with
5 my co-counsel, Mr. Mike Rose.

6 Your Honor, the defendants here seek to dismiss this
7 case that raises numerous issues related to the Town of
8 Summerville's failure to comply with the State's
9 comprehensive development law, State's procurement code,
10 its own procurement code, the State Freedom of Information
11 Act, and the State's Comprehensive Planning Enabling Act.

12 They argued that, since the public-private
13 partnership that the Town pursued with a private developer
14 failed, that all of the Town's mistakes and malfeasance
15 outlined in the extensive complaint is just nonjusticiable
16 by the Court because it's moot.

17 And, Your Honor, of course mootness is a -- it's a
18 doctrine of justiciability and whether or not there's a
19 case or controversy for the Court to decide.

20 Here, there's a very real case or controversy for
21 the Court to decide across multiple factual issues and
22 multiple causes of actions and statutes.

23 The failure of the underlying project does not
24 render the case moot. If the sole object of the lawsuit
25 were to just stop the project, then there might be some

1 merit to the defendant's argument. But the relief sought
2 by the plaintiff is a declaration that numerous actions
3 taken by the Town were unlawful and wrong under a number
4 of statutes and ordinances.

5 The question really is whether the Court is capable
6 of providing the relief requested by the plaintiffs.
7 Here, the Court is capable of providing that relief
8 despite the failure of the project because the issue of
9 whether the Town violated numerous state and local laws is
10 still very much in controversy. Despite the failure of
11 the project, the Town has never conceded that it did
12 anything wrong; that it violated any statute or provision
13 of state law as pled in the complaint.

14 If they would stipulate to that, then I would agree
15 with Mr. Domin that this case should be ended. They have
16 not and I expect would not do that.

17 So, as a result, there remains a justiciable
18 controversy for the Court to decide. Further, even if the
19 Court were to conclude that the case is moot, it should
20 decide this case, given the public importance of the
21 issues and the need for future guidance for this
22 municipality and for other municipalities in the state.
23 Mr. Domin has said he doesn't think that they have any
24 public-private partnerships planned in the future, but
25 there's no guarantee that, tomorrow, they wouldn't be

1 presented with one and make the very same mistakes.

2 This Town that has not agreed that the way it
3 proceeded with this failed project was a mistake and
4 violated laws needs the guidance of the Court to determine
5 how it is that it should proceed and other jurisdictions
6 in this State would benefit by that guidance as well.

7 Your Honor, for review of the facts of this case --
8 and I agree with Mr. Domin; it's extensive. There are a
9 lot of facts -- a lot of factual issues and a lot of legal
10 issues at play in this case. I would -- I'm not going to
11 go through those this morning in the interest of time,
12 which is actually why we withdrew our motion for partial
13 summary judgment because we believe the Court needed to
14 hear this motion and it would just take too much time. We
15 wouldn't have the time today to do that issue justice.

16 But I would refer you to Plaintiff's second amended
17 complaint dated March the 14th, 2018, for the facts and
18 the legal theories in this case.

19 I'd also, Your Honor, like to cite you to our memo
20 and specifically to the cases that we cited in our memo
21 that I don't think can be so easily distinguished or set
22 aside as Mr. Domin seemed to indicate because they all
23 point to the Court's recognition that when -- particularly
24 public interest cases, where citizens undertake the time
25 and expense to challenge violations of the law by local or

1 state government, that those actions should be addressed
2 by the Court if they're important and if they are capable
3 of being repeated in the future by this or other
4 jurisdictions and could provide guidance to other
5 jurisdictions.

6 In Sloan v. Greenville County, the Court found
7 against a mootness argument on a procurement issue and
8 pointed out that, though the plaintiffs initiated the
9 actions in the present case within a week after the
10 contracts were executed, construction on all the projects
11 was complete prior to the beginning of trial. That's the
12 way these contracts go.

13 You could argue that, in this case, the contract
14 here had an indefinite life and not surprising that it
15 failed many public-private partnerships and other
16 construction or development contracts fail. That doesn't
17 mean that, if a City government violated law in the
18 pursuit of that contract, that even if the contract fails,
19 there should be no consequences or relief for challengers
20 in courts.

21 In the Sloan v. Greenville County case, the Court
22 found an exception to the mootness doctrine and allowed
23 the case to proceed to trial.

24 A couple of others: In South Carolina Public
25 Interest Foundation vs. SCDOT, the question was whether

1 the DOT could inspect bridges inside private gated
2 communities, and they found that it's one that was capable
3 of repetition but would generally evade review and also
4 found that it was an important -- it was an important
5 issue and one that DOT had said that they would continue
6 to inspect private bridges, so the very activity
7 challenged by the plaintiff was -- you know, was important
8 and was before the Court, and the Court found that, even
9 though the particular issue in the case had been ended, it
10 was important for them to go ahead and decide the case.

11 The same result in Sloan v. DOT where the question
12 was whether or not the respondents violated a state
13 statute by awarding construction contracts to someone
14 other than the lowest qualified bidder. Again, in that
15 case, despite the mootness on the particular contract
16 challenge, the Court found that the issue was important
17 enough to address, and it did so.

18 Mr. Domin mentioned the Byrd vs. Irmo High School
19 case. That case is not so easily distinguished because,
20 even though that case did involve short-term suspensions,
21 the importance of the issue was the thing, I believe, that
22 compelled the Court to take an exception to the mootness
23 doctrine and to decide the case.

24 Croft, though -- the case that Mr. Domin cited, that
25 was a BAR appeal related to this case, is distinguishable

1 because, in fact, the relief sought in Croft was simply an
2 appeal to the BAR decision, and the relief sought was a
3 reversal of the BAR decision. It wasn't the declaratory
4 judgment relief that is sought more broadly in this case.

5 And in that Croft/BAR case, it was a fact that, you
6 know, if the project wasn't going forward, then the issue
7 of whether or not the BAR approval was appropriate or not
8 appropriate was, according to the Court, moot. But I
9 think that's different than what we're talking about here.

10 Here, the failure of the underlying project does not
11 effect the request for relief, and we ask that, Your
12 Honor, you deny this motion for summary judgment,
13 recognizing that we have important and legal factual
14 issues to be decided here, and allow those issues to be
15 decided on the merits by our state courts. So we ask that
16 you deny the motion. Thank you.

17 THE COURT: Okay. Anything else by way of a brief
18 response, Mr. Domin?

19 MR. DOMIN: Very briefly. While the Croft case was
20 a BAR appeal, the Court said that the issues that were
21 raised were not of sufficient importance to justify the
22 public importance exception to apply nor was the capable
23 of repetition but evading review applicable as they cited
24 the Byrd case.

25 The Court was looking at the issues, and if the

1 issues that were raised therein, including BAR issues as
2 well as the contract being void ab initio as they claim,
3 were truly important issues that needed to be decided as a
4 matter of public policy, the Supreme Court can and would
5 have done it at that time.

6 And while Mr. Gowder now says it's infinitely
7 reasonable, the Court found that that case was moot at the
8 time they did not concede that the case was moot and
9 argued that the Court should hear the matter as a public
10 importance exception and, therefore, I do think the Croft
11 case is amazingly on point. I don't think I have ever
12 been able to cite a Supreme Court case involving the same
13 facts as another case I'm trying to have dismissed.

14 That's all I have got.

15 THE COURT: Okay. I'll take a look at the memos,
16 obviously, at length.

17 Let's go, if y'all are ready, into the next set of
18 motions here.

19 MR. DOMIN: Your Honor -- on Harbeson, Your Honor,
20 that also involves mootness challenges, and I had actually
21 filed my motion originally in the prior case before it was
22 40(j)'d and I was thinking the computers would pick it
23 back up, but I ended up having to re-file my motion
24 because the computers didn't recognize it within the new
25 case file.

1 There are -- there's a mootness position that we
2 have on this case which, if you decide in our favor, then
3 you don't need to hear the merits. Now, if you want to
4 hear the merits today, we can argue those merits, but
5 that's up to you, Your Honor.

6 THE COURT: All right. What's your take on this,
7 Mr. Gowder?

8 MR. GOWDER: Well, Your Honor, I think it's -- I
9 think it gives you -- this case is much -- the focus of it
10 is much narrower than in Croft. It's about really one set
11 of issues. And I don't think it will take me long to
12 argue it. I think it gives you good background for
13 evaluating the mootness argument, so I would ask that you
14 allow us to argue.

15 THE COURT: You know, given the posture of this case
16 and the fact that your resident judges are recused --
17 well, at least one current resident judge is recused, but
18 I don't see why I shouldn't just hear it all today, let
19 everything air out, and let your arguments air out,
20 gentlemen, but I defer to you ultimately.

21 Mr. Domin, unless you're opposed to that -- I
22 understand the position that you're stating but I sort of
23 think let's get it all out in the air today and --

24 MR. DOMIN: I'm in agreement with whatever you want
25 to do. I didn't have a strong feeling.

1 THE COURT: Okay. I would do that. Now, in terms
2 of which side -- now, this sort of crossed -- I
3 understand, you know -- again, I'm going to defer to
4 you-all on how you want to present that, but I would just
5 assume to hear it all today and let it all be part of a
6 long, continuous record.

7 MR. GOWDER: Your Honor, that's fine. And whichever
8 motion you want to hear first is fine with me.

9 THE COURT: It matters not to me, to be honest with
10 you. I know the filing dates got a little confused.
11 Right now, the plaintiff's [indiscernible] the prior
12 filing date so we'll go with that and hear from Mr. Gowder
13 first.

14 MR. GOWDER: All right, Your Honor. Thank you.

15 And, again, may it please the Court? Andy Gowder
16 for the plaintiffs in this case, the Harbeson case.

17 Your Honor, I'll highlight points from our
18 memorandum and exhibits but will not repeat what's there
19 in the interest of time but will refer you from time to
20 time to that memo. I know that you will read that memo
21 and review those exhibits carefully in your deliberations.

22 Just a few facts. This case challenges the Town of
23 Summerville's violation of its own ordinances and state
24 law in establishing the form of government for
25 municipalities in South Carolina. Summerville adopted a

1 council -- has adopted a council form of government. As
2 you know, Your Honor, there are three options for forms of
3 government in South Carolina for local jurisdictions, and
4 Summerville adopted the council form.

5 But, this case is about the fact that, during the
6 administration of Mayor Collins, the Town converted its
7 form of government de facto to a council manager form of
8 government without a change in the law that allowed it to
9 do so.

10 From 2011 to 2016, after firing their Town
11 Administrator in the election of Mayor Collins, the Town
12 did not hire another Town Administrator but, rather,
13 assigned the duties of Town Administrator to Mayor Collins
14 at his request -- and those are on pages 9 to 18 of our
15 memo -- raising his salary from the base pay to someone
16 serving as mayor, which was \$15,000, to \$45,000, more akin
17 to payment for a Town Administrator, then bringing it back
18 to \$15,000 at the end of 2015 when the mayor lost his
19 election and stepped down as Town Administrator, and the
20 Town went back to hire a Town Administrator in 2016.

21 The actions taken by -- I'm sorry? Was there
22 something? Okay.

23 The actions taken by Town Council to give the mayor
24 duties of Town Administrator and the actions taken by the
25 mayor as Town Administrator are detailed, Your Honor, in

1 the facts section of the memo through page 22.

2 The Town of Summerville violated numerous laws by
3 failing to appoint a Town Administrator for more than five
4 years during March 10, 2011, even though their own
5 ordinances required them to do so; from 2011 to 2016; and
6 by appointing for nearly 4-1/2 years, from July 2011
7 through November 2015, Mayor Collins as the Town
8 Administrator and assigning to Mayor Collins all or
9 substantially all of the duties and authorities of the
10 Town Administrator.

11 Your Honor, based on the facts established in the
12 record -- and I don't think there is much disagreement
13 about the facts themselves, just the implications of the
14 facts, but in our view, there's no doubt that the Town
15 violated its own ordinances in several instances.

16 First, Your Honor, the Town did not appoint a Town
17 Administrator for more than five years and so violated
18 Town ordinance 2-211 which has an expressed requirement
19 that the mayor and the Town Council together shall appoint
20 a Town Administrator and fix that administrator's
21 compensation.

22 Your Honor, also, the mayor was the Town
23 Administrator or performed all or substantially all of the
24 Town Administrator's duties for a five-year period and was
25 the mayor and Town Administrator simultaneously. That

1 violated both state and local law, and we have outlined
2 those, Your Honor, in our memorandum.

3 But just to highlight a few of those ordinances that
4 were violated, Summerville Code 2-213 requires that the
5 Town Administrator report directly to the mayor and the
6 Town Council as a whole, indicating that there should be
7 both a mayor and a Town Administrator and that they not be
8 the same person.

9 2-214 requires that the Town Administrator perform
10 duties as directed by the mayor and council. Difficult to
11 do if they're the same person.

12 2-215 requires that the individual members of Town
13 Council deal with employees of the Town only through the
14 administrator and shall not give orders, directions, or
15 instructions directly to Town employees other than the
16 administrator and that the mayor shall issue orders and
17 directives through the Town Administrator. Well, if
18 they're the same person, there's no way for the mayor/Town
19 Administrator to comply with that ordinance.

20 2-216 requires that the Town Administrator shall
21 relay and communicate with the mayor. Again, indicating
22 that they're two separate people. You know, those -- if
23 they're the same person, that ordinance cannot be
24 satisfied.

25 2-217 requires that the Town Council not approve by

1 resolution any organizational chart inconsistent with the
2 provisions of this division and, in fact, when we cited in
3 our memo, the Town did just that.

4 2-321 provides that the Town Administrator or his
5 designee shall be the purchasing agent for the Town.
6 Interestingly, Mayor Collins' deposition, which we cite in
7 our memo, he states that he was not expressly the
8 purchasing agent. If that's the case, then for the time
9 during which he was both mayor and Town Administrator, the
10 Town didn't have a purchasing agent, which, again,
11 violates their own ordinances.

12 There are also problems, Your Honor, in state law.
13 Under South Carolina Code annotated Section 5-7-180, it
14 says that the mayor or councilmen are prohibited from
15 holding other political office during their term effected.
16 Except where authorized by law, no mayor or councilmen
17 shall hold any other municipal office or municipal
18 employment while serving the term for which he was
19 elected.

20 And as we have described, the mayor expressly
21 violated that statute, and the Town, in appointing him to
22 that position, violated that statute. He, in fact, was an
23 employee of the Town while he also served as mayor.

24 5-7-200 states that a mayor shall forfeit his office
25 if he violates any expressed prohibition on Chapters 1 to

1 17, and we cite an Attorney General opinion that says that
2 that statute could be invoked where a mayor held the
3 position of chief constable of the town and was the mayor,
4 and that violated that statute and forfeited his office.

5 Your Honor, also, Mayor Collins voted to appoint
6 himself to Town Administrator and voted in the various
7 resolutions that resulted in that situation, which, again,
8 he is not allowed to do.

9 We cite the case of Bradley vs. City Council, the
10 City of Greenville, in which the South Carolina Supreme
11 Court held that it's contrary to public policy to permit
12 an officer, having an appointing power, to use such power
13 as a means of conferring an office upon himself or to
14 permit an appointing body to appoint one of its own
15 members.

16 We also cite the public policy found both in case
17 law and in Attorney General opinions that states that the
18 master servant role arises when an individual serves as an
19 employee for the same body to which he or she serves as an
20 officer and that they're prohibited from serving in both
21 roles.

22 And, finally, Your Honor, there was, we believe, an
23 unlawful de facto conversion of the form of government
24 from council to something like council manager without a
25 vote. And, in fact, we cite in our memo, a later vote

1 that was put to the citizens of Summerville to change the
2 form of government after this, and they voted it down.

3 So, clearly, there was no authorization or vote
4 under the Town's law or the State's law that would allow
5 them to change their form of government, which they did.

6 So, Your Honor, there are -- we don't believe there
7 are any substantial issues of fact surrounding what
8 occurred, and we think it's for the Court to determine
9 whether these violations of the state statutes of South
10 Carolina and the Town of Summerville are violations. We
11 ask that the Court declare those violations by issuing a
12 summary judgment in this action.

13 THE COURT: All right. Thank you so much.

14 Mr. Domin, happy to hear from you on this matter.

15 MR. DOMIN: May it please the Court again? My name
16 is Tim Domin, and I represent the defendants in this
17 matter.

18 Your Honor, there is also a very substantial
19 mootness issue in this case. So this case was filed in
20 June of 2016. So it's about seven years old. Quite a bit
21 has happened in seven years.

22 Your Honor, the gist of the plaintiff's allegations
23 relate to not having a Town Administrator due to various
24 state statutes and local ordinances. Well, when Mayor
25 Collins' term expired in January of 2016, council set

1 about and found a new City Administrator they hired in
2 April of 2016. And, since then, there has more or less
3 continuously been a Town Administrator, and that's
4 supported by the affidavits that have been filed in this
5 case.

