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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable G. D. Morgan, Jr.
Circuit Court Judge

Appellate Case No. 2026-000199

Dennis Floyd Bivens, ... Appellant,

v.

York County by and through Joshua Edwards, York County Manager; Josh Reinhardt, York County Development Services Manager; and Jonathan Buono, York County Planning and Development Services Director..... Respondents.

RECORD ON APPEAL

INDEX

Orders of York County Court of Common Pleas

1. Form 4- Order of Hon. G.D. Morgan, Jr. dated January 6, 2025.....230
2. Formal Order granting in part and denying in part defendant's motion to dismiss filed January 21, 2026.....233

Pleadings

1. Summons and Complaint filed October 13, 2025.....1

Motions

2. Respondent's Motion to Dismiss, in Lieu of Answer, filed November 17, 2025.....11
3. Plaintiff's Return to Defendant Motion to Dismiss filed December 13, 2025..... 14
4. Defendant's Memorandum in Support of its Motion to Dismiss.....25
   filed December 15, 2025, with attachments:
   a.) Exhibit-A York County letter to Judi Quimby dated December 27, 2022.....70
   b.) Exhibit-B Ordinance No. 6623 adoption dated, September 18, 2023.....72
   c.) Exhibit-C Fee in Lieu (FILOT) agreement dated, September 18, 2023.....78
   d.) Exhibit-D Walter Buchanan Zoning Interpretation Checklist.....114
   e.) Exhibit-E York Planning & Developing letter to Buchanan dated February 16, 2024.....117
   f.) Exhibit-F Board of Zoning Appeals Appeal Application.....120
   g.) Exhibit-G Board of Zoning Appeal – Reversal Decision dated, May 30, 2024.....126
   h.) Exhibit-H Subchapter E Part 13 Zoning Compliance ordinances.....129
5. Notice of Appeal filed January 22, 2026.....257

Transcripts

1. Transcript of Oral Argument before Hon. G.D. Morgan Jr. dated December 16, 2025.....136

Other Documents

1. Affidavit of M. Allison Love (filed in Supreme Court) 229
2. Deed Restrictions filed December 17, 2025 (46 pages) 183
3. Letter delivery of Notice of Appeal and Notice as to Permits by Petitioner's Counsel dated January 22, 2026.....258

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Dennis Floyd Bivins	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	SUMMONS
YORK COUNTY by and through Joshua Edwards, York County Manager; Josh Reinhardt, York County Development Services Manager; and Jonathan Buono, York County Planning and Development Services Director	)	
	)	
Defendants.	)	

TO: DEFENDANTS ABOVE NAMED:

You are hereby Summoned and Required to Answer the complaint in this action, a copy of which is served upon you with this Summons and notice, within thirty (30) days.

TAKE NOTICE that should you fail to Answer in the time set forth above, the plaintiff will petition the court for against you BY DEFAULT and IN YOUR ABSENCE seeking all relief demanded by way of the Complaint.

Respectfully Submitted,

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October 13, 2025

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Dennis Floyd Bivins	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	**COMPLAINT**
YORK COUNTY by and through	)	(NON-JURY)
Joshua Edwards, York County Manager;	)	
Josh Reinhardt, York County Development	)	
Services Manager; and	)	
Jonathan Buono, York County Planning and	)	
Development Services Director	)	
	)	
Defendants.	)	
	)	

In complaint against the defendants, the plaintiff would respectfully show and allege the following:

JURISDICTION

1. Plaintiff Dennis Floyd Bivins ("Bivins") is a resident of York County with standing to bring this suit as against the defendants as neighboring owner to 7149 Logistics Lane, Fort Mill, South Carolina 29715, per S.C. Code §6-29-950.

2. Defendant York County is a body politic and political subdivision of the state of South Carolina responsible for zoning compliance under the York County ordinances and laws, including zoning enforcement pursuant to S.C. Code Ann. §6-29-950, *et seq*.

3. Defendant Joshua Edwards, named in his official capacity, is the manager for York County government and supervises all county departments, including zoning and the department of planning and development services.

4. Josh Reinhardt is named in his official capacity as manager of the Development Services department, and is responsible for managing and supervising zoning related permitting.

5. Jonathan Buono is named in his official capacity as Director of the York County department of Planning and Development, and is responsible for ensuring applicants compliance with the zoning code in York County.

2

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

6. Jurisdiction is proper in the court of common pleas arising out of violation of zoning code and issuance of unlawful construction permits for 7149 Logistics Lane, Fort Mill, South Carolina 29715 where defendants have issued numerous permits for corporation construction of a chemical manufacturing use not permitted in a distribution warehouse building without change of use approval.

7. That the district and property described is zoned Light Industrial ("LI") by zoning code. That there has been no change of use or variance for the subject property by the applicant corporation.

8. Applicant and permittee Silfab Solar is an affected party and is actively constructing on site at 7149 Logistics Lane in Fort Mill where defendants named have inherent police power to enforce zoning compliance but have failed and have acted in violation of law and zoning code to issue repeated permits for a non-conforming use under the zoning code in York County.

9. Plaintiff bring this action seeking the court act to protect existing zoning, and compel defendants to act to bring cease and desist and stop work orders as against the corporation and its general contractors and agents at 7149 Logistics Lane in Fort Mill.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment Action – S.C. Code Ann. 15-53-10, et seq.)

10. The above allegations are re-stated here and incorporated by reference. Plaintiff here seeks Declaratory Judgment of the Court of the following:

    a. The zoning for 7149 Logistics Lane in Fort Mill is and remains Light Industrial.

    b. That the use being constructed at 7149 Logistics Lane did not at any time exist prior to adoption of the zoning code now in existence.

    c. Any permit lacking the zoning administrator's approval violates law and zoning code as set forth more fully below.

11. A ripe and judiciable dispute and controversy exists regarding the legality of defendants' issuance of permits authorizing construction of a corporation chemical manufacturing use where the corporation failed to obtain change of use of any type or variance before engaging in full construction.

12. On information and belief, the defendants' conduct in issuing permits has occurred without written approval of the York County Zoning Administrator in violation of statutory and local zoning law. Specifically, defendants' conduct is in violation of S.C. Code Ann. 6-29-950.

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

13. Plaintiff is informed and believes that pursuant to York County Zoning Code §155.1121 and S.C. Code Ann. §6-29-950 that any building occupancy or operations permit for any non-conforming use (or any use) requires the affirmative written approval and signature of the Zoning Administrator, or is otherwise voidable, void, and unlawful.

14. Plaintiff brings its petition here for Declaratory Judgment that York County issuance of any and all permits related to 7149 Logistics Lane, Fort Mill, S.C. 29715 not approved by the zoning administrator, pursuant to S.C. Code Ann. §6-29-950, et seq are unlawful. That the plant construction at 7149 Logistics Lane is occurring without change of use, variance, and in violation of York County Ordinance, specifically §155.1121.

15. That because zoning use is not approved by the zoning administrator, any construction permit which changes the character and use of lands at 7149 Logistics Lane, Fort Mill, SC 29715 is in violation of the zoning code and unlawfully issued by the county defendants named in this action. See *Knowles v. City of Aiken*, 305 S.C. 219 (1991) (invaliding spot zoning and arbitrary reclassification of property inconsistent with surrounding uses); *ANI Creation, Inc. v. City of Tega Cay*, Op. no. 28201 (S.C. Sup. Ct. April 19, 2023) (Spot or reverse zoning invalid where lacking rational basis).

16. York County by and through the defendants named has permitted non-owner, Silfab Solar, Inc., to violate local and state law in no less than three respects: (a) unlawful use (b) occupancy violations where no occupancy permit exist; and (c) no signature indicating approval by the zoning administrator. The statute governing these matters is clear, as set forth below.

17. S.C. Code Ann. 6-29-950 provides "...It is unlawful to construct, reconstruct, alter, demolish, change the *use* (*sic) of or *occupy* (*sic) any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the *zoning administrator* (*sic)."

18. Plaintiff is informed that defendants' conduct in issuing permits is characterized by breaking statutory law, violating the zoning code, and is willful and grotesque negligence by continued permitting of construction of an un-tested industrial chemical manufacturing use that presents health and safety hazards to the plaintiff, the similarly affected public, is a nuisance, and is resulting in site-specific or spot zoning not authorized by the zoning code classification on "Light Industrial" (LI), without change of use approval and zoning compliance approval by the zoning administrator. Plaintiff avers the harm will be irreparable.

19. Plaintiff is without adequate remedy at law. Plaintiff can show likelihood of success on the merits by virtue of state statutory law and York County Ordinance, and threat of

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

imminent harm of spot zoning involving construction and operation of a use at 7149 Logistics Lane that violates zoning code and state law.

FOR A SECOND CAUSE OF ACTION
(Action for Temporary and Permanent Injunctive Relief)

20. Plaintiff re-alleges and incorporates by reference the foregoing allegations.

21. Plaintiff moves this court for temporary and permanent injunctive relief as against the county and occupant of 7149 Logistics Lane in the form of Cease and Desist restraining order prohibiting further construction, occupancy or operations permits in violation of law.

22. Plaintiff has no adequate remedy at law where the harm will be irreparable site specific alteration to zoning in light industrial district by construction of a chemical manufacturing use adjacent to schools and homes where the permittee corporation will employ hazardous and toxic gases, chemicals, and process of manufacturing for solar panels and solar photovoltaic cells which will exhaust or discharge volatile organic compounds or toxic pollution via stacks. Plaintiff can show likelihood of success on the merits under existing statutory law and the existing zoning code.

23. That the aforementioned production of solar panels and solar cells by chemical process use did not exist prior to the adoption of zoning code 155.1121 and does not present the county or corporation with any form of vested right prohibiting this court from compelling defendants to order cease and desist or revoke permits issued without zoning administrator signed approval.

24. That the existing Light Industrial zoning allowing distribution not involving chemical processes is county approved by the legislative county council, and bears reasonable relation to surrounding residential and school properties already in existence, and should be upheld and enforce by court order compelling defendants to issue cease and desist orders. *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165 (1952) ("[z]oning regulations are constitutional when they bear reasonable relation to public health, safety, morals, or general welfare, and are not arbitrary in application."

25. Plaintiff is informed and believes that the balancing of equities between public health, safety and welfare outweighs corporate construction under defendants' permitting which presents irreparable harm in the form of spot zoning or site specific zoning not authorized by signature of the zoning administrator.

26. Plaintiff can further demonstrate likelihood of success on the merits pursuant to state statutory law and local zoning law where defendants have issued numerous construction permits without approval of the zoning administrator for York County, specifically.

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

27. That construction now manifesting itself under unlawful permits in violation of law that is imminent in nature, threatens spot zoning or site specific zoning, and threatens toxic exposure to the public of chemicals and toxins by a yet un-tested industrial use.

28. That on information and belief the construction now existing threatens imminent harm in the form of site-specific or spot zoning not approved by the legislative county council in York County. See, *Knowles v. City of Aiken*, 305 S.C. 219 (1991) (invalidating spot zoning and arbitrary reclassification of property inconsistent with surrounding areas). The surrounding areas to 7149 Logistics Lane include elementary school, middle school, retirement community, and dense population of residential homes.

29. Injunction is a proper remedy to halt zoning violations by all named defendants, if permits have issued in violation of zoning and with no approval by the zoning administrator. *Botany Bay Marina, Inc. v. Townsend,* 296 S.C. 52 (1988).

30. Plaintiff seeks Temporary Restraining Order followed by Preliminary and Permanent Injunction, and/or order for defendants to cease and desist construction or operational permits issued without approval of zoning administrator that constitutes any change is use of the parcel not approved by the legislative body in York County.