6 In addition, Your Honor, the Town has no plans, as
7 he states, to go back to any other system at this point in
8 time. And the underlying ordinances which are critical to
9 this case have actually changed within the Town. So
10 you're being asked to render a declaratory judgment on
11 matters including ordinances that have since changed and
12 no longer exist.

13 I won't repeat much of the mootness argument because
14 you just heard it in the last case, and I'm going to just
15 incorporate it by reference but should we go up on appeal,
16 I want to make sure I say at least a few words, which is
17 this is a case for injunctive and declaratory relief only.
18 Initially, actually, it was brought as an action to ask
19 the mayor and Town councilmembers who voted for any pay
20 differentials to pay back that money. But when the case
21 was dismissed pursuant to 40(j), the individual defendants
22 were dismissed. I think they may have been successful
23 getting out on legislative immunity anyway, but it was
24 dismissed, and it was agreed this would be just injunctive
25 and declaratory relief.

1 Well, you can't go back in time and say we're going
2 to declare that there was a City administrator. We can't
3 go back in time and install a City administrator. We
4 can't go back in time and say Bill Collins' term as mayor
5 didn't exist; he forfeited his term of office.

6 In fact, I would be concerned that that kind of a
7 declaration could be very inappropriate, trying to have
8 somebody go back and look at whatever decisions were made
9 to try to undo any of those decisions. But, frankly,
10 that's impossible. Those -- those things that he voted
11 on, if he wasn't removed by a Court, remained valid.

12 So, Your Honor, there's no relief that they can ask
13 for that would be effective other than saying, well, we
14 don't want this to happen in the future. Well, there's no
15 indication that it's going to happen in the future. It
16 hasn't happened again since 2016. And the ordinances
17 themselves, which allowed some of this to happen, have
18 changed. So if it did happen again, it would be on a
19 completely different set of ordinances.

20 Now, Your Honor, I want to make point clear that,
21 except for the action of asking for money back, which has
22 been dropped, this case was really moot on the issue of
23 declaratory injunctive relief when it was brought. This
24 was brought in June of 2016. Well, Mayor Collins' term
25 ended in January of 2016. The new [indiscernible] --

1 THE COURT: Wait a minute. All right. Go ahead.

2 MR. GOWDER: I lost you. I'm sorry.

3 The new City Administrator was hired in April of
4 2016. So by the time this action was brought, it was --
5 it was already moot, but for that issue, they were asking
6 for monetary damages at that time.

7 And as soon as -- you know, as soon as that was
8 eliminated, there certainly is no ongoing relevancy.
9 There's no case or controversy for you to decide. It is
10 not enough that the plaintiffs want to prove that they
11 were right. That's not a case -- a valid case or
12 controversy. Nor is there any reason to believe it's
13 happening again here or anyplace else that it's such an
14 issue of great public importance. And if it was, it would
15 be on different ordinances with different facts and
16 different circumstances.

17 Now, on the merits of the case, we would submit,
18 Your Honor, that this was not any kind of dual office
19 holding or improper appointment of an official. The
20 resolution that created this, which was July 2011, the
21 resolution that created this said, one, there is already
22 existing Town ordinance which has since been amended and
23 substantially amended and the important language taken
24 out, that I'm going to quote, but it's cited in that
25 resolution, as well as in the affidavit of Lisa Wallace,

1 that, in the absence of a Town Administrator, the mayor
2 shall exercise the role of communicating with the
3 department heads. That's essentially the substantial
4 function of the Town Administrators, to communicate with
5 those department heads and to run the Town through those
6 department heads.

7 Now, what the Town Council did, in July of 2011, was
8 that they said, in addition to any other duties that are
9 listed by ordinance by -- for the Town Administrator, we
10 are going to temporarily give those to the mayor until
11 such time as a Town Administrator is appointed or until
12 such time as we remove those powers by action of this
13 council. It's vitally important.

14 One, nowhere in the official document that actually
15 made this happen does it say that Mayor Collins became --
16 was given the office of Town Administrator. He was given
17 responsibilities and duties of the Town Administrator but
18 he was never sworn into that office and he was never given
19 that office to hold. The only office he ever held was the
20 office of being a mayor, which, while it's a paid
21 position, is not an employee, is a public official.

22 Now, it's important to understand that there's
23 nothing in a council form of government that even requires
24 there to be a Town Administrator, and there's nothing that
25 defines what the mayor is prohibited from doing. There's

1 nothing in the council form of government that says the
2 mayor cannot do things like communicate with department
3 heads.

4 If there is any issue, that would be from Town
5 ordinance, which, again, has substantially changed and the
6 basis on which council took action, which was, in the
7 absence of a Town Administrator, the mayor already had
8 those powers, is very important to the Town's position.

9 Now, ultimately, in this case, the -- well, let me
10 go back and say -- and I put this in the memo, but I think
11 it's worth repeating. You know, the plaintiff's argument
12 that, if you have the duties of a Town Administrator, that
13 makes you a Town Administrator, or somebody calls you a
14 Town Administrator, that that makes you a Town
15 Administrator. It's fundamentally incorrect.

16 If the mayor cleans his own office and empties his
17 trash can and that of his assistant, he is not the
18 janitor. He is performing duties of the janitor, but he's
19 not a janitor. If he puts out a fire, he is not a
20 fireman. He may be performing duties of a fireman, but
21 he's not a fireman.

22 And, ultimately, the prohibitions against dual
23 office holding don't apply to duties. They apply to
24 offices. And he didn't hold the office of the Town
25 Administrator.

1 Now, Mr. Gowder makes the point that his salary was
2 increased, and, in fact, there is a definite factual
3 dispute about that because Bill McIntosh, City Council
4 member, said, you know, I was raising his salary because I
5 just thought it was too low for a mayor of a city this
6 size. That needed to be higher, more like the mayor --
7 more like mayors around us.

8 And, by the way, that pay raise did not go into
9 effect until the next election of City Council. And, as
10 our memo sets forth and addresses the compensation issue
11 in much greater detail, that's completely lawful and
12 proper.

13 The other critical argument here is that they're
14 saying this changed the form of government. It in no way
15 changed the form of government. There is a specific
16 procedure where you can have an election to change the
17 form of government, as Mr. Gowder noted. That was
18 considered at some point in time. Voters voted it down.

19 But what's fundamental when you have a certain form
20 of government is that certain forms allow certain people
21 to have rights that cannot be divested. So in a strong
22 mayor form of government, the mayor has the power to hire
23 and fire and Attorney General's opinions have indicated it
24 would be improper -- City Council couldn't take that away
25 from them even if they wanted.

1 Here, City Council has the powers in a council form
2 of government. Well, they are fully authorized and
3 nothing is improper about giving those powers to somebody
4 on their City Council -- the mayor -- to be able to
5 perform those duties, but they can take them away at any
6 point in time.

7 So this is not become a strong mayor form. It is a
8 wise and intelligent choice to not have all seven members
9 of City Council trying to direct the staff: You go this
10 way, you go this way.

11 In fact, in the absence of a Town Administrator and
12 with an ordinance saying in the absence of a Town
13 Administrator, the mayor should act, I think that it is
14 short-sighted to say, "Well, if you exercise the duties
15 and step into the void left by the absence of a Town
16 Administrator, you have automatically lost your position
17 as mayor." And that's exactly what the plaintiffs are
18 arguing here.

19 Now, in addition to mootness, there are two other
20 small concepts. One is latches. They didn't bring this
21 action in July of 2011 when this issue was created.
22 July 2011, as the documents show, is the resolution where
23 they gave the mayor these additional powers; City Council
24 did. They didn't file this action until June of 2016,
25 after -- after the mayor is out of office and after there

1 is a Town Administrator.

2 We would submit, to the extent they're asking for
3 equitable relief, it's inappropriate for them to come into
4 court after the problem is over and say, "Oh, there was a
5 problem." If there was a problem, they should have
6 addressed it in July of 2011 and asked for relief then and
7 asked for it to be expedited. Then it wouldn't be moot.
8 And then nobody could accuse them of sitting on their
9 rights, which, I'm afraid, is what they did.

10 The other issue here -- and it's raised in our
11 brief, is a separation of powers argument, which is that
12 the Court has actually said, look, you can't direct the
13 City Council to hire a Town Administrator. The case that
14 we cited was the Horry County Telephone Company case
15 versus the City of Georgetown. And, there, they said the
16 courts can't direct City Council to perform a legislative
17 act that violates separation of powers. It can't direct
18 City Council to give Horry Telephone the franchise that
19 they say that they should have gotten.

20 And, here, it would be inappropriate for the Court
21 to say you must next time hire a City Administrator. I
22 mean, if that's the injunctive relief that you order,
23 again, how soon are they required to do it? If you say in
24 three months, they're in contempt of court for not doing a
25 legislative act in three months? Six months? What if

1 it's seven?

2 It would be inappropriate, of course, to ask to
3 declare something or enter some kind of an injunction if
4 there isn't a problem going on, but, again, I think that,
5 even if you were considering entering some kind of relief
6 of that type, it would violate separation of powers.

7 So for all of those reasons, we believe that Town
8 Council acted properly. The mayor was allowed to
9 temporarily receive the powers. The Town Administrator
10 already had those by ordinances and was given additional
11 power by City Council, which is their right to do.

12 For all those reasons, we remain opposed to the
13 plaintiff's motion for summary judgment and would suggest
14 you grant judgment in favor of the defendants on the
15 grounds of mootness. Thank you.

16 THE COURT: Mm-hmm. Okay.

17 All right. Anything else in response?

18 MR. GOWDER: Yes, Your Honor, if I may, I'd like to
19 address briefly both the -- Mr. Domin's argument against
20 my motion on the merits and also address the mootness
21 argument he raised.

22 Your Honor, on the merits, what they called Mayor
23 Collins was and is a distinction without a difference. I
24 invite you -- and I know you will -- to go through the
25 evidence that is recounted in our memorandum, in our

1 exhibits. It's very clear that they set Mayor Collins up
2 to be the Town Administrator. It's not a situation where
3 he is emptying his trash can, and, you know, runs the risk
4 of becoming or being called a Town janitor. They intended
5 for him to be the Town Administrator. They didn't hire a
6 Town Administrator the entire time he served in that role.
7 They paid him more to serve as Town Administrator because
8 he was spending the time to do that. It's very clear from
9 their deliberations, from their actions, from their
10 actions at the time contemporaneously and in their
11 deposition testimony, what they intended to do, and it was
12 to have him serve both as mayor and Town Administrator.

13 And moving, then, Your Honor, to the mootness issue,
14 it's interesting to me that counsel argues or has said,
15 "Well, the Town has no plans to go back to that system."
16 And it's the same argument that was made in the Croft
17 case; "Well, we don't have any plans to do another
18 Applegate public-private partnership like this."

19 And that really makes the point. The point is that
20 these things happened once. They could easily happen
21 again. Political decisions and ordinances change and are
22 made all the time, and the reason that courts intervene
23 and provide opportunities for citizens to challenge
24 illegal actions by local governments is to address
25 those -- those very issues. And if the towns or

1 municipalities could simply be lucky enough for the
2 infraction for the problem that is being challenged to go
3 away during the litigation process and then they get a
4 "get out of jail free card," then that really denies the
5 citizens of South Carolina relief and access to the
6 Courts, and we think that's improper. We think that the
7 case law in South Carolina that I recounted to you -- and
8 it's in the memo in this case and it's in the memo in the
9 Croft case -- does set out the test that says that, if
10 it's a matter of public importance, if it's a matter
11 that -- where local government is not doing what it should
12 do, it's not complying with the law, then the Courts will
13 allow a review of those decisions even if the specific
14 contract or specific action involved has expired due to
15 the passage of time.

16 And so, Your Honor, again here, the relief that was
17 sought was not removal of Mayor Collins. As Mr. Domin
18 pointed out, when the case was filed, Mayor Collins was
19 gone. The point of the action by these citizens was to
20 bring to the Court the fact that the Town had violated the
21 law and there's nothing that has changed in the
22 intervening time -- the very long time that it's taken for
23 this case to get to a decision that has changed that.

24 And so, Your Honor, we would assert that, first of
25 all, it's clear from the arguments and the evidence that

1 we recount in our memo that the Town violated numerous of
2 its own ordinances and the state law that prohibits an
3 elected official from holding another office, and we also
4 believe that nothing has occurred to make this case moot.
5 The relief sought is a declaration that what the Town did
6 and what the mayor did broke the law, and the -- you know,
7 there's nothing about that that the Court cannot address.
8 The case is fully justiciable. There is a case or
9 controversy. I don't hear defense counsel conceding that
10 what they did was wrong.

11 And so, Your Honor, I would say that -- I would ask
12 respectfully that you deny the motion for dismissal of the
13 defendants and grant the plaintiff's summary judgment
14 motion.

15 THE COURT: All right. Forgive me, I'm trying to
16 figure out where we -- I think, Mr. Domin, you get one
17 more reply, if I'm keeping track.

18 MR. DOMIN: Well, give me credit for saying I think
19 that we have covered all the territory that we needed to
20 cover.

21 THE COURT: I think so too. I just want to make
22 sure I have given everybody the opportunity.

23 Okay. Well, I certainly appreciate your arguments
24 this morning and look forward to reviewing the memoranda
25 that you filed with the Court. This is, obviously,

1 something I'll be having to delve into pretty deeply, so
2 I'm not going to put myself on a timeline this morning.
3 My hope is always to do an order under 30 days so
4 certainly, if you have not received anything after 30
5 days, I would request that you actually reach out to my
6 office and find out, because, occasionally, these orders
7 do get lost in the shuffle, we have learned, of e-Filing
8 sometimes.

9 So, hopefully, you will receive an order within 30
10 days on these matters, one way or the other. If I need a
11 formal proposed order, I will indicate that in the form
12 issue that I issue. Okay?

13 MR. GOWDER: Thank you very much, Your Honor.

14 MR. DOMIN: Thank you.

15 THE COURT: Okay. Thank y'all so much. Have a
16 great day.

17 MR. GOWDER: Thank you. Bye-bye.

18 (The above matter concluded at 10:53 a.m.)
19
20
21
22
23
24
25

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Croft v. Town of Summerville

3 2022-CP-18-01494

4 DATE OF HEARING: 8/24/23

5 COURT REPORTER/MONITOR: WEBEX

6 *****

7 I, Bobbi Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were
10 transcribed to the best of my ability from the audio
11 recording and supporting information, and that I am
12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 5/3/24

20
21 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
22 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
23 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."
24 ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM
25 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO
THIS REPORTER AT BFISHER@SCCOURTS.ORG.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-18-01494

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

Plaintiffs,

vs.

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

Defendants.

**AFFIDAVIT OF LISA WALLACE, TOWN
ADMINISTRATOR FOR THE TOWN OF
SUMMERVILLE**

1. That my name is Lisa Wallace and I am the Town Administrator of the Town of Summerville and have been since July 2021. I started as the Clerk/Treasurer from 1996 to 2004. I was the Assistant to the Town Administrator from October 2004 to August 2011. I was the Director of Administrative Services from August 2011 to December 2016.
2. I am familiar with the issues relating the matters in the above captioned case. I worked directly with Mayor Collins during his term, and I thereafter worked with

his successor Mayor Wiley Johnson before leaving and thereafter coming back to work as the Town Administrator and the current Mayor, Ricky Waring.

3. The Croft case was initiated in connection with the Plaintiffs' many objections to the Public Private Partnership Agreement (PPPA) concerning a joint project to build a hotel, parking garage, convention space and condominiums. The PPPA called for a convention center and parking garage to be built on public land owned by the Town of Summerville and a private boutique hotel and condominiums to be built on land that Applegate and Co. had under contract. In November 2015, it became apparent that the estimates for the "PUBLIC IMPROVEMENTS" provided by Applegate at the time the contract was being negotiated and signed were very inaccurate through no fault of the Town. The costs were going to be nearly double. Town Council was asked by Applegate and Co. to increase the contract price, but Town Council never voted to increase the amount it would pay for the "PUBLIC IMPROVEMENTS." Ultimately, Applegate and Co. sued the Town of Summerville and the Summerville Redevelopment Corporation making various claims for breach of contract, quasi-contract/unjust enrichment, tortious interference with prospective contractual relations, and promissory estoppel (See Amended Complaint.) This lawsuit was recently settled after a vote by Town Council on July 13, 2023 authorizing the settlement. The attached release has been executed by both sides. (See Exhibit A—Signed Release) The funds have been sent and received by Applegate's attorney and the matter has been dismissed with prejudice. (See Exhibit B—Stipulation of Dismissal).
4. Nothing related to the Public Private Partnership Agreement remains in effect. In

addition to signing a release with Applegate and Co., the Town of Summerville sold the property that it owned where the "PUBLIC IMPROVEMENTS" were to be built to a different developer that proposed and is moving forward with an entirely different project in which the Town has no ownership. The new owner has applied for and received conceptual approval from the BAR for the project without any lawsuits being lodged as to the process or result.