PETITION FOR WRIT OF MANDAMUS

31. The above allegations are re-stated and incorporated by reference as if set forth verbatim.

32. Mandamus will lie where a clear legal right and a corresponding ministerial duty exists. *Charleston Cty Sch. Dist. V. Charleston Cty. Election Comm'n*, 336 S.C. 174 (1999). Plaintiff and citizens similarly situated have a clear legal right to rely upon the existing zoning to protect health, safety, and general welfare from environmental hazards and nuisance. Stay or revoking permits is a ministerial function of Defendants as administrative arm of York County government where there is no change of use or zoning approval signed by the zoning administrator.

33. That the land use defendants have issued repeated permits upon did not exist previously in the Light Industrial district at 7149 Logistics Lane. This court should compel defendants by Writ of Mandamus to revoke permits and cease construction or potential operation of chemical plant at 7149 Logistics Lane.

34. On information and belief, defendants have a non-discretionary duty pursuant to York County ordinance §155.1121 and pursuant to S.C. Code Ann. §6-29-950 where change of use, or variance are functions of the legislative body, the York County Council requiring approval of the legislative body.

6

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

35. If the court should determine defendants have issued permits without approval by the zoning administrator, the evolving result is site specific zoning, or spot zoning, in progress by way of construction without change of use, or lawful permits, good cause exist for Writ of Mandamus commanding the defendants named to issue cease and desist orders to the occupant corporation.

36. That should this court determine the occupant corporation and permittee constructed having no written approval of the zoning administrator and that the proposed use was not approved by the legislative council or board of zoning appeals for York County, good cause exists where Writ of Mandamus should issue, compelling defendants to order stop work orders and cease and desist to the permittee.

37. That Plaintiff prays this court issue Writ of Mandamus commanding York County officials named as defendants to REVOKE all non-compliant permits, require the occupant and its general contractor to cease and desist all construction involving chemical process activities at 7149 Logistics Lane in Fort Mill, and enforce Chapter 155.1121 of zoning and S.C. Code Ann. §6-29-950.

PETITION FOR WRIT OF PROHIBITION

38. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.

39. Plaintiff as petitioner moves the court to issue Writ of Prohibition and Order restraining and enjoining defendants, specifically York County Planning and Development, from further issue of any permanent occupancy or operational permits without first verifying the use now constructed by Silfab at 7149 Logistics Lane.

40. Plaintiff is informed and believes that plaintiff has a clear legal right to rely upon existing zoning and not be subjected to potential spot zoning, or chemical and toxic discharges from any industrial or chemical manufacturing use not permitted by code.

41. That defendants nor the corporation would suffer any prejudice where there is no permanent occupancy permit nor any operations permit and the corporation allegedly has not begun chemical manufacturing operations yet to date has on information and belief imported and is actively storing toxic chemicals on a site.

42. Plaintiff is informed and believes that defendants named in this action owe a duty to plaintiff and the citizenry which is ministerial in nature to revoke permits or issue cease and desist orders, but have arbitrarily refused where defendants named are aware that there exist no change of use, variance, and the zoning compliance is reviewed and approved, approved with conditions, or not approved by the zoning administrator, specifically. S.C. Code Ann. §6-29-950, et seq.

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

43. S.C. Code Ann. §6-29-950 prohibits issuance of permits where no signed approval of the county zoning administrator, specifically, and the zoning code provides affirmatively that an applicant corporation or permittee shall obtain zoning compliance approval prior to (a) establishing a new conditional or special exception use; (b) changing an existing use; (c) re-establishing a use after a period of non-use of 180 days or more; or (d) constructing, moving, adding to, or structurally altering a building or other structure. See, §155.1121 York County Ordinances.

44. Plaintiff is informed and believes that the applicant and permittee corporation has affirmatively and unlawfully engaged in the conduct described in (a) through (d) above by and through defendants named in this action, acting without Zoning Administrator signed approval, the defendants acting in gross recklessness, in violation of law, indifferent to public health and safety of residents.

45. The applicant corporation will employ hazardous chemicals including, but not limited to, Hydrofluoric Acid, Silane, Phosphorus Oxychloride, Hydrochloric acid and Trimethylaluminum exhibiting change of land use now evolving at 7149 Logistics Lane.

46. Plaintiff is informed and believes that a Writ of Prohibition forbidding any further construction or permanent operations permit, including cease and desist orders by the defendants, is necessary and appropriate here the corporation applicant/tenant/ permittee has been cited for violations including employee occupancy and work where no temporary occupancy permit.

47. That on information and belief the corporation is actively storing toxic chemicals at 7149 Logistics Lane without operations permit in violation of law or operations permit, including Triethylaluminium.

48. Plaintiff is informed and believes that county officials have proceeded by permits to permit the corporation alteration and build-out of a heavy industrial chemical plant or chemical manufacturing use knowing the site at 7149 Logistics Lane in Fort Mill is Light Industrial, and not heavy industrial.

49. Plaintiff is informed and believes that the defendants know and are aware that there has been no change of use or variance by the county legislative body, yet defendants have recklessly permitted construction to near completion of a chemical manufacturing use in the immediate vicinity of adjacent schools and homes in indifferent, grossly negligent, unlawful, careless, willful and wanton manner.

50. That the 7149 Logistic Lane site was originally utilized and zoned for warehouse distribution, where the use newly proposed use of chemical manufacturing was not in existence at the time of ordinance enactment by the York County legislative body.

51. Plaintiff is informed and believes that the court should issue a Writ of Prohibition mandating that the defendants be prohibited, restrained and enjoined from issuing full

8

operational permits for chemical storage and use of chemical processes involving hazardous and toxic chemicals, specialty gases, and exhaust of pollution and volatile chemical compound exhaust in proximity to adjacent Fort Mill schools and residential homes.

52. That Plaintiff is without adequate remedy at law against the immediate grotesque recklessness and inherent harm of site specific or spot zoning that violates the zoning of the site, changing the land use that was originally warehouse distribution now evolving by construction into a chemical manufacturing use; Plaintiff can show likelihood of success on the merits by virtue of the zoning code and statutory law.

WHEREFORE, having set forth Plaintiff's causes of action, Plaintiff prays the following relief issue under order of this court:

1. That the court issue Declaratory Judgment pursuant to S.C. Code Ann. § 6-29-950 et seq that any change of use must necessarily be executed and signed specifically by the signature authorization of the zoning administrator for York County in order to be lawful, and that any permits issued are in violation of the statute.

2. That this court issue WRIT OF MANDAMUS ordering York County and its officials, named as defendants to REVOKE permits issued without written approval of the Zoning Administrator, pursuant to code §6-29-950 and issue stop work orders or cease and desist orders as to the permittee corporation.

3. That this court issue WRIT OF PROHIBITION to prohibit occupancy permit and prohibit further storage or use of chemicals or chemical manufacturing use of same to produce product upon or within a district and property without zoning approval use now taking form at 7149 Logistics Lane, Fort Mill, S.C 29715. That defendants should be compelled to issue stop work orders where constructing is altering the warehouse distribution facility into a chemical manufacturing use.

4. Plaintiff seeks temporary stop work orders and cease and desist injunctive relief, followed by permanent injunctive relief by Writ of Prohibition until the corporation complies with zoning §155.1211 and S.C. Code Ann. §6-29-950 to stop and prohibit spot zoning or site specific zoning of a land use that violates zoning code.

5. For such other and further relief in favor of the Plaintiff as the court may deem just and proper under the circumstances.

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9

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

Respectfully submitted,

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October 10, 2025

ELECTRONICALLY FILED - 2025 Oct 13 10:02 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

10

ELECTRONICALLY FILED - 2025 Nov 17 5:12 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	C/A NO.: 2025-CP-46-04007
	)	
Dennis Floyd Bivins,	)	
	)	
Plaintiff,	)	
	)	**DEFENDANTS' MOTION TO DISMISS**
vs.	)	
	)	
York County by and through Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director,	)	
	)	
Defendants.	)	
	)	

TO: J. CAMERON HALFORD, ATTORNEY FOR PLAINTIFF AND PLAINTIFF:

PLEASE TAKE NOTICE that Defendants York County, Joshua Edwards, Josh Reinhardt, and Jonathan Buono (collectively hereinafter, "the County"), by and through the undersigned counsel, will move before the York County Court of Common Pleas to dismiss Plaintiff Dennis Floyd Bivins' Complaint pursuant to Rule 12 of the South Carolina Rules of Civil Procedure ("SCRCP"). The County's Motion is based on the following grounds:

1. Plaintiff has failed to sufficiently plead that he has standing to bring this lawsuit. Therefore, the Court should dismiss pursuant to Rule 12(b)(1), SCRCP for lack of jurisdiction.
2. Plaintiff's causes of action and requested relief are not ripe and justiciable for the Court's consideration pursuant to the pending litigation in *Silfab Solar, Inc. v. York County Board of Zoning Appeals*, C/A No. 2024-CP-46-02641 and *Citizens Alliance for Government Integrity, Inc., a South Carolina Non-Profit v. Silfab Solar, Inc., Exeter 7149 Logistics,*

ELECTRONICALLY FILED - 2025 Nov 17 5:12 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

L.P., and York County, C/A No. 2024-CP-46-03532 ("Related Litigation"). Therefore, the Court should dismiss pursuant to Rule 12(b)(1), SCRCP for lack of jurisdiction.

3. Plaintiff fails to plead facts sufficient to warrant a declaratory judgment, injunctive relief, or the extraordinary relief of writs of mandamus and prohibition. Therefore, the Court should dismiss pursuant to Rule 12(b)(6), SCRCP for failure to state facts sufficient to constitute a cause of action.
4. Plaintiff fails to name Silfab Solar, Inc., the entity the Complaint identifies as the permittee of the approvals and permits it seeks to revoke, enjoin from further development, and which Plaintiff alleges has violated state and local laws, as a defendant in this matter. Because Plaintiff has failed to name a party necessary for just adjudication of this matter, the Court should dismiss pursuant to Rule 12(b)(7), SCRCP.
5. The claims asserted in the Complaint are currently pending in the Related Litigation, advanced by related parties sharing the same legal counsel. Therefore, the Court should dismiss pursuant to Rule 12(b)(8), SCRCP.

Accordingly, the Court should grant the County's Motion to Dismiss. The County reserves the right to file any additional supporting affidavits or legal authority in support of the motion prior to any hearing on this Motion. This motion will be supported by a memorandum of law filed prior to any hearing on this Motion.

[SIGNATURE PAGE FOLLOWS]

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Respectfully submitted,

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Attorneys for Defendants York County and Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director, each in their official capacities

Columbia, SC
November 17, 2025

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Dennis Floyd Bivens,	)	
Plaintiff,	)	Case No. 2025-CP-46-04007
-vs-	)	(PLAINTIFF)
	)	~~DEFENDANT~~ RETURN TO DEFENDANTS'
YORK COUNTY by and through Josh Edwards, York County Manager; Josh Reinhardt, York County Development Services Manager; and Jonathan Buono, York County Planning and Development Services Director,	)	JOINT MOTIONS TO DISMISS
Defendants.	)	

TO: HON. J.G. MORGAN, PRESIDING JUGDE:

Plaintiff here files its Memorandum of Law opposing defendants' motions to dismiss under all sub paragraphs of Rule 12 SCRCP, Rule 12(b)(1), Rule 12(b)(6), Rule 12(b)(7) and Rule 12(b)(8). Plaintiff shows the following in requesting the court deny the relief sought by defendants:

BACKGROUND

Dennis Boyd Bivens is a neighboring property owner to the Silfab Solar Inc. ("Silfab") site at 7149 Logistics Lane in Fort Mill. Silfab has been granted successive permits by York County administrative (not legislative) government, beginning after York County Board of Zoning Appeals May 30, 2025 reversing of the Zoning Administrator and Silfab. While defendants ask this court to take judicial notice of other pending cases, under Rule 12(b)(6) the court must construe this motion strictly in view of the pleadings in this case no. 2025-CP-46-04007.