5. The Summerville Redevelopment Corporation was dissolved by Town Council June 9, 2022. A copy of the Ordinance is attached as Exhibit C. As indicated in the dissolution Ordinance, "the purpose for which the Redevelopment Corporation was formed is no longer a viable project." There is no present discussion to create a different Summerville Redevelopment Corporation.
6. The Town is not currently in discussion to build any hotels or convention centers. The Town is not in any discussions with developers about any "Public Private Partnerships."
7. I have already provided an affidavit in the Harbeson v. Town of Summerville case as to the changes in the leadership of the Town of Summerville and the way in which the Town is run differently than it was under Mayor William Collins, who was the Mayor at the time of the Public Private Partnership and the events alleged in the complaint. I am attaching that prior affidavit as Exhibit D.
8. To the extent the plaintiffs raise concerns about the procedure for related to work with the Lawrence Group creating a Master Plan, Comprehensive Plan, or "Vision Plan" in 2014 and 2015, the Town adopted an entirely new Comprehensive Plan which is available on www.summervillesc.gov. The new Comprehensive Plan was

formally adopted October 8, 2020. A copy of the Ordinance adopting the Comprehensive Plan is attached as Exhibit E without the voluminous Plan itself which is best viewed on the Town's website. There have been no lawsuits filed as to the process of creating or adopting the 2020 Comprehensive Plan.

9. There are no pending lawsuits for alleged Freedom of Information Act violations against the Town of Summerville other than this lawsuit raising meetings in 2014 and 2015 that involve meetings of the BAR related to this project which is no longer viable and the activities related to the planning documents referenced above which have been replaced by the 2020 Comprehensive Plan.


Lisa Wallace

Sworn to before me this

2nd day of August, 2023

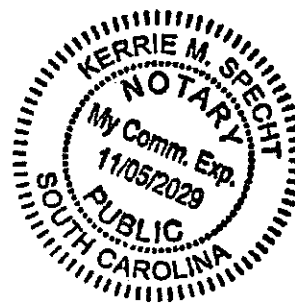
Kerrie M Specht (SEAL)

Notary Public for South Carolina

Kerrie M Specht

(print notary's name)

My Commission Expires: Nov. 5, 2029



**FINAL AND COMPLETE MUTUAL RELEASE
READ CAREFULLY
THIS RELEASE ENDS ALL CLAIMS**

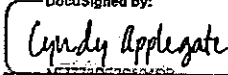
In consideration of the sum of Fifty Thousand Dollars to be paid by the Town of Summerville to Applegate & Co., Applegate & Co. does release and forever discharge the Town of Summerville, the recently dissolved Town of Summerville Redevelopment Corporation, their current and past employees, officials and attorneys from any and all claims, demands, damages, actions, causes of action, or suits at law or equity of whatsoever kind or nature, known or unknown, arising from the facts and legal arguments raised in a lawsuit or counterclaims in the action styled "APPLEGATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364.

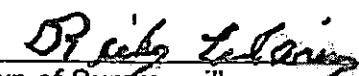
In consideration of such release and mutual promises herein, the Town of Summerville on its behalf and on behalf of the recently dissolved Town of Summerville Redevelopment Corporation release Applegate and Co., its current and past employees, officers, shareholders, principals, and attorneys, and Cynthia T. Applegate from any and all claims demands, damages, actions, causes of action, or suits at law or equity of whatsoever kind or nature, known or unknown, arising from the facts and legal arguments raised in a lawsuit or counterclaims in the action styled "APPLEGATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364.

The parties understand that there may be facts about this matter which are incomplete or incorrect and the parties agree that they nevertheless wish to proceed forward with this settlement and that the discovery of additional information shall not be a defense to nor be cause for invalidating this agreement. Further, this release includes any claims that any party to this agreement exclusively owns or is entitled to compensation for the ideas, concepts, planning, designs, or data in connection with this project or any future project.

The parties agree that, within fifteen (15) days of the payment required herein, they will cause their attorneys to file a dismissal with prejudice of the action APPEL GATE & CO. vs. TOWN OF SUMMERVILLE, and TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION" filed in Dorchester County as Case No. 2017-CP-18-229 and restored as case 2019-CP-18-00364, with each side to bear its own costs and attorneys fees.

**CAUTION, READ BEFORE SIGNING
THIS IS A FULL, FINAL AND COMPLETE RELEASE.**

DocuSigned by:

Applegate & Co. by its
President
7/7/2023


Town of Summerville
by Ricky Waring, Mayor
as authorized by vote of City
Council on July 13, 2023

ELECTRONICALLY FILED - 2023 Aug 03 10:45 AM - DORCHESTER - COMMON PLEAS - CASE#2022CP1801494

DocuSign

Certificate Of Completion

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Laura Phillips

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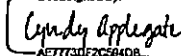
Cyndy Applegate

cyndyapplegate61@gmail.com

President

Security Level: Email, Account Authentication
(None)**Signature**

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Signature Adoption: Pre-selected Style
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Signed: 7/7/2023 9:00:42 AM

Electronic Record and Signature Disclosure:

Accepted: 7/7/2023 8:59:45 AM

ID: 685137cb-c27a-4898-b038-e3aa12e7de70

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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Security Checked

7/7/2023 9:00:42 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, SHI International Corp OBO Moore & Van Allen PLLC (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact SHI International Corp OBO Moore & Van Allen Plc:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bambachl@mvalaw.com

To advise SHI International Corp OBO Moore & Van Allen Plc of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at bambachl@mvalaw.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from SHI International Corp OBO Moore & Van Allen Plc

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to bambachl@mvalaw.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with SHI International Corp OBO Moore & Van Allen Plc

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to bambachl@mvalaw.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify SHI International Corp OBO Moore & Van Allen Pllc as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SHI International Corp OBO Moore & Van Allen Pllc during the course of your relationship with SHI International Corp OBO Moore & Van Allen Pllc.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
APPLEGATE & CO.,

Plaintiff,

vs.

TOWN OF SUMMERVILLE, and TOWN
OF SUMMERVILLE REDEVELOPMENT
CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2019-CP-18-00364

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

WHEREAS, that Plaintiff and Defendants have settled and compromised their differences pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure. Plaintiff and Defendants hereby dismiss and ends this action with prejudice as to all claims filed or which could have been filed against one another arising out of the subject matter of the within lawsuit. This is with the consent of all parties who appeared in this action, with each side to bear its own costs and attorney fees.

CLAWSON and STAUBES, LLC

Moore & Van Allen, PLLC

s/Timothy A. Domin

Timothy A. Domin
SC Bar No. 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Attorney for Defendants

s/E. Brandon Gaskins

E. Brandon Gaskins, Esq.
SC Bar No. 73274
78 Wentworth St.
Charleston, SC 29401-1425
Phone: (843) 579-7038
Attorney for Plaintiff Applegate & Co.

ORDINANCE

21-0807

AN ORDINANCE TO DISSOLVE THE SUMMERVILLE REDEVELOPEMENT CORPORATION

WHEREAS, On May 28, 2014 the Summerville Redevelopment Corporation was formed by Town Ordinance #14-0502, and

WHEREAS, The Articles of Incorporation were filed with the Secretary of State on June 13, 2014, and

WHEREAS, At the July 8, 2021 meeting of the Redevelopment Corporation, unanimously voted to have Summerville Town Council dissolve the Summerville Redevelopment Corporation, and

WHEREAS, Summerville Town Council held a Public Hearing to receive public input regarding the dissolution of the Summerville Redevelopment Corporation on August 12, 2021 without any valid reason shown why the Summerville Redevelopment Corporation should not be dissolved, and

WHEREAS, Summerville Town Council finds that dissolution of the Summerville Redevelopment Corporation is appropriate for the following reasons:

- a. The purpose for which the Redevelopment Corporation was formed is no longer a viable project.
- b. The waste of unnecessary time spent on meetings, the expense of filing tax returns and obtaining insurance.
- c. The Redevelopment Corporation has no assets, and

WHEREAS, The Summerville Redevelopment Corporation is named as a defendant in the following law suits: Faye P. Croft, et al. v. Town of Summerville, et al., Case No.: 2015-CP-18-00713; and Applegate & Co. v. Town of Summerville, et al., Case No.: 2019-CP-18-00364. Accordingly, any monetary judgement which may be rendered in the trial of these cases will be the responsibility of the Town of Summerville to the same extent as if the judgement had been rendered against the Town.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF SUMMERVILLE IN COUNCIL ASSEMBLED THAT:

1. The above recitals are hereby incorporated into this ordinance to the same extent as if set out verbatim.
2. The Summerville Redevelopment Corporation is hereby dissolved.

3. The Town attorney shall file the Articles of Dissolution with the Secretary of State.
4. The Finance Director or Acting Financing Director shall file the necessary final tax returns with the Internal Revenue Service and State Department of Revenue if necessary.
5. Any judgement(s) rendered against the Summerville Redevelopment Corporation shall be the same as if rendered against the Town of Summerville, and

IT IS SO ORDAINED this 9 day of June, 2022.

Ricky Waring

Ricky Waring, Mayor

Attest:

Beth Messervy

Beth Messervy, Town Clerk

FIRST READING: 8/12/21

SECOND READING: 6/9/22

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

William Harbeson, James Stephen Greene, Jr., David Messinger, Homer P. Gonzalez, John Paul Flowe, Tara Adele Flowe, Robert Allen Owens, Troy Ray Hayes, Terrence L. Langley, Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, and South Carolina Public Interest Foundation,

Plaintiff,

vs.

Town of Summerville; Summerville Town Council; William C. Collins, individually and in his official capacity as former Mayor of the Town of Summerville; Terry Jenkins, Aaron Brown, Walter Bailey, William McIntosh, Kima Garten-Schmidt and Robert Jackson, personally and in their capacities as members or former members of Summerville Town Council,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2016-CP-18-01128

AMENDED AFFIDAVIT OF LISA WALLACE

1. That my name is Lisa Wallace and I am the Town Administrator of the Town of Summerville and have been since July 2021. I started as the Clerk/Treasurer from 1996 to 2004. I was the Assistant Town Administrator from October 2004 to August 2011. (The prior version of this affidavit accidentally referenced my position as Assistant to the Town Administrator, an error which I only caught after the document was signed.) I was the Director of Administrative Services from August 2011 to December 2016.

2. I am familiar with the issues relating to the compensation and duties

of Mayor William "Bill" Collins. Williams Collins was sworn in as Mayor in June 2011. I worked directly with Mayor Collins during his term.

3. Prior to Mayor Collins being sworn in, the Mayor was Berlin Myers. During Myers' administration, Dennis Pieper resigned as Town Administrator effective March 24, 2011.. (See Exhibit A) The position of Town Administrator was not immediately filled upon Dennis Pieper's resignation.

4. At that time, Section 2-62 of the Summerville Code of Ordinances provided "The Mayor shall have the power to give direction to the town administrator, or in the absence of the town administrator, to any of the department heads of the town as authorized by state law or town ordinances, or as delegated by the town council." (See Exhibit B, Resolution of July 11, 2011).

5. On July 11, 2011 a resolution was passed by Town Council referencing section 2-62 and delegating to the Mayor the temporary authority to exercise powers of the Town Administrator, which was then vacant. (See Exhibit B, Resolution of July 11, 2011). The Town Council also adopted an ordinance requiring the Mayor to give Town Council monthly reports. (See Exhibit C, Resolution of July 13, 2011.)

6. The Mayor, with my assistance, performed the duties of interacting with the department heads and others inside and outside the Town of Summerville as the Mayor. The Mayor was never officially named the Town Administrator by Town Council, although sometimes people would say that Collins was the "Town Administrator" or "acting as the Town Administrator" or even "Acting Town Administrator." However, the resolutions of July 11, 2011 and July 13, 2011 speak for themselves as to what Town Council did. (See Exhibits B and C).

7. Approximately two years later in July 2013, an ordinance was passed

raising the Mayor's salary to \$45,000 effective as of the next general election of two or more Town Council members. (See Exhibit D, Ordinance 13-601.)

8. Mayor Collins was defeated in the next election and Mayor Wiley Johnson was sworn in as the next Mayor in January 2016. Various changes were made in the wording of ordinances relating to the powers of the Mayor and Town Administrator in Ordinances 15-1107 and 15-1108 (Exhibits E and F).

9. Ordinance 15-1107 provided that the Mayor's salary as of January 2018, would be \$15,000 (See Exhibit E).

10. The Town hired Colin Martin as Town Administrator in April 2016.

11. Per Finance Department records, Mayor Wiley Johnson was paid based on an annual salary of \$45,000 until January of 2018 at which time it was based on a \$15,000 annual salary. (See Exhibit G, Spreadsheet of Payments to Mayor Johnson)

12. Mayor Johnson did not run for reelection at the end of his term and Mayor Ricky Waring won the election and was sworn in in January 2020. Colin Martin also retired in January 2020. (I was not with the Town at the time of Mayor Waring's election or Martin's retirement, but it is part of my general knowledge and I work with Mayor Waring at this time.)

13. The Town hired Rebecca Vance as Town Administrator in January 2020. (Again, I was not present at that time, but it is part of my general knowledge of the Town that I now have as the Town Administrator.)

14. The Town ordinances show that per Ordinance 21-302, the Mayor's pay was raised to \$25,000 per year effective as of the start of the election of two or more members of council. (I was not present when this Ordinance was passed, but it is

reflected in the records of the Town.)

15. Rebecca Vance was terminated in June 2021 by vote of Council.
(Again, I was not with the Town at that time, but I am aware of it as part of the
general knowledge I have as the current Town Administrator.)

17. The issues being raised by this lawsuit regarding the compensation and duties of Mayor Collins are not relevant to the present operation of the Town of Summerville. Since Bill Collins left, there have been two new Mayors—Wiley Johnson and then Ricky Waring, the current Mayor. There have been changes in various ordinances relating to the power and duties of Mayor and Town Administrator. Summerville has hired three Town Administrators since Bill Collins' term— Martin, Vance and myself. Summerville has added the position of Assistant Town Administrator. Section 2-62 was substantially re-written to eliminate the portion about the Mayor having the powers of the Town Administrator in the absence of the Town Administrator. There have been several changes in the pay of the Mayor and Town Council.

Sanchez

Sworn before me:

Berlin G. Myers, Mayor
Council Members:
Ricky Waring, Mayor Pro Tem
Walter Bailey
Aaron Brown
Mike Dawson
Kima Garten-Schmidt
Bob Jackson



Town of Summerville

Town Administrator
Dennis P. Pieper
Asst. Town Administrator
Lisa L. Waller
Town Attorney
D. Mark Stokes

March 9, 2011

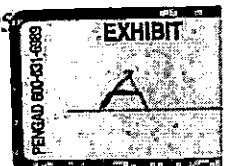
Dear Mayor and Councilmembers:

I am respectfully submitting my resignation effective March 24, 2011 and understand that I will be provided my severance package as provided in my employment contract. My last workday will be on March 23, 2011.

I want to thank each of you for the opportunity to serve the Town and the citizens of Summerville.

Sincerely,

Dennis P. Pieper
Town Administrator



Also see Ord. # 11-70
(Amend org. Structure)

RESOLUTION NO. *Adopted at July 11, 2011 Finance Committee meeting*

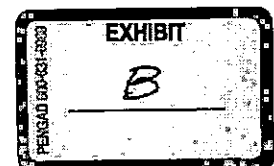
A RESOLUTION DELEGATING TO THE MAYOR OF THE TOWN OF SUMMERVILLE THE TEMPORARY AUTHORITY TO EXERCISE ALL THE GENERAL DUTIES, RESPONSIBILITIES, AND DELEGATION OF AUTHORITIES PROVIDED TO THE TOWN ADMINISTRATOR PURSUANT TO TOWN CODE, AND OTHER MATTERS RELATED THERETO.