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

STANDARD OF REVIEW

A defendant may move to dismiss a complaint based on Plaintiff's failure to state facts sufficient to constitute a cause of action. Rule 12(b)(1), SCRCP. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In reviewing a motion to dismiss, the court must accept as *true* the well-pleaded facts in the complaint. In considering such a motion, the trial court must base its ruling solely on the allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the Plaintiff, would entitle the Plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Baird v. City of Charleston*, 333 S.C. 519, 511 S.E.2d 69 (1999).

The court must consider whether the complaint, viewed most favorable to the non-movant, states any valid claim for relief. *Gentry v. Yonce,* 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle Plaintiff to relief under any theory. Id. The complaint should not be dismissed merely because the court doubts the Plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Under Rule 56 SCRCP, viewed most favorably to the non-movant well pleaded facts, inferences deducible therefrom, and the evidence of public record show genuine issue of material fact in favor of Plaintiff as to whether the county has issued unlawful permits and caused special harm to the Plaintiff, adjoining landowner. As stated by our Supreme Court, the proper standard under Rule 56 is the "genuine issue of material fact" standard set forth in the text of the rule. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456 (2023). There is no scintilla standard any longer. Provided, however as our high court has stated "it is not sufficient for a party to create an inference

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. at 477, 744 S.E. at 166.

DISCUSSION and APPLICATION

Plaintiff has sought declaratory judgment and extraordinary writs of this court where the county defendants absolutely have no signed permit approval by zoning administrator. See, S.C. Code Ann. § 6-29-950. Moreover, the county administration has issued repeated construction permits despite having no approval of the Zoning Administrator. Provided, the county's quasi legislative body has affirmatively spoken. The Board of Zoning Appeals reversed the zoning administrator and Silfab on May 30, 2025 finding that Silfab's propose use did not comply with the prevailing zoning code.

It is true this matter is on appeal to the circuit court as pointed out by defendants. The circuit court on this matter has not ruled and briefing deadlines are pending. Provided, this does not eliminate Plaintiff's standing, nor is it duplicative litigation. Plaintiff has filed a stand-alone case for injunctive relief where plaintiff seeks writs of prohibition and writs of mandamus against the county (not Silfab). Only the county departments and officials named can permit or revoke permits. Silfab cannot do so and has no such statutory authority as it is not a governmental entity or body politic. Plaintiff's failure to name Silfab therefore in no way impacts standing of neighboring owner Dennis Floyd Bivens pursuant to S.C. Code Ann. 6-29-950(A). The statutory text is clear and unambiguous.

STRICT CONSTRUCTION OF THE STATUTE
6-29-950(A)

The cardinal rule of statutory construction is that the court must ascertain and effectuate the intent of the legislature, and in interpreting a statute, the court must give the words their plain and ordinary meaning without resorting to a tortured construction which limits or expands the

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

statute's operation. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996); *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996). Moreover, the court should give statutory provisions a reasonable construction consistent with the purpose of the statute. *Jackson v. Charleston County Sch. Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994). Here defendants seek a tortured construction of the statute 6-29-950(A), and argue disingenuine fact that a zoning technician signature satisfies the statute's plan and unambigious language regarding the requirement of the zoning administrator, specifically, authorization signature.

While 6-29-950(A) identifies only the "zoning administrator", section 6-29-950(B) addresses who may proceed where building, structure, or land is or is proposed to be used in violation of any ordinance. Those who have standing and are empowered to act are enumerated within the statute as adjacent or neighboring owners, the zoning administrator, or "other appropriate administrative officer" which is not explicitly defined. Neverthless, section (B) to the statute pertains to those authorized to file actions for violation of the statute, assuming they may be specially damaged by violation. Herein lies the achilles' heel to defendants' arguments.

ARGUMENT

In rebuttal to defendants' motions, standing is present under the well pleaded facts. For standing to exist, a plaintiff must establish three elements. First, the Plaintiff must have suffered an "*injury in fact*"-an invasion of a legally protected interest which is (a) concrete and particularized..and (b) "*actual or imminent*, not "*conjectural*" or "*hypothetical*"..... *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L.Ed. 2d 351 (1992). "Injury in fact" is the "[f]irst and foremost of standings three elements. *Meyer v. McMaster*, 394 F. Supp. 3d 550,

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

558 (D.S.C. 2019) (internal citations omitted here). Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly traceable to the challenged action of the defendant, and not …th[e] result [of] the independent action of some third party not before the court. *Jujan*, 504 U.S. at 560-561 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 96 S. Ct. 1917, 1926, 48 L.Ed. 450 (1976). Third, it must be "likely" as opposed to merely "speculative" that the injury will be "redressed by a favorable decision." Id. at 561 (quoting Simon, supra, 426 U.S. at 38, 43).

Plaintiff now addresses defendants' arguments on standing. The statute is clear and evidences the plaintiff has standing where the county illegally permits a change of use of the site. A warehouse distribution warehouse is being converted to a chemical manufacturing operation adjacent to plaintiff's home. The statute provides that an adjacent or neighboring property owner may proceed under the statute:

"[I]n case of a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator, or other appropriate authority of municipality or county … or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies …institute injunction, mandamus (*emphasis) or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction (*emphasis), alteration, conversion (*emphasis), maintenance, use (*emphasis) or to correct or abate the violation, to prevent the occupancy of the building, structure or land. S.C. Code Ann. §6-29-950 (A), at 8-12. The statute unequivocably provides Plaintiff has standing when this motion is viewed most favorably to the non-movant.

1. Plaintiff has unequivocal standing as neighboring property owner to 7149 Logistics Lane where defendants named have permitted on-going construction in violation of law S.C.

Code Ann. 6-29-950 (2004), specifically not having the signature of the Zoning Administrator.

York County relies on theory of implied approval of the zoning administrator, where the zoning administrator has not signed permits. The statute is plan and not ambiguous, and must be construed according to its plain meaning. The statute provides....*[I]t is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion (*emphasis), demolition, enlargement, movement, or structural alteration (emphasis) of a building or structure without the approval of the zoning administrator.*"

a. Injury in fact – spot zoning or site-specific zoning.

Silfab nears full conversion and structural alteration of a distribution warehouse being upfitted for chemical manufacturing of solar panels and solar cells. Silfab does so under county issued permits without approval of the zoning administrator. Defendants claim "department" approval signed by a zoning technician is sufficient. While the defendants argue implied authority, the conduct nevertheless violates the plain and unambiguous letter of the law. See, S.C. Code Ann. 6-29-950(A). Viewing Plaintiff's claims as true unlawful use is occurring wherein a distribution warehouse is being converted, altered, and structurally altered to a non-conforming use adjacent to Plaintiff's home.

b. Proximate Legal Cause.

Bivens can establish foreseeability and that but for the county's repeated issue of permits not approved by its Zoning Administrator, the spot zoning in progress would not be occurring in Fort Mill next to Bivens' neighboring home at 7149 Logistics Lane.

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

c. No adequate remedy at law.

Addressing the third element, the threatened harm is likely and not merely speculative. Should the circuit court grant the relief being sought by writ of mandamus or writ of prohibitition. It will merely compel the county to obtain proper signature of its own administrative zoning official (not a subpordinate zoning technician) and comply with zoning vs. attempting site-specific zoning of a chemical manufacturing process use upon a tract where zoning authorizes only warehouse distribution, and not chemical manufacturing. While sub paragraph (B) of the statute provides for stop worker order requiring that the entity (Silfab) by the county's permittee stop all activities in violation of the zoning ordinance, no such official designated by the statute has acted to do, and plaintiff has had to resort to the circuit court. Viewing all facts and inferences most favorably to the movant under well pleaded complaint, the court can take judicial notice that from the very first permit issued by the administrative government to Silfab, all issue without approval of the zoning administrator.[1] The statute makes clear that It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without approval of the zoning administrator.

Defendants also take issue with plaintiff's standing, ignoring what they already know from past litigation and plain statutory law. S.C. Code Ann. §6-29-950(A), et seq. The statute unequivocably provides neighboring owners standing to petition the court for the very relief sought by Plaintiff, extraordinary writs of mandamus and prohibition. Defendants attempt to conflate the issue by reference to other pending cases not involving Plaintiff Dennis Floyd Bivens:

[1] The zoning administrator resigned after May 30, 2025 and the zoning administrator position has been vacant since March 30, 2025. Prior to resignation, the zoning administrator delivers to Silfab and the County/Respondent that their proposed use is not compatible with the light industrial zoning. The county nonetheless issues permits for construction on June 28, 2024. The zoning administrator had not yet resigned, but the respondent can produce no permits signed permits under S.C. Code Ann. 6-29-950(A)

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

2. Plaintiff's claims are distinguishable from all other pending litigation in circuit court as Plaintiff's claims are first to seek circuit court issuance of extraordinary writ in the form of writ of prohibition against the county where it is not necessary to name a permittee that has no vested interest nor any legal permits.

Defendants' memorandum lists two (2) pending circuit cases: (1) Case No. 2024-CP-46-02641 *Silfab Solar, Inc. v. York County Board of Zoning Appeals*; and (2) Case No. 2024-CP-46-03532 *Citizens Alliance for Government Integrity v. Silfab Solar, Inc., Exeter 7149 Logistics, L.P.* ("Related Litigation") [Def. memorandum at 2, para. 2]. The second case is stayed by order of circuit judge Martha Rivers, pending outcome of the first. The first is an Appeal by Silfab of the BZA May 30, 2024 reversal of the Zoning Administrator and Silfab interpretations of proposed use of 7149 Logistics Lane. Where, there was absolutely no change of use petition nor petition for variance. The York County BZA ruled against the respondents in a five-to-zero reversal, yet permits have continued to issue ultra vires by the county to Silfab, where no approval of the zoning administrator exists. S.C. Code Ann. 6-29-950(A). The Plaintiff lists these matters for the court, as Dennis Floyd Bivens' petition is separate and distinct from the above and below cases. This matter is properly before the court and presents the court with a ripe and justiciable controversy pursuant to the zoning code and S.C. Code Ann. 6-29-950(A).

3. Petition to Supreme Court for Exercise of Origninal Jurisdiction - Supreme Court Case No. 2025-002174: Citizens Alliance for Government Integrity v. York County, et al.

Defendants conflate Dennis Floyd Biven's case in attempt to intwine other existing circuit court litigation, as set forth in their memorandum. Yet, they omit the case identified by plaintiff in item (3) above, which is a non-profit petition to Supreme Court seeking the Supreme Court exercise original jurisdiction including petition for Writ of Mandamus and Writ of Prohibition. Plaintiff makes the circuit court aware that petitions have been made by non-profit entity Citizens

Alliance for Government Integrity ("CAGI") that the Supreme Court exercise original jurisdiction. The South Carolina Supreme Court has not done so effective with the date of this filing, nor has it declined to do so.

Defendants do not list the above petition seeking the Supreme Court exercise original jurisdiction for the same causes of action listed in this case. The reason is simple, the party seeking Supreme Court intervention is not Dennis Floyd Bivens, who has petitioned the circuit court. It is a citizens group and non-profit. Moreover, the defense counsel is the same legal counsel in the Supreme Court as in this circuit court matter.

Until and unless the Supreme Court acts to exercise original jurisdiction, or declines to do so, the circuit court has jurisdiction and the plaintiff has standing viewing the complaint allegations most favorably to Dennis Floyd Bivens.

CONCLUSION

For the foregoing reasons, plaintiff Dennis Floyd Bivens requests the court deny defendants' motion to dismiss. Permits can only be issued with the approval of the Zoning Administrator. S.C. Code Ann. 6-29-950(A). The corporation cannot do so. The county issuing permits without zoning administrator approval is ultra vires conduct. Failure to name Silfab corporation is in no way fatal to Plaintiff's causes of action for this reason, and the defendants' motion should therefore be respectfully denied.

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ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the Plaintiff in the above entitled action and that I did by electronic filing and email serve a copy of the foregoing Plaintiff Return and Memorandum in Opposition to Defendants' Motion to Dismiss by delivery to the following counsel of record at addresses listed with the South Carolina AIS of the South Carolina bar.

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ELECTRONICALLY FILED - 2025 Dec 13 2:01 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA COUNTY OF YORK Dennis Floyd Bivins, Plaintiff, vs. York County by and through Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director, Defendants.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C/A NO.: 2025-CP-46-04007 **DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**

INTRODUCTION

Defendants York County, Joshua Edwards, Josh Reinhardt, and Jonathan Buono (collectively, the County), by and through the undersigned counsel, respectfully submit this memorandum in support of their Motion to Dismiss Plaintiff Dennis Floyd Bivins' Complaint pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure (SCRCP).

This action is the *third* civil matter presently pending before the circuit court arising from the facts set forth below.[1] Each of the plaintiffs in these related cases is represented by the same counsel, Mr. Halford, who has also represented related, or the same, parties in two appellate

[1] Specifically, two other matters are similarly pending in the Court of Common Pleas, Sixteenth Judicial Circuit, York County: (1) 2024-CP-46-02641, *Silfab Solar, Inc., et al. v. York County Board of Zoning Appeals*; and (2) 2024-CP-46-03532, *Citizens Alliance for Government Integrity, Inc., a South Carolina Non-Profit v. Silfab Solar, Inc., Exeter 7149 Logistics, L.P., and York County by and through its Planning and Development Services and Zoning Administrator, a body politic and political subdivision of York County and the State of South Carolina* (collectively, the Related Litigation).

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

proceedings regarding the subject matter of this case.[2] Collectively, these challenges pursue a single objective: to halt non-party Silfab Solar, Inc.'s (Silfab) county-approved, -induced, and -regulated development in York County. However, this piece of the continued coordinated attempt cannot succeed, as a matter of law, and therefore should be dismissed.

BACKGROUND

A. Zoning Compliance Verification

In late 2022, Silfab sought zoning compliance approval under subchapter E, part 13 of the York County Zoning Code (§§ 155.1120 *et seq.*) for proposed solar panel manufacturing operations on a parcel located at 7149 Logistics Lane, Fort Mill, South Carolina (Parcel). The Parcel is located in a multi-county industrial park developed by York and Chester Counties under South Carolina Code section 4-1-170 and is zoned Light Industrial. On December 27, 2022, the County's zoning office,[3] a division of the County's Planning and Development Services Department, issued a letter to Silfab verifying that Silfab's proposed operations were compatible

[2] Those matters are (1) Appellate Case No. 2025-001325 (Petition denied July 21, 2025), and (2) Appellate Case No. 2025-002174 (Pending review) (collectively, the Related Appellate Litigation).

[3] The Complaint attempts to attach significance to the fact that the Zoning Compliance Verification issued to Silfab lacked the Zoning Administrator's signature, arguing Zoning Administrator alone may approve or deny zoning compliance. Instead, a staff member of the Zoning Division, with the title of "York County Zoning Technician," signed the Zoning Compliance Verification letter to Silfab. The fact that the Zoning Compliance Verification to Silfab was signed by the technician assigned to the request is indicative and dispositive of nothing. The County's Zoning Division staff is specifically tasked with assisting the public with requests or information associated with the use and development of property within the County. *See* https://www.yorkcountygov.com/377/Zoning. Among the staff's responsibilities is to "[r]eview and approve subdivision plats and non-residential site plans for compliance with York County development regulations." *Id.*; *see also* Zoning Code § 155.957 (Table 155.957-1). Compliance reviews and approvals are evaluated collectively by the staff, including the Zoning Administrator, prior to responding to the requesting person or entity. Therefore, the Zoning Compliance Verification was the Zoning Division's official position on the inquiry, the letter was not appealed and has not been revoked or rescinded, and Plaintiff's allegations to the contrary are meritless.

and compliant with the Parcel's Light Industrial zoning district (Zoning Compliance Verification). *See* Ex. A.[4] No challenge or appeal of the Zoning Compliance Verification was instituted.

B. Fee in Lieu of Tax and Incentive Agreement

During that same period, Silfab and the County began negotiating a fee in lieu of tax (FILOT) and incentive agreement to induce Silfab to locate its operations in the County. A proposed inducement and incentive ordinance (Inducement Ordinance) that would authorize the execution of the FILOT agreement was introduced and given first reading by County Council on March 6, 2023. *See* Ex. B, at 4. Second reading, along with a public hearing, occurred on August 21, 2023. *Id.* On September 18, 2023, the County Council held a third reading of the Inducement Ordinance and enacted the same. *Id.* In pertinent part, the Inducement Ordinance authorized and directed County representatives to execute the FILOT agreement. *Id.* at 2, Section 2. The Inducement Ordinance provides that "[a]ll ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed." *Id.* at 3, Section 5.

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[4] Ordinarily, the Court cannot consider materials outside the complaint in ruling on a motion to dismiss. Under certain circumstances, however, the Court can consider additional information without converting the motion into a motion for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding that a Court may consider documents incorporated by reference in the complaint to prevent plaintiffs "from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based"); *see also Phillips v. LCI International, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999) ("[A] court may consider [a document attached to a motion to dismiss, but not to the complaint] in determining whether to dismiss the complaint because it was integral to and explicitly relied on in the complaint and because plaintiffs do not challenge its authenticity"); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) ("[S]ources courts ordinarily examine when ruling on Rule 12(b)(6) motions [include] documents incorporated into the complaint by reference, and matters of which a court may take judicial notice"); *Sheppard v. Tex. Dep't of Transp.*, 158 F.R.D. 592, 595-96 (E.D. Tex. 1994) ("[D]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [plaintiff's] claim."). Each of documents attached to this memorandum are either explicitly referred to and relied upon by Plaintiff in the complaint, referenced or relied upon by inference, or are public records of which this Court may take judicial notice. *See* Rules 201, 803(8), SCRE.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

In accordance with the Inducement Ordinance, also on September 18, 2023, the County and Silfab executed the FILOT agreement. *See* Ex. C. The FILOT is a binding agreement between the County and Silfab to pursue development of the Silfab project at the Parcel. Among other terms, Recital 4 of the FILOT states that "[t]he Project is located, or if not so located as of the date of this Agreement, the County intends to use its best efforts to locate the Project, in a Multi-County Park."[5] *Id.* at 1. Recital 5 further provides that:

> The County has determined that it is in the best interests of the County to enter into this Agreement with [Silfab], subject to the terms and conditions set forth herein, and, by Ordinance No. [6623] enacted by the Council on September 18, 2023 ... approved the form, terms and conditions of this Agreement *and ratified all prior actions taken with respect to the Project.*

Id. at 1–2 (emphasis added). Thus, the County, through formal legislative action of its County Council, has approved and has specifically induced Silfab to locate in the County at the site in question. Further, based on the FILOT agreement's finding that "all prior actions taken with respect to the Project" were ratified, as authorized by official action taken by the County Council in the Inducement Ordinance, the Zoning Compliance Verification issued by the County's zoning office specific to both Silfab and the Parcel was legislatively approved.

Thereafter, Silfab began undertaking steps to develop the identified Parcel, including seeking relevant permits and authorizations from the County and other relevant regulatory entities, site work, and construction on the site.[6]

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[5] Multi-County Park is defined in the FILOT agreement as "the joint county industrial park (York County and Chester County) established pursuant to the terms of the [November 11, 2002 Agreement for Development of Joint County Industrial and Business Park]." *Id.* at 5.

[6] Since it began developing, to date, Silfab has had two building-related violations at the Parcel. First, during a routine meeting onsite on May 20, 2025, the County discovered that three support buildings within the bulk storage area were partially constructed prior to building permits being issued. As each of these buildings required a separate building permit, three individual stop work orders were issued on May 21, 2025, for construction without building permits. Conditions to rectify the orders included submittal of the appropriate permit documents, licensed contractor information, as well as a letter from an engineer in order to verify that construction had been

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

C. Related Litigation

As mentioned at the outset, in addition to this lawsuit, two other pending challenges have been mounted against Silfab's county-approved and -regulated operations, involving substantially similar (or identical) arguments.

1. Zoning Interpretation and Subsequent Appeal

On February 1, 2024, Walter Buchanan, a resident of Fort Mill, requested a zoning interpretation (Zoning Interpretation Request) from the County Planning and Development Services Department under Subchapter E, Part 11 of the York County Zoning Code (§§ 155.1090 *et seq.*). Ex. D. Zoning Code section 155.1090 states the purpose of a zoning interpretation is "to clarify ambiguities in the Zoning Code and to resolve any ambiguities in future amendments." Although intended to address ambiguities within the Zoning Code itself, the Zoning Interpretation Request submitted seven inappropriate questions directed specifically at the approval of Silfab's development of the Parcel. *Id.*

On February 16, 2024, the County Zoning and Development Standards Administrator provided a response to the Zoning Interpretation Request (Zoning Interpretation). Ex. E. Therein,

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completed according to building code requirements. Upon completion of the aforementioned requirements, the stop work orders were lifted on June 27, 2025.

Second, on June 20, 2025, the County was notified that non-construction employees of Silfab were present at the facilities constructed on the Parcel and conducted a site visit on June 23, 2025. During that site visit, the County observed non-construction employees on site conducting certain educational training. In addition, the County discovered that other violations related to egress, exit lighting, sprinkler systems, and fire alarm systems not being fully operable, liquid fuel equipment being operated within the building, and fuel tanks being stored in an incorrect location. No formal operations were taking place. Because Silfab had not yet received a certificate of occupancy for the facilities for non-construction personnel, in addition to the other noted violations, the County issued a stop work order to Silfab on June 24, 2025. Upon adequate assurances that the non-construction personnel were not and would no longer be present at the site, and demonstration of correction of the other noted violations, the County lifted the stop work order on June 27, 2025. No other formal corrective action has been taken by the County.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

the County declined to address the requests, consistent with its authority under section 155.1093(B), as it did not perceive the referenced code sections to be ambiguous, and provided certain "clarifications" as to other tangentially-related issues. *Id.* Thereafter, on March 14, 2024, Mr. Buchanan appealed the Zoning Interpretation and certain of his submitted questions to the County Board of Zoning Appeals (BZA), (BZA Appeal). Ex. F.