WHEREAS, § 2-62 of the Town Code of Ordinances for the Town of Summerville provides that, in the absence of the Town Administrator, the Mayor shall have the power to give such direction to any of the department heads of the Town as well as powers designated by Town Council; and,

WHEREAS, pursuant to § 2-214 of the Code of Ordinances, the general duties, responsibilities, and delegation of authority are granted to the Town Administrator; and,

WHEREAS, the position of Town Administrator is currently vacant and Town Council finds it necessary to delegate to the Mayor, in addition to that power already granted to the Mayor pursuant to § 2-62 of the Code of Ordinances, those certain duties, responsibilities and delegation of authorities vested in the Town Administrator pursuant to § 2-214, until such time as a new administrator is appointed, in order to accomplish the most effective management of the Town for its day-to-day operations; and,

WHEREAS, Town Council finds it in the best interests and welfare of the citizens and taxpayers of the Town of Summerville to vest these duties, responsibilities, and delegation of authorities to the Mayor until the vacancy in the position is filled or other action taken;



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IT IS FURTHER RESOLVED, that any authority or power granted to the position of Assistant Town Administrator, as might be provided in any job description or organizational chart of the Town, vesting the Assistant Town Administrator with temporary authority of the position of Town Administrator be, and hereby is, temporarily suspended.

Finance Committee

William C. Collins, Mayor


Lisa Wallace, Clerk of Council

ROA 0943

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RESOLUTION

A RESOLUTION TO ESTABLISH A POLICY FOR THE MAYOR TO PROVIDE TOWN COUNCIL WITH A MONTHLY UPDATE ON THE CURRENT AFFAIRS OF THE TOWN.

WHEREAS, A first reading of the Ordinance for an increase of the Mayor's salary was had on June 12, 2013; and,

WHEREAS, Council desires that in conjunction with said increase, the Mayor give a monthly update on the current affairs and activities of his office:

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Town Council, in Town Council assembled, that:

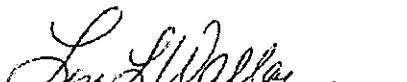
1. The Mayor shall report to and update Town Council on a monthly basis as to the current affairs and activities of his office.

Resolved this 10th Day of July, 2013.

Approved:


William C. Collins, Mayor

Attest:


Lisa L. Wallace, Clerk/Treasurer



AN ORDINANCE

TO Amend Code of Ordinances, Town of Summerville, South Carolina, SECTION 2-69(a).

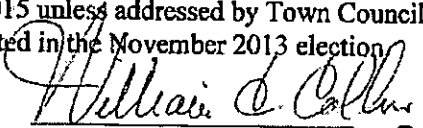
WHEREAS, S.C. Code Section 5-7-170 and Summerville Town Ordinance Section 2-68 require that any ordinance increasing the Mayor's salary shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance; and,

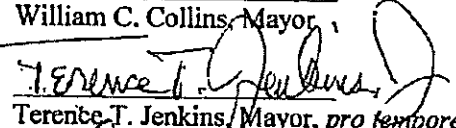
WHEREAS, The Town of Summerville is desirous of increasing the salary of the current Mayor to \$45,000.00 to be effective as of the first Wednesday in January, 2014; and,

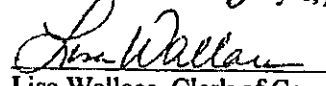
WHEREAS, The Town of Summerville is desirous that the increase in the current Mayor's salary to \$45,000 shall revert to \$15,000.00 on December 31, 2015 unless sooner addressed by Town Council after the seating of the three members elected in the November 2013 election.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor, Mayor, *pro tempore* and Town Council of the Town of Summerville in Council assembled that Section 2-69(a) of the Code of Ordinances, Town of Summerville, South Carolina, is hereby amended as follows:

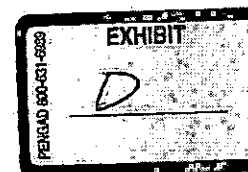
- (1). The salary of the current Mayor is increased to \$45,000.00 effective as of the first Wednesday of January 2014; and,
- (2). The increase in the current Mayor's salary to \$45,000 shall revert to \$15,000.00 as of December 31, 2015 unless addressed by Town Council after the seating of the three members elected in the November 2013 election.


William C. Collins, Mayor


Terence T. Jenkins, Mayor, *pro tempore*


Lisa Wallace, Clerk of Council

FIRST READING: June 12, 2013
SECOND READING: July 10, 2013



BE IT HEREBY ORDAINED BY the Mayor and Council of the Town of Summerville, in a meeting duly assembled, that the Code of Laws of the Town of Summerville be hereby amended by amending sections 2-61, 2-62, 2-63, 2-64, 2-65, 2-66, 2-69, 2-94, and 2-97, 2-98, and 2-99 as follows:

The mayor shall perform the duties of chief executive officer of the town in a manner consistent with these ordinances and state law.

The mayor shall not have authority to give direction to the town administrator or to any of the division heads or department heads of the town unless such authority is given by a majority vote of town council.

During the finance committee meeting held prior to any regularly scheduled meeting, any two members of council shall have the authority to add any item to the agenda for all regular meetings of town council.

The mayor or any town council member shall have power to inspect such of the books, papers and records of the public officers of the town, and of the boards and committees under the



authority of the council, as may in the mayor's or council member's judgement be of assistance to the mayor or council member in the discharge of such officer's duties.

Sec. 2-65. – Authority to require officers to furnish reports.

The mayor and town council may together call upon any officer of the town and members of the boards to furnish, in writing, any information connected with any of their respective offices.

Sec. 2-66. – Suppression of riots and preservation of order.

It shall be the duty of the mayor to take prompt measures for the suppression of riots and for the preservation of good order in the town, for which purpose the mayor shall have the power to require all the town officers to aid and assist such officers.

Sec. 2-69. - Compensation of mayor and members of town council.

- (a) Mayor: The annual compensation for the Mayor shall be \$15,000 effective as of the first Wednesday, of January 2018; and
- (b) Council: The annual compensation of town council members shall be \$7,500.00.
- (c) Compensation of the mayor and town council shall be paid biweekly.

Sec. 2-94. - Required attendance. Modified

It shall be the duty of the council members to attend the regular meetings of the council and, when notified, to attend all special meetings called by the mayor or a majority of the council.

Sec. 2-95. - Presiding officer; quorum.

Immediately at the hour appointed for a council meeting, the presiding officer shall take the chair and, if a quorum is present, proceed to business. A majority of the seven members of the council (four) shall constitute a quorum.

Sec. 2-97. - Order of business.

The order of the proceedings of the council at regular meetings of the council shall be as follows:

- (1) Invocation and Pledge of Allegiance;
- (2) Public comments;
- (3) Approval of the minutes of the last regular meetings and any special meetings held subsequent to the last regular meeting;
- (4) Petitions for annexation;
- (5) Reports from committees;
- (6) Second reading of pending bills;
- (7) Introduction of bills and resolutions;
- (8) Miscellaneous business;
- (9) Adjournment.

Sec. 2-98. - Addressing council by member.

- (a) Every member of the council, when about to speak, shall address the mayor as "Mr. Mayor" or "Madam Mayor," as the case may be, and in speaking shall avoid all disrespect to the council and all personalities, and shall confine remarks to the subject under consideration.
- (b) Citizens addressing the council during the "public comments" portion of the meeting must provide their name and address and shall do so only after being recognized by the presiding officer. Public comments are limited to five minutes or less unless otherwise specifically authorized by the presiding officer. Citizens' remarks should be directed to the council itself, rather than the audience or specific individuals in the audience. The presiding officer may direct that extended comments are provided in writing.

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Done this 10th day of February, 2016, at Summerville, South Carolina.

Attest:



Lisa Wallace, Clerk of Council

Robert J. Jackson
Mayor Pro-Tem

Second Reading: February 10, 2016

ORDINANCE NO. 15-1108

**AN ORDINANCE AMEND CHAPTER 2, ARTICLE IV, DIVISION 2 OF THE
CODE OF ORDINANCES FOR THE TOWN OF SUMMERVILLE ENTITLED
"TOWN ADMINISTRATOR"**

BE IT HEREBY ORDAINED BY the Mayor and Council of the Town of Summerville, in a meeting duly assembled, that the Code of Laws of the Town of Summerville be hereby amended by amending sections 2-213, 2-214, and 2-215 as follows:

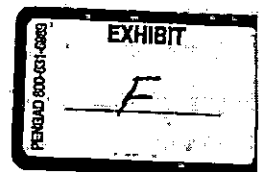
Sec. 2-213. - Supervision.

The town administrator reports directly to the mayor and town council as a whole. The administrator shall also compile information, investigate problems, perform administrative services and offer advice to the mayor and individual members of town council as requested by such councilmembers; provided, however, that in any situation where the administrator deems it appropriate, such request for administrative assistance may be presented to the entire town council for approval.

Sec. 2-214. - General duties, responsibilities and delegation of authority.

The town administrator performs such duties as directed by the mayor and council. Additional duties of the administrator include, but are not limited to, the following:

- (1) Supervise preparation of and submit to town council not later than November 1 of each year a balanced, proposed annual budget for the ensuing fiscal year.
 - (2) Recommend organizational changes and assist in formulation of internal plans, programs and policies of the town for consideration of the town council.
 - (3) Supervise all appointed division heads, department heads and their departments as well as any nondepartment head employees reporting directly to the administrator.
- Plan, direct, monitor and coordinate activities of all town departments and functions.



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- Sec. 2-215. - Authority.**

Done this 10th day of February, 2016, at Summerville, South Carolina.

Attest:



Lisa Wallace, Clerk of Council

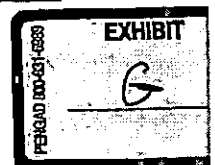
Wiley Johnson, Mayor
Robert J. Jackson
Mayor Pro-Tem

Second Reading: February 10, 2016

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Wiley Johnson Pay History

Date	Type	Payment Number	Earnings	Deductions	Taxes
01/21/2016	Regular	92372	\$ 1,384.64	\$ 112.99	\$ 289.06
02/04/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
02/18/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
03/03/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
03/17/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
03/31/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
04/14/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
04/28/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
05/12/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
05/26/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
06/09/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
06/23/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
07/07/2016	Regular	999999	\$ 1,730.77	\$ 141.23	\$ 385.57
07/21/2016	Regular	999999	\$ 1,730.77	\$ 150.75	\$ 383.47
08/04/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
08/18/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
09/01/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
09/15/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
09/29/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
10/13/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
10/27/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
11/10/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
11/23/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
12/08/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
12/22/2016	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
01/05/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 383.66
01/19/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
02/02/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
02/16/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
03/02/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
03/16/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
03/30/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
04/13/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
04/27/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
05/11/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
05/25/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
06/08/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
06/22/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
07/06/2017	Regular	999999	\$ 1,730.77	\$ 149.88	\$ 381.84
07/20/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
08/03/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
08/17/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
08/31/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
09/14/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55



09/28/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
10/12/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
10/26/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
11/09/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
11/22/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
12/07/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
12/21/2017	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 380.55
01/04/2018	Regular	999999	\$ 1,730.77	\$ 155.77	\$ 379.40
01/18/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 86.38
02/01/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
02/15/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/01/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/15/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
03/29/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
04/12/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
04/26/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
05/10/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
05/24/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
06/07/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
06/21/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
07/05/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
07/19/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/02/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/16/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
08/30/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
09/13/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
09/27/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
10/11/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
10/25/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
11/08/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
11/21/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
12/06/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
12/20/2018	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
01/03/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 75.23
01/17/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
01/31/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
02/14/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
02/28/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
03/14/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
03/28/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
04/11/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
04/25/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
05/09/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
05/23/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
06/06/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
06/20/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03
07/03/2019	Regular	999999	\$ 576.93	\$ 51.92	\$ 73.03

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07/18/2019	Regular	999999	\$	576.93	\$	51.92	\$	73.03
08/01/2019	Regular	999999	\$	576.93	\$	51.92	\$	73.03
08/15/2019	Regular	100027	\$	576.93	\$	51.92	\$	73.03
08/29/2019	Regular	100408	\$	576.93	\$	51.92	\$	73.03
09/12/2019	Regular	100791	\$	576.93	\$	51.92	\$	73.03
09/26/2019	Regular	101172	\$	576.93	\$	51.92	\$	73.03
10/10/2019	Regular	101552	\$	576.93	\$	51.92	\$	73.03
10/24/2019	Regular	101934	\$	576.93	\$	51.92	\$	73.03
11/07/2019	Regular	102313	\$	576.93	\$	51.92	\$	73.03
11/21/2019	Regular	102691	\$	576.93	\$	51.92	\$	73.03
12/05/2019	Regular	103073	\$	576.93	\$	51.92	\$	73.03
12/19/2019	Regular	103456	\$	576.93	\$	51.92	\$	73.03
01/02/2020	Regular	103839	\$	576.93	\$	51.92	\$	73.03
01/30/2020	Regular	104601	\$	345.73	\$	31.12	\$	34.93

Net Pay	
\$	982.59
\$	1,203.97
\$	1,203.97
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20-0904

AN ORDINANCE

TO ADOPT A COMPREHENSIVE PLAN FOR THE TOWN OF SUMMERVILLE, IN ACCORDANCE WITH
THE SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994,
S.C. CODE OF LAWS ANN. § 6-29-510, et seq

WHEREAS, the 1994 State of South Carolina Comprehensive Planning Enabling Act (S.C. Code section 6-29-510 et. seq.) requires the development and adoption of a Local Comprehensive Plan that is reviewed and updated as mandated and designed to promote public health, safety, morals, convenience, prosperity of the general welfare as well as the efficiency and economy of the Town, and the Plan must be comprised of certain defined elements, and

WHEREAS, said Act requires the Local Comprehensive Plan be updated no less than every ten (10) years, and

WHEREAS, the Town of Summerville last updated its Comprehensive Plan in the year 2011, and

WHEREAS, the members of the Town's Planning Commission have unanimously recommended to Town Council the adoption as its Comprehensive Plan the document entitled "Summerville: Our Town, Our Future" dated August 18, 2020, and

WHEREAS, it appears to Council that the Plan is comprised of all required elements, is proper in all other material respects, and that the adoption of the Plan is in the best interest of the Town,

THEREFORE,

BE IT ORDAINED, by the Mayor and Council of the Town of Summerville, in Council assembled as follows:

1. Pursuant to Section 6-29-510, South Carolina Code of Laws (1976) et. seq., as amended, Council does hereby adopt, approve and ratify as the Town of Summerville Comprehensive, the document entitled "Summerville: Our Town, Our Future" dated August __, 2020.
2. That should any part of this Comprehensive Plan adopted by this Ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable and shall continue to be in full force and effect.
3. The above recitals above are hereby incorporated into this Ordainment to the same extent as if set out verbatim.

IT IS SO ORDAINED THIS 9 DAY OF October, 2020

Ricky Waring
Ricky Waring, Mayor

Attest:

Beth Messervy
Beth Messervy, Town Clerk

First Reading: September 10, 2020

Second Reading: October 8, 2020

Thursday, October 17, 2024 at 23:27:01 Eastern Daylight Time

Subject: 2022CP1801494 :Croft v Summerville: Plaintiff's Motion for Summary Judgment Witndrawn

Date: Wednesday, August 23, 2023 at 9:34:00 AM Eastern Daylight Time

From: Andy Gowder

To: 'jmccoyj@sccourts.org', McCoy, Jennifer Law Clerk (English Maul)

CC: Timothy A. Domin, GW Parker, Becky Stevens, Mike Rose, Rachel Fete Huff

Judge McCoy,

Good morning.

In the interest of the court's time, the other matters on the docket, and to allow for a full and fair argument of the issues on the merits, the Plaintiffs in the Croft case are withdrawing their Motion for Summary Judgment at this time.

We will be prepared to argue against the Defendants' Motion to Dismiss in Croft and will proceed on all pending motions in Harbeson.

On the Harbeson motion for summary judgment, I am providing a Dropbox link to you and opposing counsel that will allow for easier downloading of the exhibits.

https://www.dropbox.com/sh/d8dio4p6nveqnf/AADBqiFi0qQIDjc_VVujzDd1a?dl=0

I am also attaching a link to our memo in support of our Motion for Summary Judgment.

<https://www.dropbox.com/scl/fi/ytmi7oy1a58cqzbzxbd8q/20230821-Memo-Motion-SJ-Harbeson-Final.pdf?rlkey=25gr79ez0eu8b7jijk9p74zy8&dl=0>

I look forward to appearing before you on Thursday morning in these matters.