On May 9, 2024, the BZA held a hearing on the BZA Appeal, following which it voted 5-0 to reverse the Zoning Interpretation and thereafter issued a final decision setting forth a written record of its decision and findings (BZA Order). *See* Ex. G. In pertinent part, the BZA Order characterized the questions presented in the appeal as: (1) whether "Solar Panel Manufacturing is a Permitted Use within the Light Industrial Zoning District"; and (2) whether "Solar Panel Manufacturing [is] considered a Heavy Industrial use." *Id.* at 2. Neither question proposed by the BZA in its order were presented by Mr. Buchanan in his Zoning Interpretation Request. *Compare* Ex. D, *with* Ex. G. Nor did the BZA answer the threshold question of whether an appeal of the Zoning Interpretation was cognizable, in light of the fact that the Zoning Administrator declined to answer any of the question posed by the Zoning Interpretation Request. *Id.* Ultimately, the BZA Order contained the following conclusions:

> i. The Zoning Administrator erred in determining that Solar Panel Manufacturing is a Use under Computer and Electronic Products Manufacturing permitted in Light Industrial; and
> ii. Solar Panel Manufacturing is not listed as a Use applicable for the Light Industrial Zoning District and is therefore prohibited pursuant to section 155.270(G),[7] York County Code of Ordinances.

Id. at 3. The BZA Order did not mention Silfab, its specific project, or the Parcel.[8]

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[7] Section 155.270(G) of the Zoning Code provides: "**Unlisted Uses Prohibited.** Any use not listed for an applicable zoning district in the Use Table is prohibited." (Emphasis in original).

[8] Although not relevant or dispositive for this Motion, it is the County's position that the procedures afforded by the Code of Ordinances for requesting a zoning interpretation may not be used to challenge a specific project or development. *See* York County Zoning Code § 155.1090.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Thereafter, Silfab and its landlord, Exeter 7149 Logistics, L.P. (Landlord), as parties with substantial interest in the decision, appealed the BZA Order to the circuit court.[9] *See supra* note 1. As a result of the appeal, the BZA Order is stayed by virtue of subchapter E, part 3 of the York County Zoning Code. *See* York County Zoning Code § 155.982(C) ("**Effect on Other Proceedings**. An appeal [of an administrative decision] stays all legal proceedings by the County relating to the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals, after the appeal application has been filed, that a stay would cause an imminent peril to life and property.") (emphasis in original).[10] Consistent with South Carolina Code section 6-29-820(B)(2), Silfab requested pre-litigation mediation of the BZA Appeal, and on April 21, 2025, the parties unsuccessfully mediated the case. As a result, the matter is ongoing and, thus, the BZA's determination as to the Zoning Interpretation is not final.[11]

That is particularly the case where the project is relying on an unappealed zoning compliance verification from the County that predates the zoning interpretation request and is being relied upon for development or operating. Opening the door to that type of after-the-fact, collateral challenge is not only legally unsustainable under the Code of Ordinances but also would wreak havoc on County business, undermine the legislative authority of the County Council, and give voice to a heckler's veto that would grind development to a halt.

[9] On October 22, 2024, Mr. Buchanan, represented by Mr. Halford, was granted intervention in the pending BZA Appeal circuit court action.

[10] The Zoning Administrator has not certified that a stay of the Zoning Interpretation is warranted due to imminent peril to life and property; therefore, the BZA Order is stayed.

[11] In addition to this litigation and those listed in notes 1 and 2, *supra*, Mr. Buchanan, again represented by Mr. Halford, also attempted to collaterally challenge the air quality permit issued to Silfab by the South Carolina Department of Environmental Services (SCDES) by way of a request for contested case stemming from a July 30, 2024 acknowledgment letter of SCDES regarding certain air modeling updates conducted by Silfab. *Buchanan v. SCDES and Silfab*; Docket No. 24-ALJ-07-0367-CC. SCDES had issued an air quality permit to Silfab on March 1, 2024, which went unchallenged. Mr. Buchanan's contested case request was dismissed by Order of Chief Judge Anderson for failure to file a response to the motion to dismiss, *see* Rule 19, SCALC, and for lack of jurisdiction based on the timeliness of the challenge. *Id.*, Order dated December 23, 2024. Reconsideration was likewise denied. *Id.*, Order dated January 17, 2025.

2. Stayed Circuit Court Action

On September 5, 2024, Citizens Alliance for Government Integrity, Inc. (CAGI), a South Carolina non-profit, filed a complaint in circuit court against Silfab, Landlord, and the County. *See supra* note 1 (CAGI Action). That lawsuit purports to be a putative class action but seeks only declaratory and injunctive relief, arguing that the subsequently-issued BZA Order and general Zoning Interpretation controls over the prior, specific Zoning Compliance Verification issued to Silfab for the Parcel. The defendants there, including the County, moved to dismiss the action on a number of grounds. While the motions to dismiss were pending, CAGI sought a preliminary injunction to stay or revoke all permits issued by the County to Silfab, identical to the relief sought in this case. On December 18, 2024, The Honorable Martha M. Rivers held a hearing on the pending motions. Thereafter, on January 29, 2025, Judge Rivers issued a Form-4 Order declining to rule on CAGI's motion to stay or revoke all permits and instead stayed the lawsuit pending final resolution of the BZA Appeal.[12]

D. Related Appellate Litigation

In addition to the now three pending circuit court matters arising out of the facts presented here, Silfab's project has been challenged via two petitions filed in our Supreme Court. *See supra* note 2.

[12] Judge Rivers correctly determined that an action seeking a declaratory judgment as to impact of the BZA Order could not be decided where the BZA Order is on appeal and therefore not final, in addition to being administratively stayed. *See* Zoning Code § 155.982(C), *supra.* CAGI, through Mr. Halford, has since twice moved for reconsideration of Judge Rivers' order staying the action. Both motions were summarily denied before the defendants could even respond.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

First, on July 2, 2025, Merlyn Bivins[13] petitioned the Supreme Court to invoke its original jurisdiction to issue writs of mandamus and prohibition (Bivins Petition), requesting that the court require the County to revoke permits issued to Silfab and ultimately halt its project. On July 21, 2025, before the undersigned could file its Return on behalf of the County, the court declined to entertain the matter in its original jurisdiction.

Second, on October 28, 2025, notwithstanding that denial, CAGI petitioned the Supreme Court in its original jurisdiction (CAGI Petition), pursuing writs of mandamus and prohibition on the same bases as those in the Bivins Petition and in this case. The County filed its Return on November 20, 2025, and CAGI filed its Reply on December 1, 2025. As of the date of this filing, the matter is still under consideration by the court.

* * *

That brings us to this action, in which Plaintiff continues to seek relief against both the County and *non-party* Silfab through a collateral attack on the unchallenged Zoning Compliance Verification and related permits issued by the County in this court, despite failing to exhaust his administrative remedies, thereby seeking to prevent Silfab from continuing its development. The action also seeks temporary and permanent injunctive relief and, despite the Supreme Court's refusal to entertain the Bivins Petition seeking the same, writs of mandamus and prohibition aimed at revoking Silfab's permits and ultimately ceasing its operations.[14]

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[13] On information and belief, Merlyn Bivins is Plaintiff Dennis Bivins' mother, and Mr. Buchanan, who sought the Zoning Interpretation and is a party to BZA Appeal, is Merlyn Bivins' son-in-law.

[14] Defendants again emphasize that Mr. Halford represents Plaintiff, the plaintiffs in the Related Litigation, and the petitioners in the Related Appellate Litigation. CAGI's membership list, cited in the relevant appellate filings as comprising approximately 7,076 residents of York County, is neither publicly available nor has been provided to Defendants; therefore, the County has no way of verifying whether the Bivinses or Mr. Buchanan are members of CAGI.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ARGUMENT

The Court should dismiss Plaintiff's Complaint for four overarching reasons, each of which is discussed below.

I. Plaintiff's claims are duplicative.

First, pursuant to Rule 12(b)(8), SCRCP, the Court should dismiss Plaintiff's claims because they are duplicative of those advanced in the Related Litigation still pending in the circuit court, brought by related parties sharing the same legal counsel. *See* Rule 12(b)(8); *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (Ct. App. 2009) (explaining dismissal under Rule 12(b)(8), SCRCP is "proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim.").

More specifically, this action is duplicative of the action against the County stayed by the circuit court. There, the plaintiff (CAGI) seeks (1) declaratory relief, arguing that the subsequently-issued BZA Order and general Zoning Interpretation controls over the prior, specific Zoning Compliance Verification issued to Silfab for the Parcel, and (2) injunctive relief to stay or revoke all permits issued by the County to Silfab. The relief sought by Plaintiff here overlaps with the relief sought in the stayed action. While Plaintiff and CAGI are distinct parties, both are represented by the same attorney.[15] In other words, the Complaint amounts to counsel's second attempt (at least) at advancing the same legal arguments, seeking the same relief, to achieve the same result: to enjoin Silfab's development of the Parcel.[16] South Carolina courts recognize that

[15] And Plaintiff may well be a member of CAGI, but that information is not known or available to the County.

[16] Not to mention the Related Appellate Litigation, in which Mr. Halford sought writs of writs of mandamus and prohibition to halt Silfab's development—relief identical to that pursued here—arising from the same of facts, despite our Supreme Court's denial of that requested relief just months before this lawsuit was filed.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"substantial similarity" between the parties and claims is sufficient to satisfy Rule 12(b)(8). *See, e.g., Cap. City Ins. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009) (stating the claim must be precisely "*or substantially the same*" in both proceedings) (quoting *Beatty v. Liberty Mut. Ins. Group*, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) (applying 12(b)(8) dismissal "where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same.")); *Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (affirming dismissal under Rule 12(b)(8) despite one action being for wrongful death and survivorship and the other for negligent infliction of emotional distress, because both actions were "based upon the same facts and circumstances"). Respectfully, Plaintiff's counsel should not be allowed to evade the consequences of Rule 12(b)(8), SCRCP, merely because different—but clearly related—litigants agreed to advance identical arguments all pursuing the same goal. *See also Sladek v. Sladek*, No. 05-UP-210, 2005 WL 7083851 (S.C. Ct. App. Mar. 21, 2005) (while not dispositive, the court noted that, even though the parties in the two actions were different, they were represented by the same counsel, and Rule 12(b)(8) might apply to bar the subsequent action).[17]

Moreover, "[i]t is settled [law] that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge." *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (1985) (citing cases); *see Graham v. Town of Loris*, 272 S.C. 442, 449, 248 S.E.2d 594, 597 (1978) ("The Court of Common Pleas is a unity. … There is no appeal from one Circuit Judge to another." (quoting *Steele v. C., C. & A Railroad Co.*, 14 S.C. 324 (1880))). It is "clearly an impermissible act" for one circuit judge to reverse an earlier, substantive

[17] Consistent with Rule 268(d)(2), SCACR, this case is not cited for precedential value but merely as information.

order of another circuit judge. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (1986). Here, Judge Rivers has already considered and stayed an action based on identical facts which sought the same injunctive relief and revocation of the permits issued by the County. As such, in practical effect, this action constitutes an impermissible collateral attack on the orders of Judge Rivers and should be dismissed.

II. Plaintiff's causes of action and requested relief are not justiciable for the Court's consideration.

Plaintiff has failed to meet his burden of pleading facts sufficient to demonstrate standing, and his claims are not ripe for judicial review, rendering the matter non-justiciable and compelling their dismissal pursuant to Rule 12(b)(1), SCRCP, for lack of jurisdiction.

"A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy." *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430–31, 468 S.E.2d 861, 864 (1996). The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997). As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996).

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

A. Standing[18]

i. Statutory Standing

To the extent that Plaintiff has or should contend that S.C. Code Ann. section 6-29-950 provides him statutory standing to maintain this lawsuit, the complaint fails to plead the necessary and required facts to satisfy his burden under the precedent of the South Carolina Supreme Court. Beyond that deficiency, Plaintiff overlooks the application of the Inducement Ordinance and the supporting FILOT agreement, **which was passed specifically for the Silfab project and authorizes its development on the Parcel**. The existence of the Inducement Ordinance is fatal to Plaintiff's claim that the County's actions in issuing approvals and permits to Silfab for its development is violative of the Zoning Code, as it eliminates the threshold condition precedent to Plaintiff's claim under section 950(A).