Best regards,
Andy

W. Andrew Gowder, Jr.,

Austen & Gowder, LLC
P.O. Box 20820
Charleston, SC 29413

1629 Meeting Street, Suite A
Charleston, South Carolina 29405

843.727.2229 Office
843.870.0307 Mobile

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

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

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

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

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

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

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

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

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

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

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

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

1. **DEVELOPER COMMITMENTS.**

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

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

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

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

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

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

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

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

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

6. PROPERTY SWAP.

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

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

8. PROJECT DESIGN AND CONSTRUCTION.

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

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

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

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

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

10. **CONSTRUCTION BUDGET AND FINANCING.**

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

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

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

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

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

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

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

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

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

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

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

**TOWN OF SUMMERVILLE, SOUTH
CAROLINA**

William C. Collins

Mayor, Town of Summerville, South Carolina

ATTEST:

Lisa L. Waller

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

**TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION**

By: William C. Collins

Its: Chairman

APPLEGATE & CO.

a South Carolina Corporation

By: A. Applegate

Its: President

EXHIBITS

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



Course	Bearing	Distance	Point	Northings	Eastings
1	N 39° 02' 06" W	51.45	A	43243.790	22416.600
2	N 28° 41' 06" E	29.10	B	43249.674	22411.688
3	N 56° 39' 35" E	8.38	C	43249.806	22416.750
4	N 29° 10' 45" E	26.86	D	43247.635	22418.616
5	N 58° 36' 45" W	26.53	E	43239.946	22418.011
				43264.875	22417.637

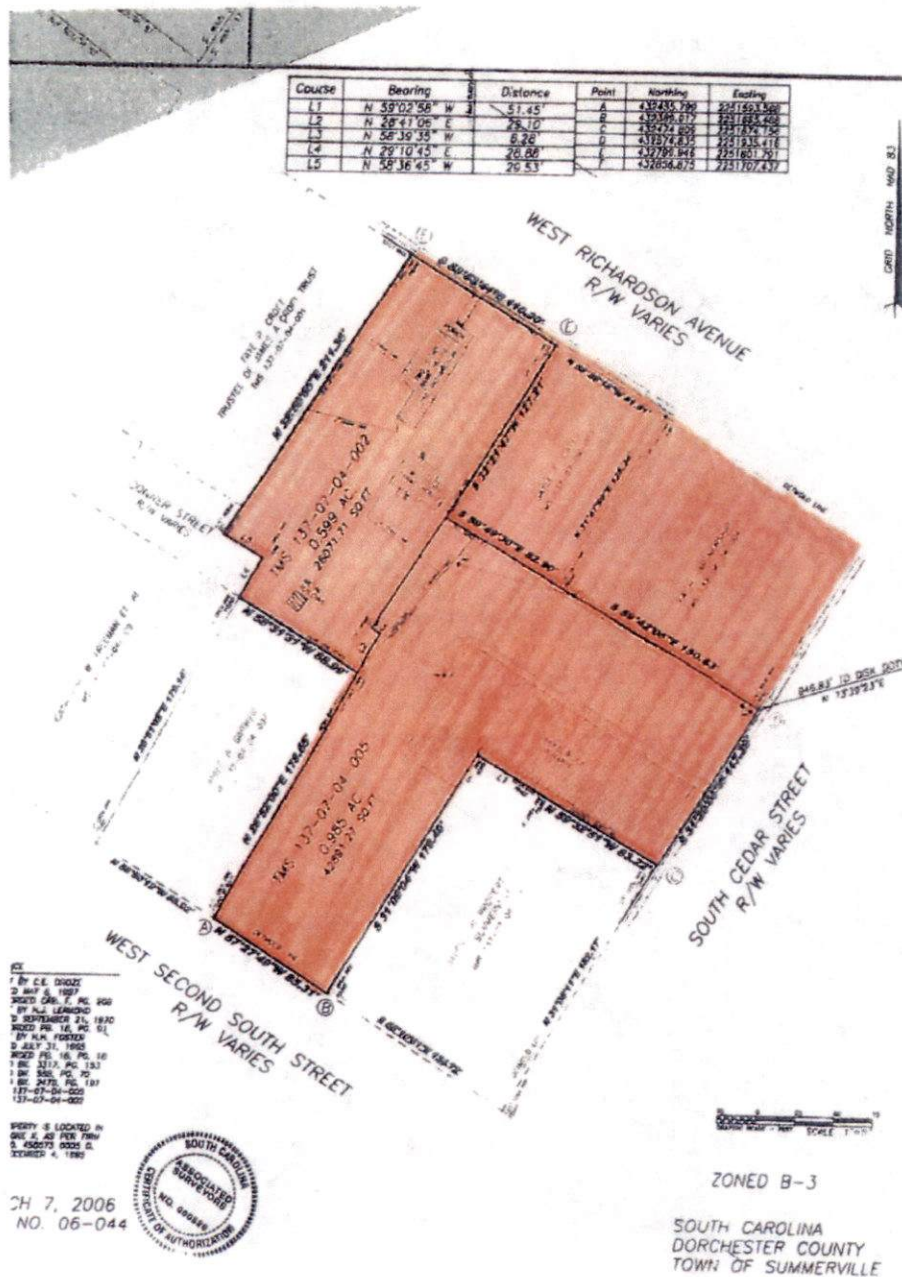


EXHIBIT B

PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT
(The Dorchester)

Between

TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION,
as the Owner

and

THE DORCHESTER, LLC,
as Manager

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THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

PARKING GARAGE/CONFERENCE CENTER OPERATION AGREEMENT
(The Dorchester)

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

WITNESSETH:

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

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

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

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

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

WHEREAS, the Developer agreed in the Public-Private Partnership Agreement, dated as of July 1, 2014 (the "PPP Agreement"), to construct Public Improvements (as defined in the PPP Agreement), including the Parking Garage (the "Parking Garage") and the Conference Center (the "Conference Center"), as part of the Project, and further to manage and operate, or cause the management and operation by means of a special purpose entity formed by the Developer of, the public Parking Garage and Conference Center upon completion of the Project as detailed in the PPP Agreement and in this Agreement; and

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

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

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

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

Section 3. Management and Operation of the Project.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Capital Improvements.

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

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

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

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

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

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

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

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

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

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

Section 5. Administrative and Supervisory Expenses. All administrative and supervisory salaries and expenses and other management overhead expenses (other than expenses for on-site employees) shall be borne by the Manager out of its own funds and shall not be treated as expenses of the Conference Center and the Parking Garage. However, when it is to the financial benefit of the Conference Center or the Parking Garage, normal on-site duties and reasonable expenses (including but not limited to staff, bookkeeping, accounting services, clerical, office supplies and equipment, telephone, and postage) may be performed off-site and paid for and treated as expenses of the Conference Center and the Parking Garage. In addition, when feasible and to the financial benefit of the Conference Center or the Parking Garage, certain functions and services shall be shared with the Private Improvements, and the reasonable cost shall be prorated on an equitable basis and charged to the Conference Center or the Parking Garage. All payments to the Manager shall be subject to the limitations set forth in Section 9(b) below.

Section 6. Management Overhead Expenses. Management overhead expenses, which shall be borne by the Manager out of its own funds and which shall not be treated as operating expenses of the Conference Center or the Parking Garage and shall not be reimbursable to the Manager, shall include: (a) compensation of central office or off-site personnel employed or contracted by the Manager, (b) rent for off-site offices utilized by the Manager, telephone and utility charges incurred at such offices; office supplies; rent for and repair and maintenance of office machines used at such offices; postage used at such offices; any rental for or allocation of depreciation or amortization of any properties owned by or leased by the Manager and used in the performance of its duties hereunder, (c) premiums for fidelity bonds on the Manager's employees not associated with the Conference Center or the Parking Garage, and (d) premiums for general liability, workers' compensation, or other such insurance carried by the Manager not associated with the Conference Center or the Parking Garage.

Section 7. Residential Parking. RDC has agreed to lease up to 55 spaces in the Parking Garage to the Manager on a long-term basis to support the residential portion of the Project per the terms of the Parking Lease Agreement attached hereto as Attachment A.

Section 8. Insurance. The Manager shall arrange periodic conferences with the RDC and an insurance consultant regarding the insurance coverage required for the Conference Center and the Parking Garage.

Section 9. Manager's Compensation.

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

(b) Notwithstanding any other provisions of this Agreement, the total amount payable to the Manager as compensation under any provision of this Agreement, including without limitation Section 3(j) and Section 5 above, shall not exceed in any year the fixed fee compensation set forth in Section 9(a). Reimbursement of the Manager for actual and direct expenses paid by the Manager to unrelated third parties is not treated as compensation to the Manager for purposes of this paragraph.

Section 10. Damage or Destruction.

Damage or Destruction. If the Conference Center or the Parking Garage is damaged, the RDC will promptly commence and expeditiously complete the Restoration in accordance with Section 10(b).

Restoration. Upon receipt of notice from the Manager of an event of damage or destruction of either the Conference Center or the Parking Garage, the RDC will promptly commence and expeditiously complete any necessary restoration. The RDC will restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC will complete the restoration as soon as reasonably possible after the date of such damage or destruction. If not completed as provided in the previous sentence, the Manager may terminate this Agreement in accordance with the provisions of Section 13 hereof. In the event that the RDC fails promptly to commence and expeditiously complete any necessary restoration, the Manager may proceed to restore the Conference Center or the Parking Garage, as applicable, as nearly as possible to its value, condition, and character immediately prior to the damage or destruction. The RDC bears the entire costs of such restoration, which the RDC shall promptly pay, upon written demand, to the Manager. The Manager may offset any revenues derived from the operation of the Conference Center and the Parking Garage to satisfy the obligation of the RDC to pay the Manager for the costs of restoration.

Fees. During the period from the date of the damage or destruction, through the: (i) completion of the restoration; or (ii) termination of this Agreement, the RDC will continue to pay the management fee provided in Section 9 hereof.

Section 11. Compliance with Laws. The Manager and its employees and subcontractors, shall perform all of the services under this Agreement in compliance with all applicable rules, regulations, orders, determinations, ordinances, or laws of any federal, State, or local authority. If the Manager shall fail or refuse to comply with or abide by any rule, order, determination, ordinance, or law of any federal, State, or local authority, the RDC may terminate this Agreement in accordance with the provisions of Section 13 hereof.

Section 12. Assignment. The Manager shall not transfer, assign, pledge, or hypothecate in in whole all of its rights, duties, or obligations under this Agreement without

the prior written consent of the RDC except to an Affiliate or to its lender. The RDC shall not assign or pledge its rights under this Agreement without the prior written consent of the Manager.

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

(b) This Agreement may be terminated prior to the end of the current term in accordance with the following conditions:

(i) This Agreement may be terminated by the mutual consent of the RDC and the Manager at any time.

(ii) Except as hereinafter provided, in the event a petition in bankruptcy is filed by or against either the RDC or the Manager, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other.

(iii) Either the RDC or the Manager may terminate this Agreement by written notice to the other party in the event that the other party shall breach its obligations, duties, or covenants under the terms of this Agreement. Such notice shall specify the nature and scope of the claimed breach of this Agreement and shall provide the breaching party with the right to cure the claimed breach within 30 days of the receipt thereof. If the claimed breach is not cured to the satisfaction of the non-breaching party within the 30-day cure period, this Agreement shall terminate; provided, that so long as a course of action adequate to remedy such failure shall have been commenced by the breaching party within such 30-day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby within 90 days of such occurrence, this Agreement may not be terminated for such breach. The non-breaching party shall also have the right to seek damages and exercise such other remedies as may be provided by law or in equity against the breaching party.

(c) Upon termination of this Agreement, the Manager shall submit to the RDC financial statements and information with respect to the Conference Center and Parking Garage reasonably requested by the RDC. The termination of this Agreement shall not affect the rights and obligations of the parties hereto as set forth herein as to matters, events, obligations, and duties that pertained or accrued prior to the date of termination.

(d) Upon termination of this Agreement, the Manager shall promptly turn over to the RDC all of the records with respect to the Conference Center and Parking Garage and any other property of the RDC within the Manager's possession. Notwithstanding the termination of this Agreement, any payments due to the Manager under this Agreement will be paid as provided herein.

(e) Upon termination of this Agreement, the Manager agrees to recognize and accept any successor manager of the Conference Center and Parking Garage selected by the RDC as the manager for the Conference Center and Parking Garage.

Section 14. Manager's Licenses. The Manager represents and warrants that it has obtained and covenants to maintain all licenses necessary for the performance of its obligations under this Agreement.

Section 15. Interpretative Provisions. (a) This written Agreement and attachments hereto (if any) constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the Company and the Manager with respect to the management of the Conference Center and Parking Garage. It is expressly agreed that there are no verbal understandings or agreements that in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the Company and the Manager.

(b) This Agreement has been executed in several counterparts, each of which constitute a complete original Agreement and which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

(c) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.

(d) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.

(e) The paragraph headings or captions appearing in this Agreement are for convenience only, and are not to be considered in interpreting this Agreement.

Section 16. Notices. (a) All notices, certificates, demands, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, return receipt requested, or given when dispatched by facsimile transmission, or by personal delivery addressed as follows:

If to the RDC:

Town of Summerville Redevelopment Corporation

Attention: Chairman
Summerville, South Carolina 29483
Telephone: (843) 871.6000
Facsimile: (843) 871.6954

If to the Manager:

The Dorchester, LLC

Attention: _____

_____, South Carolina _____

Telephone: (843) _____

Facsimile: (843) _____

(b) Either party hereto may, by notice given to each of the other, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent.

Section 17. Applicable Law. This Agreement and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of South Carolina.

Section 18. Successors and Assigns; Changes. This Agreement shall be binding upon the parties hereto and their successors and assigns.

Section 19. Mediation / Arbitration. Any dispute, controversy, difference or claim arising out of, relating to or in connection with this Agreement (a "**Claim**"), shall be negotiated by the parties within twenty (20) days of written notice of a Claim ("**Dispute Notice**"). Such Dispute Notice shall indicate in bold or capital letters that it is a Dispute Notice being filed under the Agreement. If no agreement is reached within such 20-day period, the parties agree to submit the claim to arbitration, as provided in the South Carolina Uniform Arbitration Act, Title 15, Chapter 48 of the Code of Laws of South Carolina ("**Arbitration**"). In the event the parties submit a dispute to Arbitration, it shall be undertaken in Charleston, South Carolina. Either party may submit the Claim to Arbitration. The party requesting Arbitration shall give a written demand for Arbitration to the other party by registered or certified mail. The demand shall set forth a statement of the nature of the dispute, the amount involved and the remedies sought. No later than thirty (30) calendar days after the demand for Arbitration is served, the parties shall jointly select and appoint an arbitrator. If the parties do not agree on the selection of an arbitrator, each party shall select one arbitrator by written notice to the other party no later than thirty-five (35) calendar days after the demand for Arbitration is served and the two so selected shall select a third arbitrator no later than forty-five (45) calendar days after the demand for Arbitration is served. Such arbitrator shall be knowledgeable in the areas of law governing this Agreement. The failure of a party to select an arbitrator, or the failure of an arbitrator to provide a selection of a third arbitrator, within the times provided herein, shall eliminate the selection of an arbitrator by such party, and the arbitrator shall be the arbitrator selected by the other party in a timely manner. The arbiter's award shall include (i) a provision that the prevailing party in such Arbitration shall recover its costs of the Arbitration and reasonable attorneys' fees from the other party, and (ii) the amount of such costs and fees.

Section 20. Attorney's Fees. In the event of a dispute hereunder, the prevailing party shall be entitled to receive reimbursement of its reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, the RDC and the Manager by their duly authorized representatives have executed this Agreement on the date first above written.

RDC:

TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION

By: William C. Collins
William C. Collins, Chairman

MANAGER:

THE DORCHESTER LLC

By: [Signature]

ATTACHMENT A

THIS PARKING LEASE AGREEMENT AND PURCHASE OBLIGATION (this "Lease") is made and entered into as of this 4 day of July, 2014, by and between **TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION**, a 501(c)(4) organization, as landlord ("RDC") and **THE DORCHESTER, LLC**, a South Carolina limited liability company ("Tenant").

WITNESSETH:

WHEREAS, the Town of Summerville, South Carolina established the RDC to facilitate financing and funding for various community and economic development projects within the municipal limits of Summerville, and to create a partnership to provide for the efficient and timely development of a mixed-use development that includes a hotel, residential units, and retail space (the "Project") the Town considers beneficial to the economic growth of Summerville; and

WHEREAS, Applegate & Co. (the "Developer") agreed in the Public-Private Partnership Agreement, dated as of July 9, 2014 (the "PPP Agreement"), to construct Private Improvements (as defined in the PPP Agreement), including approximately 34 residential condominium units and associated shared common space (the "Residential Units") and to construct Public Improvements (as defined in the PPP Agreement), including the Parking Garage (the "Parking Garage"), as part of the Project, and further to manage and operate, or cause the management and operation the public Parking Garage upon completion of the Project as detailed in the PPP Agreement by means of the Tenant pursuant to the terms of the Parking Garage/Conference Center Operation Agreement, dated as of July 1, 2014 (the "Operation Agreement"); and

WHEREAS, the RDC has agreed in the Operation Agreement to lease 55 spaces in the Parking Garage to the Tenant for a twenty (20) year term to support the Residential Units per the terms of this Lease; and

WHEREAS, the RDC has agreed to sell and the Tenant has agreed to purchase 55 spaces in the Parking Garage in accordance with the terms hereof;

NOW, THEREFORE, for and in consideration of the mutual promises and benefits herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RDC and the Tenant hereby agree as follows:

1. **PREMISES.** The RDC leases to Tenant and Tenant hereby leases from the RDC, in accordance with the terms hereof, those fifty-five (55) parking spaces (the "Premises") located within the Parking Garage which is located along West Richardson Avenue and S. Cedar Street ("Tenant's Property"), said Premises being shown as the highlighted area on Exhibit A attached hereto and by this reference made a part hereof.
2. **TERM.** The initial term ("Term") of this Lease shall be for a period of twenty (20) years commencing on _____ (the "Commencement Date"). The Term shall end on midnight of the day twenty (20) years subsequent to the Commencement Date.

3. RENT DURING TERM: PURCHASE OF PREMISES.

(a) During the Term hereof, Tenant shall pay to the RDC a fixed rent according to the following schedule:

Years 1 to 5: Twenty (\$20.00) Dollars per month per space;

Years 6 to 10: Twenty-five (\$25.00) Dollars per month;

Years 11 to 15: Thirty (\$30.00) Dollars per month; and

Years 16 to 20: Thirty-five (\$35.00) Dollars per month.

(b) Should the Term begin or end on a date that is not the first day of the month, the rent shall be prorated to reflect the actual number of days.

(c) The rent is due and payable on the first day of each month at the RDC's address set forth in Paragraph 17 of this Lease, or at such other place as the RDC may from time to time designate in a writing actually received by Tenant.

(d) During the Term hereof, the RDC hereby agrees to sell to the Tenant, and the Tenant hereby agrees to purchase from the RDC, all or any portion of the Premises upon mutually agreed upon terms and price. Such purchase shall be subject to customary and standard provisions regarding the sale and purchase of real estate such as the Premises.

(e) In the event that the Tenant does not purchase the entire Premises during the Term hereof as provided in paragraph (d) of this Section, the Tenant hereby agrees to purchase all of the Premises (to the extent not previously purchased by the Tenant) no later than the day on which this Lease terminates. The purchase price to be paid by the Tenant for the Premises or portion thereof so purchased shall be Fifteen Thousand Dollars (\$15,000.00) per parking space. Such purchase shall be subject to customary and standard provisions regarding the sale and purchase of real estate such as the Premises.

4. HOLDING OVER. If Tenant holds over after the expiration or other termination of this Lease, Tenant shall become a tenant from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy, and such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay rent on a monthly basis upon terms and conditions as existed as of the last month of the then applicable lease term.

5. CONDITION OF THE PREMISES. At the commencement of the Initial Term of this Lease, Tenant shall accept the Premises "as is". No representation, statement, or warranty, express or implied, has been made by or on behalf of the RDC as to the condition or as to the use that may be made of the Premises. Notwithstanding the foregoing, the RDC warrants that it knows of no non-compliance with any law, statute, regulation, ordinance, code or ruling by any governmental body with respect to the condition or operation of the Premises. Should the Premises be deemed to be unsuitable for parking at any time during the Term of this Lease by any governmental or regulatory authority through no fault of Tenant, Tenant may immediately terminate this Lease without penalty.

6. USE OF THE PREMISES. During the Term hereof, Tenant shall have the exclusive use of the Premises for the operation and maintenance by Tenant of automobile parking spaces

to be sublet to owners of the Residential Units and for any other associated lawful purpose. All references to "Tenant" herein regarding the use of the Premises shall include the Tenant's subtenants with respect to the particular parking space that such subtenant subleases from the Tenant. In no event shall Tenant use the Premises for any use which violates any ordinance, statute, law or regulation of any governmental body having jurisdictional authority over the Premises. Tenant shall have the use of and access to the Premises twenty-four hours a day, seven days a week.

7. **ACCESS TO THE PREMISES.** The RDC grants to Tenant, its employees, agents, and independent contractors, and to Tenant's sublessees and invitees, a nonexclusive right for the duration of the Term of this Lease of ingress and egress over all property owned by the RDC where the Premises are located ("**RDC's Property**") to and from the Premises to the extent necessary for the use, operation, and maintenance of the parking spaces. The RDC shall be responsible for the maintenance and repair of the areas covered by this right of ingress and egress.
8. **QUIET ENJOYMENT.** The RDC covenants that if Tenant shall perform all of the covenants and agreements of this Lease to be performed by Tenant, Tenant shall, subject to the terms and conditions of this Lease, at all times during the Term have peaceful possession and occupancy and quiet enjoyment of the Premises, without molestation, hindrance, or disturbance by the RDC or any party. The RDC covenants and warrants that, as of the Effective Date of this Lease, the RDC is the true and lawful owner of and has sole legal title and interest to the Premises, and has the good right and full power to lease the Premises to Tenant. The RDC further represents that there are no liens, judgments, restrictions, covenants, easements, rights of way, leases, or other agreements, written or unwritten, recorded or unrecorded, known to the RDC which would prohibit or in any way restrict Tenant's intended use of the Premises. If Tenant's peaceful and quiet enjoyment of the Premises is interrupted by any person after notice by Tenant to the RDC of such interruption or expected interruptions and ten (10) days elapse during which the RDC has been unwilling or unable to cure such interruption, then Tenant, in addition to its other remedies at law and in equity, may, at its sole option, terminate this Lease, and in such event Tenant will not be required to pay any further rent. Failure to exercise the option to terminate shall not waive subsequent rights Tenant has to terminate.
9. **CONDEMNATION.** In the event a portion or all of the Premises shall be taken by condemnation, eminent domain, or other similar action for public use or purpose, or be purchased by the condemning authority in lieu of condemnation, then, in either case, Tenant may, at its option, cancel and terminate this Lease in its entirety effective at any time after notice of such impending order of condemnation or offer to purchase by giving written notice to the RDC of its intention to do so. Upon the giving of said written notice by Tenant, this Lease shall terminate, any rent paid in advance shall be apportioned and refunded to Tenant and any rent due shall be accounted for as between the RDC and Tenant as of such Lease termination date. Each party shall be free to make claim against the condemning party for the amount of damages incurred by each by such proceeding.
10. **CASUALTY.** If the Premises are totally destroyed (or so substantially damaged as to be unusable for its intended purpose) by storm, fire, earthquake, or other casualty, then this Lease shall terminate as of the date of such destruction or damage, and rent shall be accounted for as between the RDC and Tenant as of that date. If either (a) all or any part of the RDC's Property or (b) all or any part of Tenant's Property is totally destroyed (or

so substantially damaged as to be unusable for its intended purpose) by storm, fire, earthquake, or other casualty, then this Lease shall terminate, at the option of Tenant, as of the date of such destruction or damage, and rent shall be accounted for as between the RDC and Tenant as of that date.

11. INSURANCE.

11.1 Property Insurance. During the Term, the RDC shall maintain, or cause to be maintained, Commercial Property insurance ("**CP Insurance**") that insures the Premises and the RDC's personal property at the Premises on a replacement cost basis, and Tenant shall maintain CP Insurance that covers the Tenant's personal property in and about the Premises on a replacement cost basis. Each CP Insurance policy shall, at a minimum, insure against the perils included in the ISO special causes of loss form CP 10 30 and any amendments or "all-risk" coverage, including but not limited to loss or damage due to fire and the risks normally included in extended coverage (e.g., flood, windstorm, earthquake, and terrorism).

11.2 Casualty Insurance. During the Term, the RDC and Tenant shall maintain: (i) Commercial General Liability insurance ("**CGL Insurance**") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from each party's operations at the Development or Premises, as applicable, independent contractors, product-completed operations, personal injury, and advertising injury, and contractual liability that includes this Lease as an insured contract; (ii) Business Auto Liability insurance ("**BAL Insurance**") with limits of liability not less than \$1,000,000 per occurrence covering bodily injury, including death, and property damage for liability arising from use of each party's owned, non-owned, and hired vehicles; (iii) Workers' Compensation insurance ("**WC Insurance**") in accordance with all federal and state statutory requirements and Employers' Liability insurance ("**EL Insurance**") in an amount of not less than \$1,000,000 per accident for bodily injury and \$1,000,000 per employee/aggregate for disease; and (iv) Umbrella Liability insurance ("**Umbrella Liability Insurance**") with limits of liability of not less than \$5,000,000 per occurrence that applies on a "following form" basis and is in excess of the underlying CGL Insurance, BAL Insurance, and EL Insurance limits of liability with the Umbrella Liability Insurance policy listing the CGL Insurance, BAL Insurance, and EL Insurance policies on its schedule of underlying Insurance (collectively, "**Casualty Insurance**").

11.3 Additional Insureds. With respect to CGL Insurance and Umbrella Liability Insurance, Tenant shall name the RDC as an additional insured with respect to Tenant's negligence for any claims arising out of Tenant's operations in or upon the Premises, and the RDC shall name Tenant, its employees, officers, directors, subsidiaries, affiliates, partners, or sublessees, as additional insureds with respect to the RDC's negligence for any claims arising out of operations of the RDC or the RDC's agents or contractors in or upon the Development, Premises, or Common Areas. In addition, the CGL Insurance and the Umbrella Liability Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to each party's additional insured status; (ii) endorsed to provide cross-liability coverage if they do not contain a standard ISO separation of insureds provision; and (iii) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

11.4 Rating Requirements. All insurance policies required by this Section 11 (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and umbrella policies. The insurance provisions set forth in this Section 11 set forth the minimum amounts and scopes of coverage to be maintained by the RDC and Tenant and are not to be construed in any way as a limitation on each party's liability under this Lease.

11.5 Certificates of Insurance. Each party shall furnish Certificates of Insurance to the other party evidencing all of the above-described insurance policies prior to or upon execution of this Lease and annually thereafter, but not later than ten (10) business days after the expiration of each policy. All policies shall provide that not less than thirty (30) days' prior written notice of cancellation or non-renewal shall be given to the other party.

12. WAIVER OF SUBROGATION.

12.1 Waiver of Subrogation (Property). Tenant and the RDC hereby waive and release each other of and from any and all rights of recovery, claims, actions, or causes of action against each other, including their respective employees, officers, directors, subsidiaries, affiliates, agents, representatives, and assigns, for any loss or damage that may occur to the Development, the RDC's personal property, the Improvements (including any alterations or additions thereto), and Tenant's personal property by reason of fire or other casualty, regardless of cause or origin. The RDC and Tenant shall obtain a waiver of subrogation from their respective insurers and shall endorse their CP Insurance policy to reflect the waiver of subrogation. The above waiver of subrogation applies whether or not there are any deductibles or self-insured retentions and in the absence of any CP Insurance.

12.2 Waiver of Subrogation (Casualty Insurance). Tenant and the RDC hereby waive and release each other of and from any and all rights of recovery, claims, actions, or causes of action against each other, including their respective employees, officers, directors, subsidiaries, affiliates, agents, or representatives to the extent covered by Casualty Insurance. Each Casualty Insurance policy must be endorsed to reflect the insurer's acceptance of this waiver of subrogation. The waiver of subrogation applies whether or not there are any deductibles or self-insured retentions and in the absence of any Casualty Insurance.

13. INDEMNIFICATION. The RDC shall indemnify and save harmless Tenant from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of the negligence or wilful misconduct of the RDC, its officers, agents, employees, independent contractors or invitees, or the failure by the RDC to perform its obligations under this Lease, provided that Tenant gives the RDC timely notice of any claim coming under the scope of this indemnity, allows the RDC to completely control the settlement and defense of any such claim and cooperates fully with the RDC in the investigation and defense of such claim.

Tenant shall indemnify and save harmless the RDC from all direct loss or damage for personal and bodily injury and tangible property damage (including reasonable attorneys' fees) arising out of the negligence or wilful misconduct of Tenant, its officers, agents, employees, independent contractors, sublessees, or invitees, or the failure by Tenant to perform its obligations under this Lease, provided that the RDC gives Tenant timely notice of any claim coming under the scope of this indemnity, allows Tenant to

completely control the settlement and defense of any such claim and cooperates fully with Tenant in the investigation and defense of such claim.

14. **ENVIRONMENTAL MATTERS:** The RDC warrants and represents that, to the best of its actual knowledge, (i) the RDC is not subject to any existing investigation by any governmental authority under any Environmental Requirements related to the Property, (ii) any handling, transportation, storage, treatment, or use of Hazardous Materials that has occurred on the Property to date by or behalf of the RDC has been in compliance with all Environmental Requirements, and (iii) no leak, spill, release, discharge, emission or disposal of Hazardous Materials has occurred on the Property since the date of the RDC's acquisition of its fee title interest therein. The term "Environmental Requirements" means all applicable past, present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment; including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; and Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos, and petroleum, including crude oil or any fraction thereof, natural gas, natural liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of such natural gas and synthetic gas).

Tenant shall have no liability of any kind to the RDC as to Hazardous Materials on, under or about the Premises and/or on any other property of the RDC (collectively, the "**Property**") caused or permitted by: (i) the RDC, its agents, employees, contractors or invitees (if any); or (ii) any person or entity (other than Tenant and Tenant's employees, agents, invitees or contractors) located outside of the Property (including, without limitation, the migration or leaching of Hazardous Materials from outside the Property on or onto the Property).

The RDC shall and hereby does indemnify Tenant and hold Tenant harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by Tenant in connection therewith) suffered by Tenant by reason of historic site operations and/or conditions occurring prior to the Effective Date of this Lease, or by reason of contamination on, at or emanating from the Property by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by the RDC or the RDC's employees, agents or contractors, and which does not arise directly from or out of the presence of Hazardous Materials on, at or from the Premises solely as the result of Tenant's use of the Premises or any act or omission of Tenant, its agents, employees, or contractors; provided that, however, the RDC shall not be liable to Tenant for any consequential or punitive damages suffered by Tenant as a result of any breach of the RDC's obligations hereunder. Tenant shall and hereby does indemnify the RDC and hold the RDC harmless from and against any and all expense, loss, and liability (including, without limitation, any and all legal and professional fees and costs incurred by the RDC in connection therewith) suffered by the RDC (except to the extent that such expenses, losses, and liabilities arise

out of the negligence or willful act of the RDC or the RDC's employees, agents, invitees or contractors), by reason of the storage, generation, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Materials (whether accidental, intentional, or negligent) by Tenant or Tenant's employees, agents, invitees or contractors, provided that, however, Tenant shall not be liable to the RDC for any consequential or punitive damages suffered by the RDC as a result of any breach of Tenant's obligations hereunder. Notwithstanding anything to the contrary in this Paragraph 14, Tenant shall have no liability to the RDC of any kind as to any Hazardous Materials unless the RDC provides a Phase I environmental investigation which conclusively determines that (a) such Hazardous Materials were not present on the Property on the Effective Date of this Lease, and (b) the release of such Hazardous Materials was caused solely by Tenant, its agents, employees or contractors.

15. **COSTS AND EXPENSES.** The RDC shall pay the following costs and expenses associated with the Premises: real estate taxes (the RDC shall provide Tenant with evidence of the payment of thereof upon Tenant's request), general and special assessments assessed on the property interest of the RDC in the Premises, property insurance protecting the RDC's interest in the Premises, debt service on any loans on which the RDC or an affiliate of the RDC is the borrower and which are secured by or related to the Premises, any and all repair, maintenance and operation expenses related to the Premises, and any other costs that may be related to the ownership of the Premises and the remainder of RDC's Property.

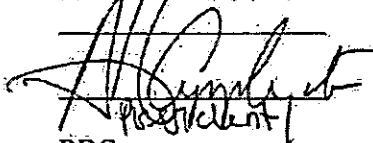
Tenant's costs and expenses related hereto shall be strictly limited to obtaining and maintaining such insurance policies as are required pursuant to Section 11 hereof.

16. **REPAIRS AND MAINTENANCE.** The RDC shall provide all routine repairs and maintenance to the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises.

17. **NOTICES.** Whenever, in this Lease, it shall be required or permitted that notice or demand be given or served by either party on the other, such notice or demand shall be given or served in writing: (i) by certified mail, return receipt requested, (ii) by courier or hand delivery, or (iii) by reputable overnight courier, at the address specified below for each party or at such other address as the parties may designate:

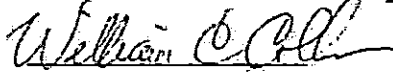
Tenant:

The Dorchester, LLC



RDC:

Town of Summerville Redevelopment Corporation


Chairman

Notices sent in accordance with the provisions of this Paragraph 17 shall be deemed given upon receipt, upon the refusal to accept such notice or upon the inability to deliver such notice due to an address change for which notice was not given in accordance herewith.