The Supreme Court has stated that "[s]tatutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (citing *Freemantle v. Preston*, 398 S.C. 186, 194-95, 728 S.E.2d 40,

[18] Generally, there are three related avenues by which a plaintiff can demonstrate standing: traditional, constitutional standing; statutory standing, where a specific statute provides a defined opportunity for challenging a particular action; and the public importance exception to standing. Plaintiff does not plead or argue the public importance exception to standing and it has no applicability to this case. Due to the deficiencies of the allegations of the complaint, it is not readily apparent from the face of the pleading whether Plaintiff claims statutory standing, although Plaintiff's memorandum in opposition to this motion to dismiss argues that it does. *But see Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308 (2007) (holding that, in considering a motion to dismiss, a "court may consider only the facts alleged in the complaint," rather than arguments of counsel submitted in memoranda for the purpose of shoring up deficient pleadings). Out of an abundance of caution, and because the complaint is deficient under either avenue, this memorandum addresses the complaint's failure to plead facts sufficient to satisfy both statutory and constitutional standing for the Plaintiff.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

44-45 (2012)). The operative provision of section 950(A) under which Plaintiff could arguably claim statutory standing to bring this lawsuit provides:

> In case a building, structure, or land is or **is proposed to be used in violation of any ordinance adopted pursuant to this chapter**, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner **who would be specially damaged by the violation** may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

(Emphasis supplied). Thus, there are two mandatory requirements for an adjacent or neighboring property owner[19] for a claim under section 950(A) to be viable: (1) first, the property in question must be proposed for a use that would be—or is currently being used—in violation of an ordinance; and (2) second, the adjacent or neighboring property owner must be "specially damaged" by that use. But Plaintiff has failed to plead that he has been "specially damaged" by Silfab's development, or plead any facts that would support such a determination, and the County Council's official action by and through the Inducement Ordinance nullifies any claim that the development of the Parcel is contrary to Zoning Code.

1. Proposed Use in Violation of an Ordinance

Regarding the first requirement, the complaint alleges that Silfab's development of and proposed operations on the Parcel are in violation of Zoning Code section 155.1121. In particular, the complaint contends that section 155.1121 stands for the proposition that "any building occupancy or operations permit for any non-conforming use (or any use) *requires the affirmative*

[19] The complaint states that Plaintiff is a "neighboring owner to 7149 Logistics Lane, Fort Mill, South Carolina 29715." Compl. ¶ 1. For the purposes of this memorandum, the County assumes that this basic description constitutes sufficient facts pled to support the requirement that a person actually own a neighboring or adjacent parcel, although this fact would be subject to a more rigorous level of proof should this lawsuit survive the within motion.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

written approval and signature of the Zoning Administrator, or is otherwise voidable, void, and unlawful." Compl. ¶ 13 (emphasis added). However, nothing in section 155.1121 specifies or requires that written approval or the signature of the Zoning Administrator is required. *See* Ex. H, Zoning Code Subchapter E, Part 13, Zoning Compliance. In fact, section 155.1121 merely sets out the conditions under which a zoning compliance verification may be sought by an applicant and is therefore entirely irrelevant to the allegations and circumstances of this case.[20] As this is the only ordinance cited in the complaint, Plaintiff's claim necessarily fails for this reason alone. However, no other provision of the Zoning Code specifies that the written approval or signature of the Zoning Administrator is required either.[21] Plaintiff's allegation is not one of fact, it is an assertion of law, but the Court is not required to—and should not—treat a legal conclusion as true in the face of the plain language of the ordinance itself. Therefore, based strictly on the allegations set forth in the complaint, as this Court is constrained to reviewing for the purposes of a motion to dismiss, Plaintiff's claim fails. *See HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (explaining that on a Rule 12 motion, "the court is required to presume well pled *facts*, not propositions of law, to be true" (emphasis in original)); *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002) ("[W]e are not bound to accept as true a legal conclusion couched as a factual allegation."), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

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[20] Section 155.1123, which sets forth the parameters and conditions applicable to a zoning compliance verification, is the applicable section relevant to Plaintiff's argument, but that section contains no reference to written approval, a signature, or signature requirement, and is not cited by the complaint in any event.

[21] York County Code of Ordinances, Chapter 155: Zoning Code. *See* https://www.yorkcountygov.com/DocumentCenter/View/6573/-Zoning-Code-Chapter-155-June-16-2025?bidId=

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

More importantly, the complaint does not reference, and thereby attempts to entirely avoid, the indisputable fact that the County's governing body has taken official, formal action through the Inducement Ordinance to approve Silfab's location at the Parcel. *See* Ex. B. Therefore, contrary to Plaintiff's unsupported assertion that Silfab's development is being conducted in violation of an ordinance, in fact, it is being developed pursuant to and at the express direction of a specific ordinance adopted by County Council to induce the development at the Parcel. In addition, the Inducement Ordinance specifically references the fact that the FILOT agreement was presented to County Council for consideration at the time of the ordinance's adoption and contains a legislative finding of fact that the FILOT agreement was "appropriate" and "approved" for execution by the County.[22] In turn, the FILOT agreement specifically identifies the Parcel for development of the Silfab project. *See* Ex. C, at 5 (defining "land" as "the land upon which the Project will be located, as described in Exhibit A"; at A-1, FILOT agreement Exhibit A (providing the legal description for the Parcel). Further, as set forth above, the FILOT agreement—which was expressly reviewed and approved by County Council in the Inducement Ordinance—includes a finding that "all prior actions taken with respect to the Project" were "ratified." *Id.* at 2. Such prior actions include the Zoning Compliance Verification, whose issuance by the County's zoning office predated the Inducement Ordinance and FILOT agreement and was specific to both Silfab and the Parcel. Again, the entire basis for Plaintiff's claim that Silfab's development, and the permits issued to Silfab by the County, are in violation of an ordinance, is that the Zoning

[22] *See id.* at 2 ("**WHEREAS**, the County Council has caused to be prepared and presented to this meeting the form of the [FILOT] Agreement which the County proposes to execute and deliver; and **WHEREAS**, it appears that the document above referred to, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.").

Compliance Verification was invalid, void and unlawful. But that claim fails as a matter of law in the face of the foregoing legislative findings and actions of the County's governing body.

Moreover, although none actually exists, to the extent that there is a perceived discrepancy between the general review and approval of projects under the Zoning Code (§ 155.1120 *et seq.*) and that which has occurred with respect to Silfab, the more specific ordinance controls over the general application ordinance. *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) ("When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." (citing *Charleston County Parks & Recreation Comm'n v. Somers,* 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995))). "Further, where two provisions deal with the same issue, one in a general and the other in a more specific and definite manner, the more specific prevails." *Id.* (citing *Capco of Summerville v. J.H. Gayle Constr. Co., Inc.*, 368 S.C. 137, 628 S.E.2d 38 (2006)). Here, without question, the Inducement Ordinance is specific to Silfab and development on the Parcel. County Council specifically and legislatively authorized the development by and through the Inducement Ordinance, further "authoriz[ing] and direct[ing]" the County Manager to ensure and "do any and all things necessary to effect … the performance of all obligations of the County [under the FILOT agreement]." In addition, and consistent with the traditional "statutory construction" standard of giving primary effect to legislative intent, the County Council specifically—and expressly—stated that, in the event of a conflict, the more specific Inducement Ordinance controls over any contrary general zoning provisions. *See* Ex. B, Inducement Ordinance at 3, Section 5 ("All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.").

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

2. Specially Damaged

Beyond Plaintiff's inability to demonstrate that the Silfab development is being conducted in violation if the Zoning Code in light of the Inducement Ordinance, the complaint is entirely devoid of facts which would support a claim that he has been specially damaged by the development. In *Carnival Corporation v. Historic Ansonborough Neighborhood Association*, the Supreme Court evaluated a comparable zoning claim against the cruise line's operations in Charleston under S.C. Code Ann. § 6-29-950. 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). There, the Supreme Court equated the "special damage" requirement specified in section 950(A) to the particularized-injury requirement under constitutional standing, specifically holding that "Section 6–29–950's requirement that a private party seeking to enjoin a zoning violation must be specially damaged incorporates the particularized injury requirement of general standing doctrine as a requirement for the statute to apply." *Id.* at 79, 753 S.E.2d at 852. The complaint fails to plead facts sufficient to satisfy this standard.

Pertinent here, an "injury in fact" has been defined as "an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *Commander Health Care Facilities, Inc. v. S.C. Dep't of Health & Env't Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006) (quoting *Lujan*, 504 U.S. at 561). Moreover, "[p]rospective concern falls far short of the standard of 'concrete and particularized and . . . actual or imminent' harm . . . ." *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). Further, for the injury to be particularized, it must affect the plaintiff in a personal and individual way and must be different than the general impact to the public. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

The complaint does not allege that Plaintiff is or would be specially damaged by the Silfab development. Neither the word "damage" (or any derivative) nor "injury" appears in the complaint. Nor has Plaintiff pled any facts which would satisfy the particularized injury in fact requirement, offering only a conjectural and generalized grievance concerning future public health and welfare concerns. *See, e.g.*, Compl. ¶¶ 18, 27 (alleging Silfab's project "presents health and safety hazards to the plaintiff [and] the similarly affected public" and requires "the balancing of equities between public health, safety and welfare"). More specifically, that supposed injury does not allege any individualized harm suffered as an adjacent property owner or neighbor that is distinct from what he contends the public might suffer at large. *See Commander*, 370 S.C. at 301, 634 S.E.2d at 666 ("The injury must be of a personal nature to the party bringing the action, *not merely of a general nature that is common to all members of the public*." (emphasis added) (citing *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 34, 530 S.E.2d 369, 371 (2000))); *see also Carnival Corp.*, 407 S.C. at 75, 753 S.E.2d at 850 ("'[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not' possess standing." (quoting *Lujan*, 504 U.S. at 573–74)). Moreover, even if Plaintiff had alleged or could claim some personal stake, the alleged injury is merely speculative rather than actual or imminent. *See, e.g.*, Compl. ¶¶ 25 (alleging the development "threatens toxic exposure to the public of chemicals and toxins....").

It is worth revisiting here that Silfab is not yet operating on the Parcel. Nor are the purported chemicals alleged to be harmful present on site. Nor have any of the hypothetical injuries Plaintiff alleges as certain to befall him and the community occurred. Instead, and accordingly, they are the opposite of concrete and particularized, or actual and imminent; they are,

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

without question, conjectural and hypothetical. Such a fear of future harm is insufficient to satisfy the injury in fact element of standing.

Rather than present a claim that could redress an actual injury in fact, Plaintiff seeks to transform the court into a forum for policy disputes and supplant the role of—and official action taken by—the County. Specifically, this action, lacking any actual or concrete injury, is instead propelled by Plaintiff's desire to halt the Silfab project. *See* Compl. ¶ 9 ("Plaintiff bring[s] this action seeking the court to protect existing zoning, and compel [the County] to act to bring cease and desist and stop work orders as against [Silfab]."). To that end, Plaintiff argues Silfab's project is proceeding without a valid permit and it is engaging in chemical manufacturing, thereby exceeding the scope of the permissible use of the Parcel. Even assuming those baseless allegations[23] are true for purposes of this Motion, Plaintiff has not identified any legally protected interest he possesses that the County could have possibly invaded in its approval and oversight of Silfab's operations.[24] Without one, Plaintiff's claim cannot proceed.