18. DEFAULT.

(a) Tenant Default. In the event that Tenant (i) shall, after ten (10) days written notice from the RDC, fail to perform, keep, and observe any of the terms, covenants, and conditions of this Lease or (ii) shall be placed into bankruptcy, either voluntarily or by the courts, or become financially insolvent and unable to perform its obligations under this Lease, then the RDC may, at its option and in addition to and not in limitation of any other right or remedy permitted to the RDC at law, in equity or under this Lease, terminate this Lease, in which event Tenant shall surrender the Premises to the RDC within ninety (90) days of such Lease termination.

(b) The RDC Default. In the event that the RDC (i) shall, after ten (10) days written notice from Tenant, fail to perform, keep, and observe any of the terms, covenants, and conditions of this Lease or (ii) shall be placed into bankruptcy, either voluntarily or by the courts, or become financially insolvent and unable to perform its obligations under this Lease, then Tenant may, at its option and in addition to and not in limitation of any other right or remedy permitted to Tenant at law, in equity or under this Lease, terminate this Lease, in which event Tenant shall surrender the Premises to the RDC within ninety (90) days of such Lease termination.

19. LIMITATION OF DAMAGES AND LIABILITY. Except for gross negligence or wilful misconduct resulting in personal injury or property damage to third parties, in no event shall Tenant's or the RDC's liability under this Lease include any liability for incidental, indirect, special, or consequential damages.

20. TERMINATION. The RDC may not terminate this Lease prior to its stated expiration except upon a Tenant Default pursuant to Section 18 hereof and upon ninety (90) days written notice to the Tenant. Tenant may terminate this Lease, in whole or in part, with 30 days' notice to the RDC at any time during the Term of this Lease upon payment to the RDC of one month's rent as an early termination fee.

21. SURRENDER OF PREMISES. Tenant shall, at the end of the Term, or any extension thereof, promptly surrender the Premises in good order and condition and in conformity with the applicable provisions of this Lease, excepting only reasonable wear and tear and any condemnation or casualty.

22. POSTPONEMENT OF ACTION. Whenever the time for the performance or discharge of any obligation or the exercise of any right provided hereunder shall fall on any Saturday, Sunday, or other legal or public holiday, then the time for the performance or discharge of such obligation or the exercise of such right shall be extended to 5:00 p.m. on the next secular or business day.

23. SUCCESSORS AND ASSIGNS. This Lease shall be binding on the parties hereto and their respective successors and assigns.

24. EFFECTIVE DATE. This Lease and its terms shall be in effect as of the date first set forth above (the "Effective Date").

25. **APPLICABLE LAW.** Notwithstanding the location of the entities executing this Lease, this Lease shall be governed by and interpreted in accordance with the laws of the State where the Premises are located.
26. **WAIVER.** The parties may waive any provision of this Lease only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Lease, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.
27. **TIME IS OF THE ESSENCE.** Time is of the essence regarding all performance under this Lease.
28. **BROKERS.** Each party represents and warrants that it has dealt with no broker, agent, or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, and each party agrees to defend, indemnify and hold the other harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnitor with regard to this Lease.
29. **ATTORNEYS' FEES.** In the event either party is required to retain counsel to enforce any rights under this Lease, such party if successful as determined by a court issuing a final adjudication and having proper jurisdiction over the parties from which no appeal can be or is taken, shall be entitled to recover from the other party, its reasonable attorneys' fees and expenses.
30. **ENTIRE AGREEMENT.** This Lease, including all exhibits hereto, each of which is incorporated into this Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter of this Lease and no other representations, warranties, or agreements, whether written or oral, shall be binding on either of the parties. This Lease may not be amended, modified, or supplemented unless and except by an instrument in writing signed by both parties.
31. **CAPTIONS.** The captions of this Lease are inserted for the purpose of convenient reference and in no way define, limit, or describe the scope or intent of this Lease or any part hereof.
32. **SEVERABILITY.** Should any term(s), covenant(s), condition(s), provision(s), sentence(s), or part(s) thereof of this Lease be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms and provisions shall, nevertheless, remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have caused this Lease to be executed as of the day and year first above written.

**TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION,
as Landlord**

Witnesses:

Madeline H. Robinson

By: William C. Collins

Its: Chairman

THE DORCHESTER, LLC, as Tenant

Witnesses:

M. J. Norton

By: A. K. Synelgata

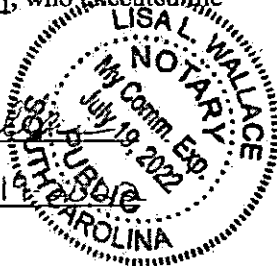
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Wallan, this 9th day of July, 2014, who executed the foregoing instrument, and acknowledged that he executed the same.

Lisa L. Wallan
Notary Public for South Carolina
My Commission Expires: 7-19-2022



Witnesses:

Madeline H Robinson
Tiffany J. Nater

The Dorchester LLC,
a South Carolina limited liability company

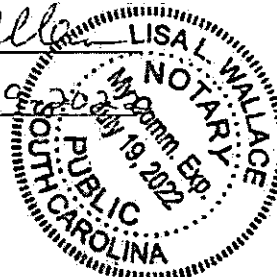
BY: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Wallan this 9th day of July, 2014, who executed the foregoing instrument, and acknowledged that he executed the same.

Lisa L. Wallan
Notary Public for South Carolina
My Commission Expires: 7-19-2022



Witnesses:

Madelyn H Robinson
Jeffrey J. Notar

Applegate & Co.

BY: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, personally appeared Lisa L. Wallace, this 9th day of July 2014, who executed the foregoing instrument, and acknowledged that he executed the same.

[Signature]
Notary Public for South Carolina

My Commission Expires: 7-19

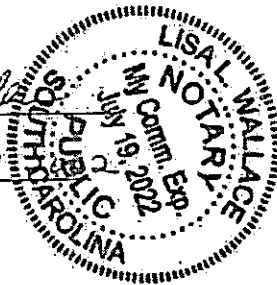


EXHIBIT "A"
THE PREMISES

EXHIBIT C

STATE OF SOUTH CAROLINA	)	GRANT AND PROPERTY
	)	CONVEYANCE AGREEMENT
	)	FOR TOURISM AND OTHER
	)	ECONOMIC DEVELOPMENT
COUNTY OF DORECHESTER	)	PROJECTS

THIS AGREEMENT is made and entered into as of July 9, 2014 by and between the Town of Summerville, a body corporate and a municipal corporation of the State of South Carolina (herein referred to as "TOWN"), and the Town of Summerville Redevelopment Corporation ("herein referred to as RDC"), a 501(c)(4) nonprofit organization.

WITNESSETH:

WHEREAS, the RDC was established by the Town of Summerville to facilitate financing and funding for various community and economic development projects; and

WHEREAS, the TOWN and the RDC are interested in entering into an agreement for the purposes of encouraging economic development for the benefit of the citizens of the Town of Summerville in accordance with Title 31, Chapter 10 Community Development Law of the South Carolina Code of Laws (1976) *et. seq.*, as amended; and

WHEREAS, the TOWN and the RDC determine that the development of mixed-use project that includes a hotel, retail space, a conference center, residential units, and a parking garage along West Richardson Avenue, South Cedar Street and West 2nd South Street (collectively herein referred to as the "PROJECT") would provide tourism related and other economic development benefits vital to the continued revitalization of downtown, improving services to residents, enhancing the economic development of the Town of Summerville, and providing facilities that will host conferences and special events that will attract visitors from outside of the Summerville community; and

WHEREAS, the TOWN owns approximately 1.58 acres of property located in downtown Summerville along West Richardson Avenue, specifically known as TMS# 137-07-4-002 and TMS# 137-07-04-005 (together, herein referred to as the "TOWN PROPERTY") that is necessary for the development of the PROJECT; and

WHEREAS, on July 9, 2014, the TOWN passed Ordinance No. _____, approving actions necessary to support the PROJECT, including the execution of a Public-Private Partnership Agreement between the TOWN, the RDC and Applegate & Co. (herein referred to as the "PPP AGREEMENT") to leverage and maximize private investment, the construction of public improvements, and the granting of funds to the RDC for the PROJECT; and

WHEREAS, on July 9, 2014, the RDC approved the PPP AGREEMENT by resolution.

NOW, THEREFORE, for valuable consideration and the mutual promises hereinafter set forth between the parties hereto, the legal sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. The TOWN agrees to convey by deed fee simple title of the TOWN PROPERTY to the RDC for purposes of developing the PROJECT.
2. The TOWN agrees to provide a grant to the RDC in the total amount of Five Million, Two Hundred Thousand and No/100 Dollars (\$5,200,000) for the purpose of funding the development of the Public Improvements of the PROJECT, including a conference center, parking garage and associated streetscape as further defined in the PPP AGREEMENT.
3. The TOWN agrees to provide a grant to the RDC in the total amount of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000) for the purpose of downtown economic development activities, as further defined in the PPP AGREEMENT.
4. The RDC agrees to utilize the PROPERTY and grant funds provided in this Agreement for the purposes of the PROJECT.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this
_____ day of July, 2014.

Witnesses:

Wahlynn H Robinson

Tiffany J. Norton

TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION

William C. Collins

By: William C. Collins

Its: Chairman

Witnesses:

Wahlynn H Robinson

Tiffany J. Norton

TOWN OF SUMMERVILLE

William C. Collins

By: William C. Collins

Its: Mayor

EXHIBIT D

PROMISSORY NOTE/LOAN AGREEMENT

BORROWER'S NAME: The Dorchester, LLC

LOAN NUMBER: _____ DATE: _____

LOAN AMOUNT: \$3,750,000.00 DATE DUE: _____

For value received, the undersigned, promises to pay to the order of the Town of Summerville Redevelopment Corporation (herein called "LENDER"), at _____ Summerville, SC _____, or any other place designated, at any time by the holder hereof, in lawful money of the United States of America, the principal sum of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000), together with any interest due on the unpaid balance based on the following terms. The payment obligation hereof by the undersigned (the "Borrower") is subordinate in all respects to the payment obligations of the Borrower to the Construction Lender (as defined in the PPPA [as defined below] and to the Equity Investors (as defined in the PPPA).

Terms shall be as follows:

1. Funds shall be disbursed hereunder by the LENDER up to the full amount of the loan (\$3,750,000.00) to The Dorchester, LLC (herein called "BORROWER") on a pro-rata basis with the application of funds of the Equity Investors upon receipt of written requests submitted to the RDC by the project architect.
2. No interest shall be due for 24 months from the date of funding by the LENDER. Interest on this note shall begin the day following 24 months from the funding by LENDER at the rate of 3.75% per annum. From that date, the interest payment shall be due on the 1st day of each month, and continue until this note is paid off. In any event, this Note shall be due and payable in full with all accrued interest on or before forty-eight (48) months from date of funding by the LENDER.
3. Interest shall be paid in arrears. The first interest payment on the loan shall be due on the first day of the month following the first day interest begins to accrue. This payment of interest shall be calculated at Three Hundred Ninety and 625/1000 (\$390.625) Dollars per day beginning the first day interest begins to accrue until the beginning of the following month.
4. Thereafter during the balance of the Term, a monthly interest payment of Eleven Thousand Seven Hundred Eighteen and 75/100 Dollars (\$11,718.75) shall be paid by BORROWER.
5. At the end of the Term of this Promissory Note or any extension thereof, a final payment of principal in the amount of Three Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$3,750,000), plus any accrued and unpaid interest, shall become due and payable.

6. This Note may be prepaid, in full, prior to maturity, without penalty to the undersigned.
7. Events of Default; Acceleration: The following shall constitute defaults or events of default hereunder ("Events of Default"):
 - (a) Failure by the Borrower, or any other party to keep, perform or observe any agreement, covenant, or condition contained herein or in the Public-Private Partnership Agreement between Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. (the "PPPA"); or (b) Failure by the Borrower to pay any installment required to be paid by this Note within five (5) days after the due date; or (c) A default by one or more of any guarantors under any agreement, covenant or condition contained in any guaranty agreement executed by the guarantors in connection with the loan evidenced by this Note. The remaining unpaid principal of this Note and all accrued and unpaid interest thereon shall immediately become due and payable, at the option of the holder hereof, upon the occurrence of an Event of Default. The Lender shall be entitled to recover all expenses, including reasonable attorneys' fees and expenses of legal counsel, incurred by the Lender in any way arising from or relating to the enforcement or attempted enforcement of this Note and any related guaranty, collateral document or other document and the collection or attempted collection, whether by litigation or otherwise, of this Note.
8. Application of Payments: All payments on this Note shall be applied first to accrued interest, then to fees, then to principal due and then to late charges. Any remaining funds shall be applied to the further reduction of principal. Notwithstanding the foregoing, upon the occurrence of a default hereunder, payments shall be applied as determined by Lender in its sole discretion.
9. Interest After Default: Any past due installments, whether of principal or interest, shall bear interest at the rate or rates herein set out until paid, except that after this Note shall become due, whether by acceleration or otherwise, this Note shall bear interest at the lesser of (a) the highest contract rate, if any, permitted by applicable law or (b) a rate per annum equal to fifteen percent (15%). The applicable interest rate herein shall apply whether before or after any judgment hereon.
10. Late Charge: Time is of the essence of this Note. To the extent not prohibited by law, a late charge of five percent (5%) shall be assessed on any payment remaining past due for 10 days or more unless interest on this Note is payable in advance, in which case such period shall instead be 30 days or more; provided, however, that if any applicable statute allows a shorter minimum time period for the imposition of a late charge, such shorter time period shall prevail. Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note

in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

11. Collateral: This Note is unsecured.

12. Governing Law; Changes: The Note may not be changed orally and shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

13. Jurisdiction; Venue: The Borrower (a) submits to personal jurisdiction in the circuit court for the first judicial circuit for the State of South Carolina, for the enforcement of this Note, (b) waives any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the circuit court for the first judicial circuit for the State of South Carolina for the purpose of litigation to enforce this Note, and (c) agrees that service of process may be made upon the Borrower in any manner prescribed by applicable state rules of civil procedure or by applicable local rules or laws of civil procedure for the giving of notice to the Borrower. Nothing herein contained, however, shall prevent the Lender from bringing any action or exercising any rights against any security and against the Borrower personally, and against any assets of the Borrower, within any other state or jurisdiction.

14. Payments Not to Violate Law: Nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Borrower to pay interest at a rate greater than it is now lawful in such case to contract for under applicable law, or to make any payment or to do any act contrary to applicable law, and the Lender shall reimburse the Borrower for any interest paid in excess of the highest rate allowed by applicable law or any other payment which may inadvertently be required by the Lender to be paid contrary to applicable law; and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Note, in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Note shall remain operative and in full force and effect.

15. Miscellaneous: The Borrower and all endorsers, sureties, and guarantors, if any, hereby waive presentment for payment, demand, protest, notice of nonpayment or dishonor and of protest, and any and all other notices and demands whatsoever, and agree to remain bound under this Note until the principal and interest are paid in full, notwithstanding any extensions of time for payment which may be granted even though the period or periods of extension be indefinite and notwithstanding any inaction by, or failure to assert any, legal rights available to the holder of this Note. Borrower acknowledges that Lender may reproduce (by electronic means or otherwise) any of the documents evidencing and/or securing this Note and thereafter may destroy the original documents. Borrower does hereby agree that any document so reproduced shall be the binding obligation of Borrower enforceable and admissible in evidence against it to the same extent as if the original documents had not been destroyed. This Note may be assigned by Lender with or without recourse.

16. WAIVER OF JURY TRIAL. BORROWER, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING FROM OR RELATED TO THIS PROMISSORY NOTE.

If BORROWER shall at any time default in making any payment of principal or interest on the Note, BORROWER agrees that it will, to the full extent permitted by law, pay to the holder of the Note, an amount equal to the reasonable costs and expenses of collection or enforcement incurred by such holder in such collection (including attorney's fees).

IN WITNESS WHEREOF, this Promissory Note has been executed under seal the day and year first above written.

THE DORCHESTER, LLC

a South Carolina Limited Liability Company

By: _____

Its: _____

Remainder of Page Intentionally Left Blank
[Additional Terms on Following Page]

GUARANTEE OF PROMISSORY NOTE

In consideration of the sum of three million seven hundred fifty thousand and 00/100 Dollars (\$3,750,00.00) paid in hand, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the extension of credit to The Dorchester, LLC, a South Carolina Limited Liability Company, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned does hereby jointly and severally, absolutely and unconditionally, guarantee to Lender, its successors, personal representatives, legal representatives, and assigns, the due and punctual payment of the principal and interest due on the Promissory Note owed by The Dorchester, LLC, a South Carolina Limited Liability Company, of even date and any penalties for late payment with a personal guarantee by Arthur H. Applegate; subject, however, to the following limitations:

1. This guarantee shall be effective and in force and effect only for the period of time beginning with the first disbursement of funds under the Promissory Note/Loan Agreement to the Borrower thereunder, and shall terminate in full upon completion of construction of the Hotel, the Parking Garage, and the Conference Center (as defined in the PPPA).