Therefore, even assuming the Complaint's unfounded allegations are true, Plaintiff has failed to allege a concrete, particularized, and actual injury required to establish he has standing to bring this action. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 ("The party seeking to establish standing carries the burden of demonstrating each of the three elements."). Based on the Supreme Court's pronouncement in *Carnival* that a neighboring property owner must satisfy the particularized injury in fact requirement of constitutional standing in order to show that he has

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[23] *See supra* notes 3 and 6; *infra* note 27.

[24] This comes as no surprise given that Plaintiff is not the object of the County's actions, instead seeking to challenge the legality of the County's conduct. *See Beaufort Realty Co.*, 346 S.C. at 301, 551 S.E.2d at 589 ("[I]t is 'substantially more difficult' to establish standing where a challenge to the government action is brought by one who is not the object of the action, but rather seeks to challenge government action or inaction because of alleged illegality." (citing *Lujan*, 504 U.S. at 560–61)).

been specially damaged, the complaint falls well short of that requirement and Plaintiff has not satisfied the conditions precedent to demonstrate statutory standing under S.C. Code Ann. section 6-29-950.

ii. Constitutional Standing

A party for whom no statute provides a direct avenue for challenging a particular action must establish standing by pleading—and ultimately proving—the "irreducible constitutional minimum of standing," which consists of three elements: (1) the plaintiff must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).

1. Injury in Fact

As set forth above, the Supreme Court in *Carnival* equated the special damages requirement of S.C. Code Ann. § 6-29-950 to the particularized injury in fact element of constitutional standing. For the many reasons discussed *supra*, the complaint is entirely deficient in pleading facts which could satisfy Plaintiff's heavy burden of showing a concrete and particularized injury that is neither contingent nor hypothetical, and which is different than would be suffered by the public generally.

2. Causation

Plaintiff's claims also fail the second element of constitutional standing: causation. Where the causal link between the complained-of activity and the alleged injuries is superseded by a third party, the alleged injuries are not traceable to the government action. Other courts, including the United States Supreme Court, have found the causal link between a challenged governmental

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

action and alleged injuries to be broken where the action itself does not cause the alleged injuries, but rather independent actions of third parties who are not before the Court do. *See Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Allen v. Wright*, 468 U.S. 737 (1984).

In *Simon*, individuals and representative groups brought an action against the Secretary of Treasury and Commissioner of the Internal Revenue Service (IRS) asserting that the IRS had violated the Internal Revenue Code and the Administrative Procedures Act in issuing a revenue ruling affording favorable tax treatment to nonprofit hospitals that allowed those hospitals to serve only indigent individuals to the extent of the hospital's financial ability. The plaintiffs alleged this revenue ruling and interpretation encouraged hospitals to deny treatment to indigents and was therefore invalid. The Supreme Court rejected these claims on the grounds that the plaintiffs failed to meet their burden in proving standing. Specifically, the Court found that the chain of causation necessarily presumed the "independent action[s] of some third party not before th[is] court" and that it was "purely speculative whether the denials of service specified in the complaint" would be remedied by an exercise of the Court's remedial powers. *Simon*, 426 U.S. at 42-43. The Court recognized the unlikelihood of fashioning a remedy where the remediation was dependent on predicting the acts of an interest group that was unrepresented in the litigation, particularly where the group is composed of many individual actors, each of whom must react to other market or regulatory factors. *Id.* at 42-46; *see also Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996) (discussing and citing to *Simon*).

Similarly, in *Allen v. Wright*, the Supreme Court evaluated a claim against the IRS that it had failed to ensure that racially discriminatory private schools were denied tax-exempt status. The Court found that the plaintiffs had alleged a justiciable, cognizable injury in the form of a reduced ability to attend a racially integrated school. However, the Court found the causal

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

connection between the alleged injury and the challenged government conduct was too attenuated to overcome the standing doctrine, and would further run afoul of the idea of separation of powers, in that the plaintiffs sought to undo an apparatus established by the Executive Branch to fulfill its legal duties. *See Allen*, 468 U.S. at 759 ("The links in the chain of causation between the challenged Government conduct and the asserted injury are far too weak for the chain as a whole to sustain respondents' standing.") (citing *Simon*). The Court went on to note that it was "entirely speculative … as to whether withdrawal of a tax exemption from any particular school would lead the school to change its policies," and that "it is just as speculative whether any given parent of a child attending such a private school would decide to transfer the child to public school as a result of any changes in educational or financial policy made by the private school once it was threatened with loss of tax-exempt status." *Id.*

These concepts have also been applied in two more recent opinions. In *Florida Audubon Society*, environmental organizations and an activist sued the Secretary of Treasury and Commissioner of the IRS under the National Environmental Policy Act for its failure to prepare an environmental impact statement on the effects of a tax credit issued by the IRS for the ETBE fuel additive. 94 F.3d 658. In analyzing the causation standard for purposes of standing, the full panel of the D.C. Circuit emphasized that "a protracted chain of causation fails both because of the uncertainty of several individual links and because of the number of speculative links that must hold for the chain to connect the challenged acts to the asserted particularized injury," which the court found to be "far weaker than even the [causal connection] alleged in *Simon*." *Id.* at 670 (citing *Cal. Ass'n of the Physically Handicapped, Inc. v. Federal Commc'ns Comm'n*, 778 F.2d 823, 829 n. 4 (D.C. Cir. 1985) (Wald, J., dissenting) (explaining that the "double layer" of speculation in *Allen* made its causal chain far weaker than the chain the Supreme Court rejected in *Simon*)). "As

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

in *Allen*, then, the presence and number of third-party links in this causal chain independently corroborate that appellants' claim of causation is 'entirely speculative' and insufficient for standing." *Id.* (citing *Simon*, 426 U.S. at 46 (Stewart, J., concurring) (observing that suits challenging a third party's taxes are not justiciable, except for First Amendment challenges)).

Likewise, the Fourth Circuit relied upon this same line of reasoning in dismissing a claim alleging injuries related to an Executive Order of President Obama removing prior limitations on federally funded human embryo stem cell research. *Doe v. Obama*, 631 F.3d 157 (2011). The court found that the plaintiffs lacked standing to challenge the Executive Order's funding restrictions included a superseding antecedent involving an independent third party not before the court. The Fourth Circuit held that "*Allen* and *Simon* illustrate a fundamental tenet of standing doctrine: where a third party such as a private school or hospital makes the independent decision that causes an injury, that injury is not fairly traceable to the government." 631 F.3d at 162. Further, "[w]here government policy not only allows [third parties] to choose what to do … but also safeguards the independence of their decision with strict conditions, the connection between injury and policy is a 'purely speculative' one." *Id.* (citing *Simon*, 426 U.S. at 42).

The import of *Simon*, *Allen*, *Florida Audubon Society*, and *Doe v. Obama* is clear: government's role, including local governments like the County, is to set policy and provide infrastructure and related service to be used by its citizens in a lawful way.[25] Just as the

[25] A decision of the United States District Court for the District of Columbia meets head on and rejects Plaintiff's argument that the County's lawful issuance of permits and authorizations to Silfab should be viewed by this Court as synonymous with the activities which could cause the hypothetical alleged injuries in this case. *See Food and Water Watch v. U.S. Env't Prot. Agency*, 1:12-cv-01639-FC, dkt.#47 (D.D.C. Dec. 13, 2013). In rejecting the plaintiff's argument that the alleged injuries were a result of policies put in place by, *inter alia*, the EPA, the court distinguished a line of cases that held the traceability prong of a party's standing could be satisfied if the challenged government action "permits or authorizes third-party conduct that would be otherwise illegal in the absence" of the government permit of approval. *Id.* (distinguishing *Nat'l Wrestling*

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

government is not liable for every traffic accident that takes place on its roads, or as an airport is not liable for mistakes made by individual airlines, so too are the collateral effects of the companies who locate in the County ***not*** attributable to the County for confirming a use as appropriate for a given site and issuing permits for its operations.

3. Redressability

Even if this Court were to find that Plaintiff could satisfy the injury-in-fact and causal connection elements of the constitutional standing analysis, he is unable to establish that his alleged injuries could or would be redressed by a decision of the Court. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (providing that it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision) (citing *Lujan*, 504 U.S. at 560-61); *see also Vt. Agency of Natural Res.*, 529 U.S. at 771 (stating that there must be "a '***substantial likelihood***' that the requested relief will remedy the alleged injury in fact") (emphasis added) (internal citations omitted). As discussed in more depth herein *infra*, the remedies sought by Plaintiff, namely declaratory relief and writs of mandamus and prohibition, are alternatively inappropriate or non-cognizable under the presented circumstances. Accordingly, Plaintiff's alleged injuries are not redressable by this Court.

B. Ripeness

Plaintiff's claims are not ripe for consideration given the Related Litigation. Specifically, the requested relief is premised, in part, on the alleged illegality of permits issued to Silfab stemming from the findings of the BZA Order, despite its lack of finality. Plaintiff suggests that,

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Coaches Ass'n v. Dep't of Educ., 366 F.3d 930, 940-41 (D.C. Cir. 2004); *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440-44 (D.C. Cir. 1998) (en banc) and *Am. Road & Transp. Builders Ass'n v. U.S. Env't Protection Agency*, 588 F.3d 1109 (D.C. Cir. 2009). In similar accord, Plaintiff's contentions in this case are directed towards lawful activities of Silfab, in compliance with all applicable law and ordinances governing.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

because Silfab's development should be considered "a non-conforming use under the zoning code," Compl. ¶8 (based implicitly on the BZA Order), this prevents Silfab from continuing its development and thereby requires the revocation of its permits and ultimately ceasing its operations. However, as Judge Rivers similarly (and correctly) found, the import of the BZA Order cannot be decided where it is on appeal and therefore not final. Without that finality, this matter is not ripe and justiciable for the Court's review.

Even if the impact of the BZA Order were final, Plaintiff's causes of action and requested relief are nevertheless non-justiciable because no injury has occurred or is imminent, and his theory of potential injury depends on a chain of assumptions about how Silfab's operations *might* affect public health at some undefined point in the future. Only when those hypothetical concerns have materialized into a concrete and particularized injury in fact may a litigant, including Plaintiff, arguably bring this action. Until then, Plaintiff's claims are not ripe, and the Court should therefore dismiss his Complaint. *See Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) (noting our courts have explained ripeness by defining what is not ripe, stating that "an issue that is contingent, *hypothetical*, or abstract is not ripe for judicial review." (emphasis added)).

III. Plaintiff has not pled facts sufficient to justify his claims for declaratory and injunctive relief, or for extraordinary writs of mandamus and prohibition.

In general, under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). A motion to dismiss under Rule 12(b)(6) should be granted if facts alleged and inferences reasonably deducible therefrom would not entitle the plaintiff to relief on any theory of the case. *See Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003).

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

A. Declaratory Judgment

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 274, 705 S.E.2d 73, 77 (Ct. App. 2010) (footnote omitted). Specifically, "Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination." *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996); *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) ("A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.").