2. The obligation of the guarantor hereunder is junior and subordinate to the obligations of the guarantor to the Construction Lender and the Equity Investors (as defined in the PPPA), which obligations shall be, and shall remain, prior and superior to the obligation of the guarantor hereunder.

Further, the undersigned does hereby, jointly and severally, unconditionally guarantee payment of all expenses (including attorney's fees) incurred in the enforcement of this guarantee. The undersigned hereby waive presentment, demand, notice of dishonor, notice of default, protest and all other notices whatsoever. The undersigned hereby waive notice of acceptance and this guarantee binds the undersigned, their heirs, personal representatives, legal representatives, and assigns. This guarantee shall inure to the benefit of Lender, its successors, personal representatives, legal representatives, and assigns.

This guarantee shall be governed by, construed and controlled under the laws of the State of South Carolina, without regard to any conflict of laws.

WAIVER OF JURY TRIAL: THE UNDERSIGNED, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING FROM OR RELATED TO THIS GUARANTEE OF PROMISSORY NOTE.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Guarantee of Promissory Note on this _____ the day of _____, 2014.

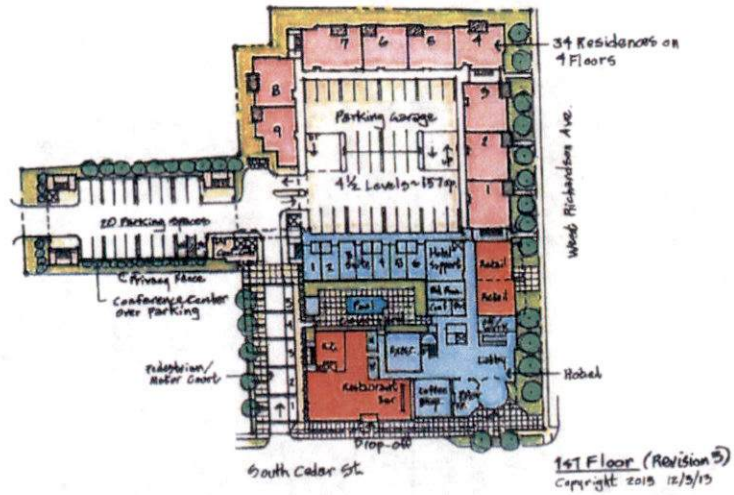
Witnesses: _____

Arthur H. Applegate

Exhibit E

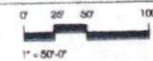
The Dorchester
Estimated Public Improvements Budget

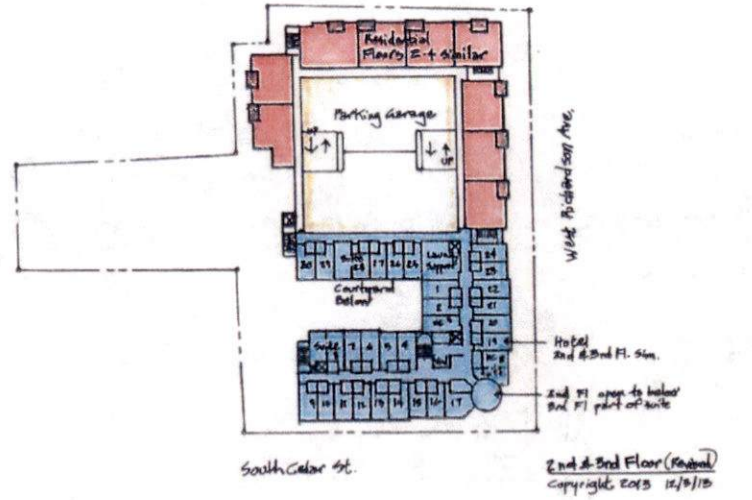
Construction Cost	\$ 4,391,324
Soft Cost	\$ 808,676
Total Project Cost	\$ 5,200,000
Construction Costs	
Vertical Construction	\$ 3,503,266
Land Improvements	\$ 375,660
Contractor Liability/Builders Risk	\$ 41,740
Bond Premium	\$ 41,740
General Requirements	\$ 166,960
Builder's General Overhead	\$ 62,610
Furniture, Fixtures, Equipment	\$ 199,348
Total Construction Cost	\$ 4,391,324
Soft Cost:	
Architect/Structural Engineer	\$ 229,043
Interior Design Services	\$ 30,000
Civil Engineering	\$ 65,500
Surveying (Topo, Boundary, Tree, UTL Locations, etc)	\$ 8,395
Geo Tech	\$ 6,600
Consultants (Traffic)	\$ 7,500
Environmental (Phase I)	\$ 2,200
Organizational/Legal Costs	\$ 25,000
Construction Management/Inspection Fees	\$ 52,000
Development Fee	\$ 260,000
Operating Deficiency Reserve	\$ 60,000
General Contingency	\$ 62,438
Total Soft Costs	\$ 808,676
Total Project Cost	\$ 5,200,000

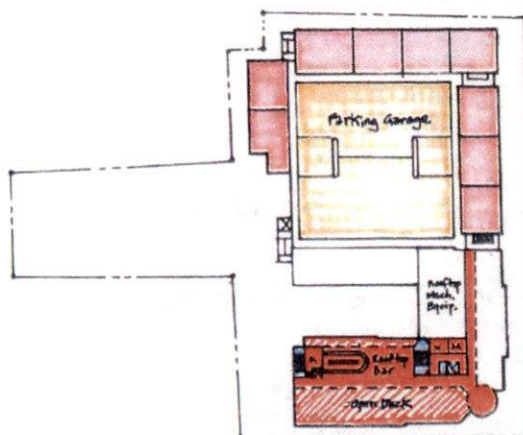


Goff•D'Antonio Associates

The Dorchester/ Mixed Use







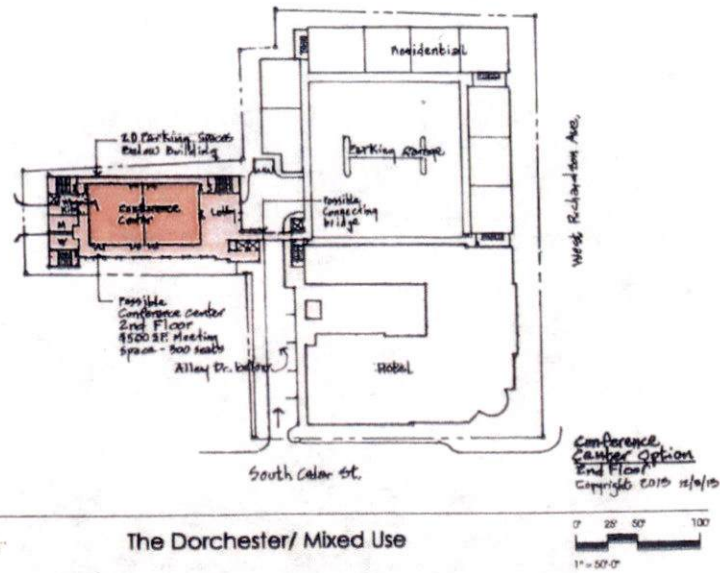
South Cedar St.

4th Floor (Revised)
Copyright 2015 12/15/15

Goff•D'Antonio Associates

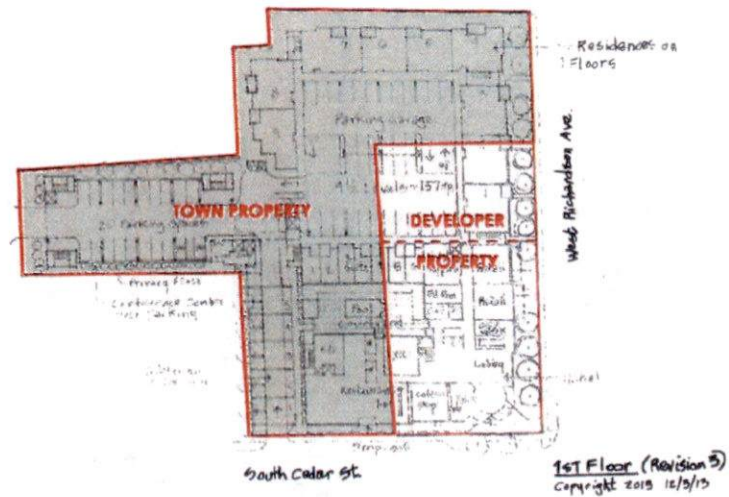
The Dorchester/ Mixed Use

0' 25' 50' 100'
1" = 50'-0"



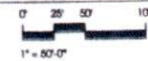
Goff•D'Antonio Associates

The Dorchester/ Mixed Use



Goff•D'Antonio Associates

The Dorchester/ Mixed Use





Goff•D'Antonio Associates

The Dorchester/ Mixed Use

0 10 20
1" = 20' 0"



Goff+D'Antonio Associates

The Dorchester/ Mixed Use





Exhibit F-8



Coffin D'Antonio Associates

The Dorchester/ Mixed Use



A RESOLUTION

Whereas the Town of Summerville published a request for proposals from developers to propose a boutique hotel project to include a possible conference center to be operated in a public-private partnership;

Whereas this was understood by the Town to principally be a contract for professional services which included planning, design and management of a boutique hotel facility on Town Property;

Whereas the Town did not and does not believe such a project could or should have been done on a sealed bid basis as it was a professional service;

Whereas Applegate and Co. was not only the sole entity responding to the request for proposal, Applegate and Co. also owned or has under contract certain adjacent properties that make the Town's land and the overall project more valuable and viable;

Whereas the addition of land under the control of Applegate and Co. to the project further justifies the Town having entered into the prior contract and this First Amendment on the basis of a "sole source" exception;

Now, therefore, the duly elected Town Council of the Town of Summerville authorizes the Mayor to sign the attached First Amendment to the Public-Private Partnership Agreement on behalf of the Town of Summerville;

Done in meeting duly assembled this 12th day of August, 2015

TOWN OF SUMMERVILLE, SOUTH CAROLINA

By: William C. Collins
Mayor, Town of Summerville, South Carolina

ATTEST:

By: Sam L. Waller
Clerk, Town of Summerville, South Carolina

FIRST AMENDMENT TO PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

THIS FIRST AMENDMENT TO THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPEGATE AND CO. (the "FIRST AMENDMENT") is entered into as of August 12, 2015 by and between the Town of Summerville, a body corporate and a municipal corporation of the State of South Carolina (the "TOWN"), the Town of Summerville Redevelopment Corporation ("RDC"), a 501(c)(4) nonprofit organization, and Applegate & Co., a corporation incorporated under the laws of the State of South Carolina ("DEVELOPER," and together with the TOWN and RDC, "PARTIES").

PREAMBLES

PARTIES have previously entered into a PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPEGATE AND CO. (the "PPP AGREEMENT") dated as of July 9, 2014, to provide for the development, construction, and operation of the PROJECT (as defined therein).

The PPP AGREEMENT sets forth certain timeframes by which development activities are expected by the PARTIES to occur and other details with respect to the PROJECT.

The PPP AGREEMENT provides for other development activities to occur without providing timeframes by which they are expected to occur.

Since the date of the PPP AGREEMENT, the PARTIES have engaged in the development activities as provided in the PPP AGREEMENT and are now in the position to set forth with more certainty the timeframes of various development activities provided under the PPP AGREEMENT and other details with respect to the PROJECT.

For good and valuable consideration and the mutual covenants and agreements set forth herein, the PARTIES now agree to modify the PPP AGREEMENT to properly reflect the timeframes and other details as set forth below.

AGREEMENT

1. Section 1(a)i is amended as follows:
 - i. DEVELOPER will procure all necessary easements or property rights and construct a new mixed-use project on the PROJECT SITE along West Richardson Avenue, South Cedar Street and West 2nd South Street, that will include both private and public improvements as defined in Sections 1(b) and 1(c) (together referred to as "PROJECT"). The project will represent an expected total private capital investment of approximately Twenty Million and No/100 Dollars (\$20,000,000.00), and the DEVELOPER will use its best effort to complete the Project within twenty four (24) months from the

date of funding of the grant by the TOWN to the RDC as provided in Section 2(b), but in no event later than thirty (30) months from such date.

2. Section 1(b)(ii) is amended as follows:

- i. Approximately 27 residential condominium units and associated shared common space.

3. Sections 2(a)-(b) are amended as follows:

- a. TOWN will convey to RDC the TOWN PROPERTY by deed within one hundred twenty (120) days of Board of Architectural Review ("BAR") final approval of the PROJECT. The TOWN PROPERTY shall be used solely for the development of the PROJECT. Any other use of the TOWN PROPERTY shall require approval by the TOWN.
- b. TOWN will gift to the RDC a grant in the amount of Five Million Two Hundred Thousand and No/100 Dollars (\$5,200,000) for purposes of participation in the PROJECT, per the terms of the Grant Agreement attached as Exhibit C, within Ninety (90) days of the issuance of the Town's hospitality fee revenue bonds.

4. Section 3(a) is amended by adding the following sentence thereto:

The GAP LOAN in the amount of \$3,750,000 will be funded from existing Hospitality Tax fund balance. Upon commencement of construction of the PROJECT, Fifty percent (50%) of the GAP LOAN will be deposited into the RDC account. Any additional amounts necessary to fund the GAP LOAN will be deposited into the RDC account as the gap occurs.

5. Section 4(a) is amended as follows:

- a. **PROPERTY LINE ADJUSTMENT PLAT AND SITE PLAN.** Within sixty (60) days after the funding of the initial draw request of the DEVELOPER for costs associated with the PUBLIC IMPROVEMENTS set forth under Section 3(b) of this PARTICIPATION AGREEMENT (the "FIRST PUBLIC IMPROVEMENT REIMBURSEMENT"), DEVELOPER will (i) instruct its surveyor to prepare and submit for review by, and approval from, the RDC a plat necessary to adjust and relocate the property lines within the PROJECT SITE ("PROPERTY LINE ADJUSTMENT PLAT"), and (ii) using the PROPERTY LINE ADJUSTMENT PLAT, instruct its architect and/or engineer to prepare a drawing showing the proposed improvements to be constructed on the PROJECT SITE ("SITE PLAN"). The SITE PLAN will show the parking garage and the conference center located on separate subdivided parcels, each with a separate tax map identification number. Upon approval by the RDC of the PROPERTY LINE ADJUSTMENT PLAT, DEVELOPER will submit the PROPERTY LINE ADJUSTMENT PLAT to the appropriate governmental authority for approval to prepare for closing of the construction loan and the property swap as outlined in Section 6 of this Agreement.

6. Section 10(a) is amended as follows:
 - a. DEVELOPER will, no later than one hundred eighty (180) days following the final Board of Architectural Review ("BAR") approval of the PROJECT, provide the RDC with (i) a final construction cost breakdown for the PUBLIC IMPROVEMENTS and the PRIVATE IMPROVEMENTS and (ii) evidence acceptable to the RDC of a loan commitment from a financial institution acceptable to the RDC (in the RDC's reasonable discretion) (the "Construction Lender") for construction financing (the "Construction Loan") and any required equity from investors (the "Equity Investors") sufficient to complete construction of the PROJECT.
7. Attachment A to the Parking Garage/Conference Center Operation Agreement, is hereby amended to delete paragraphs 13 & 14 in their entirety.
8. Any orders issued by courts regarding any litigation with respect to the PROJECT shall toll the applicable timeframe or timeframes set forth in the PPP AGREEMENT as amended.
9. Except as amended herein, the PPP AGREEMENT shall continue in full force and effect.
10. All capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the PPP AGREEMENT.
11. This First Amendment shall inure to the benefit of and shall be binding upon the PARTIES, and their respective successors and assigns.
12. This First Amendment may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
13. This First Amendment shall be deemed to be contracts made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina.

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

TOWN OF SUMMERVILLE, SOUTH
CAROLINA


Mayor, Town of Summerville, South Carolina

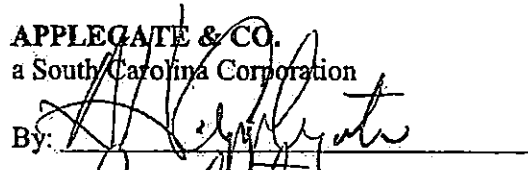
ATTEST:


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

TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION

By: 
Its: Chairman

APPLEGATE & CO.
a South Carolina Corporation

By: 
Its: 

THE STATE OF THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-000438

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

Appellants,

v.

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

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s. W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr. (7895)
AUSTEN & GOWDER, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-2229
andy@austengowder.com