Here, the purported premise of Plaintiff's declaratory judgment cause of action is that the permits issued to Silfab were without the consent or "written" approval of the Zoning Administrator. However, Plaintiff has failed to plead *any* facts that would support or give rise to that conclusion regarding consent or approval, generally, and as discussed below, the plain language of the statute belies Plaintiff's assertion of a "written" approval or signature requirement. Moreover, in terms of the actual relief sought, Plaintiff only seeks a general declaration that "[a]ny permit lacking the zoning administrator's approval violates law and zoning code [sic] as set forth more fully below." Compl. ¶10.c. In his prayer for relief, Plaintiff amends his request to more specifically requests a declaratory judgment "pursuant to S.C. Code Ann. § 6-29-950 et seq that any change of use must necessarily *be executed and signed specifically by the signature authorization of the zoning administrator* for York County in order to be lawful, and that any permits issued are in violation of the statue." Compl. p.9.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

However, neither request advanced by Plaintiff for declaratory relief from the Court establishes a justiciable controversy that is both supported by well-pled facts or that rises above an assertion that is contingent, hypothetical or abstract in nature. *See Waters*, 321 S.C. at 228 n.7, 467 S.E.2d at 918 n.7 ("Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination."); *see also Rhodes*, 405 S.C. at 595, 748 S.E.2d at 787 ("[T]he Act does not require the courts to give purely advisory opinions as to the issues sought to be raised." (citing *City of Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957))); *id.* ("[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review.") (quoting *Colleton Cnty. Taxpayers Ass'n*, 371 S.C. at 242, 638 S.E.2d at 694)).

To survive a motion to dismiss for failure to state a claim, a complaint must contain facts sufficient "to raise a right to relief above the speculative level" and to satisfy the court that the claim is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555, 570 (2007); *see also Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) (citing *Twombly* with approval). A claim is plausible only "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"—a standard that requires more than facts "that are 'merely consistent with' a defendant's liability." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556-57); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995) (affirming a motion to dismiss where the reasonable inferences derived from the pleaded facts did not support the cause of action). Plaintiff's allegations do not comply with the aforementioned standards.

Plaintiff further alleges that the Zoning Administrator's signature is required for each and every permit issued by the County. However, as discussed above, neither Zoning Code section 155.1121 nor S.C. Code Ann. section 6-29-950, both cited as authority for the signature

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

requirement, *see* Compl. ¶ 13 ("requires the affirmative written approval and signature of the Zoning Administrator"), specify that written approval or a signature of the Zoning Administrator is required. Further, in Table 155.957-1, consisting of the "Summary of Procedures for general approvals and permits, the Zoning Code specifies that "Staff" is "Decision-Making Body" for zoning compliance verifications, further undercutting Plaintiff's assertion that the Zoning Compliance Verification is invalid because it was not signed by the Zoning Administrator. *See supra* note 3.

Moreover, S.C. Code Ann. section 6-29-950 provides in full:

> Enforcement of zoning ordinances; remedies for violations.
>
> (A) The governing authorities of municipalities or counties *may* provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation *may* in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.
>
> (B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer *may* in addition to other remedies issue and serve

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

> upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

(Emphasis supplied). As evidenced by the foregoing, section 950 does not reference a signature, or signature requirement, either. A Court is not required to defer to legal conclusions masquerading as allegations of fact in a complaint. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (explaining that on a Rule 12 motion, "the court is required to presume well pled *facts*, not propositions of law, to be true") (emphasis in original). Plaintiff's assertions to the contrary cannot be sustained as a matter of law.

Finally, a collateral action in the courts seeking the revocation of permits is inappropriate where a valid administrative remedy is available and has not been sought. In particular, Part 3 of Subchapter E of the Zoning Code sets forth the exclusive appeal procedures available for any "person aggrieved by an order, requirement, decision, or determination made by the Zoning Administrator or any other administrative official in the enforcement of this Chapter or by any officer, department, board, or bureau of the County." Zoning Code § 155.982(A). The Zoning Compliance Verification, as well as all other permits and approvals issued subsequently by the County to Silfab, are decisions or determinations which fall under the appeals procedures of Part 3. An appeal must be initiated "within 30 days of the written decision or other action that is the subject of the appeal." Zoning Code § 155.982(B).

As set forth above, neither Plaintiff nor any other party initiated an appeal of the Zoning Compliance Verification issued to Silfab, timely or otherwise. Nor has any permit or approval issued to Silfab been challenged or appealed. As such, Plaintiff has failed to exhaust his administrative remedies, and the Court should decline Plaintiff's invocation of this Court's jurisdiction to entertain a collateral attack on those unappealed administrative decision. The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from

the action of an administrative agency to pursue all available remedies *before* seeking such relief from the courts. *See Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding a plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating a party is "clearly [] required to exhaust its administrative remedies prior to bringing suit" challenging denial of a permit); *id.* ("The doctrine of exhaustion of administrative remedies *only* comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the [governing body] has provided an administrative remedy." (quoting *Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander & Assocs.*, 92 Md.App. 551, 609 A.2d 353 (1992))). Exhaustion is required so that the administrative agency "may function efficiently and so that it may have the opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

For these purposes, because there is a specific procedure to challenge an administrative agency decision (*i.e.*, Part 3 of Subchapter E of the Zoning Code), compliance with such procedure is a condition precedent for judicial review. *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) ("Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief."); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) ("It was incumbent upon [the challenging party]... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she]... considered his decision erroneous.... Not having

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

done so, she cannot now attack the validity of his decision."). Thus, Plaintiff has failed to exhaust his administrative remedies, and the Court should decline to exercise its jurisdiction in an improper collateral attack on those decisions.

In sum, Plaintiff has shown no justiciable controversy. He has failed to allege facts supporting a declaratory judgment, misstated applicable law, has alleged only hypothetical, contingent harm, lacking an injury necessary for standing and ripeness, and has failed to exhaust his administrative remedies. The Related Litigation further underscores the absence of any ripe and justiciable claims. Accordingly, Plaintiff cannot maintain a claim for declaratory relief, requiring its dismissal.

B. Injunctive Relief

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50–51, 674 S.E.2d 505, 508 (Ct. App. 2009) (citations omitted). More specifically, to obtain an injunction, the plaintiff must allege facts sufficient to demonstrate that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). In addition, because the County is a governmental body, Plaintiff must also have alleged—and ultimately prove—that the County acted in an arbitrary, capricious, or oppressive manner. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758,

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

767 (2018). For the reasons explained below, none of these required elements exist in this action and this Court should dismiss Plaintiff's claim for injunctive relief.

i. Plaintiff Has Made No Showing of Harm, Much Less Irreparable Harm

First, Plaintiff has not sufficiently pled he would suffer irreparable harm absent an injunction. As was fatal to the justiciability inquiry, Plaintiff has alleged no legally cognizable harm, much less one that is irreparable.[26] Plaintiff first advances a conclusory legal assertion that "the harm will be irreparable." Compl. ¶18, which, in addition to failing to identify "the harm," is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding an argument advanced through conclusory statements with no argument or supporting authority abandoned). Beyond that, Plaintiff's only allegations regarding harm in the complaint directly tie its allegation of "imminent" and "irreparable" harm to "spot zoning" or "site specific zoning." Compl. ¶¶ 19, 22, 25, 28 and 52.

As an initial matter, Plaintiff pleads no facts supporting his assertion that the zoning of the Parcel has been rezoned, either through "spot zoning" or "site specific zoning." And there exist no facts which would support such an assertion, as the Parcel (as recounted above) was—and is—zoned Light Industrial and has not been recently rezoned. Therefore, Plaintiff has failed to advance any facts supporting his articulated assertion of harm, much less irreparable harm.

Further, even assuming that Plaintiff's regurgitation of *the standard* would suffice, such "harm" is impermissibly speculative, conjectural, and hypothetical. *See Proctor v. Dep't of Health*

[26] This is to be expected given that, as explained in the mandamus discussion below, Plaintiff has no legal right to a stop work directive aimed at Silfab. Plaintiff cannot argue an injunction is reasonably necessary to preserve rights that do not exist, or that he is at risk for irreparable harm when he has no rights implicated by the County's approval of the Silfab project.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

& Env't Control, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006) ("It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation."). Pertinent here, an "injury in fact" has been defined as "an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *Commander Health Care Facilities, Inc. v. S.C. Dep't of Health & Env't Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006) (quoting *Lujan*, 504 U.S. at 561). Moreover, "[p]rospective concern falls far short of the standard of 'concrete and particularized and . . . actual or imminent' harm . . . ." *Beaufort Realty Co.*, 346 S.C. at 303, 551 S.E.2d at 590. Notably, for the injury to be particularized, it must affect the plaintiff in a personal and individual way. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291.

The complaint is lacking in all those respects. In fact, Plaintiff's unsupported assertion of spot or site specific zoning necessarily presumes two facts which this Court is precluded from reaching in light of the Related Litigation: (1) the invalidity of the Zoning Compliance Verification, which was never challenged and is in full force and effect; as well as (2) the supremacy of the subsequently-issued Zoning Interpretation and BZA Order over the prior Zoning Compliance Verification, which are (a) stayed, not final, and the subject of an ongoing appeal (*see* BZA Appeal), and (b) which is the subject the pending—and also stayed—other action in the circuit court (*see* CAGI Action). Again, Plaintiff's claimed injury is generalized, purely conjectural, and lacks the imminence required to justify an injunction.[27] Put differently, Plaintiff

[27] For purposes of this Motion, the County assumes Plaintiff's allegations to be true yet shows they remain insufficient to state a claim for relief. However, for the Court's benefit, the County emphasizes that those allegations have been manufactured to demonstrate a risk of irreparable harm. For instance, Plaintiff accuses Silfab of improperly locating at the Parcel and operating without duly-issued permits. This is patently incorrect. *See supra* note 3. As set forth above, the County, by and through its governing body the County Council, has taken official legislative action inducing Silfab to locate its operations at the Parcel. *See* Ex. C, Recitals 4 and

cannot possibly establish he will suffer harm when that harm is contingent and merely hypothetical.

ii. Plaintiff Cannot Demonstrate a Likelihood of Success on the Merits

The requirement to demonstrate a likelihood of success on the merits asks whether the party seeking injunctive relief "has made a sufficient prima facia showing of entitlement to relief." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). The question is not whether the moving party can "prove an absolute legal right," but whether it can "present a reasonable question as to the existence of such a right." *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. The complaint does not detail how Plaintiff will likely succeed on the merits of the litigation. Instead, it merely states, "Plaintiff can further demonstrate likelihood of success on the merits pursuant to state statutory law and local zoning law where defendants have issued numerous construction permits without approval of the zoning administrator for York County, specifically." Compl. ¶ 26; *see also* ¶¶ 19, 22 and 52 (same). That single, conclusory statement—reciting the required element for injunctive relief—cannot meet the pleading standard. However, even

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5. Additionally, Plaintiff asserts Silfab is "evolving" its project "into a chemical manufacturing use," thereby exceeding the scope of its authorization from the County and "threaten[ing] adjacent schools and residents surrounding the site." Compl. ¶ 52. However, this too is unwarranted hyperbole. Although given scant mention in the Complaint, Silfab intends to produce solar panels at the facility. The production process for these panels does involve the use of certain chemicals; however, Silfab has acquired the necessary permits for their storage, use, and wastewater disposal, as well as coordinated emergency response procedures and plans with the appropriate County personnel. In addition, County inspectors have visited the Parcel multiple times during its development, including recently after the allegations of chemical storage were made, finding no evidence of Silfab's storage of chemicals as alleged.

Moreover, through those multiple site visits, and other than the unrelated issues noted in note 6, *supra*, the County has verified Silfab's construction activities and have not found any cause to permanently revoke or suspend the duly-issued permits. Though these are only a few examples, the Complaint's parade of horribles rests on assumptions and misstatements and thus fails to present a risk of irreparable harm warranting injunctive relief. Indeed, the Supreme Court has already, in effect, (correctly) rejected these identical claims of emergency and irreparable harm in its handling of the Bivins Petition. This Court should do the same here.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

assuming that it could meet the standard, as discussed above, *supra*, pages 21-23, neither Zoning Code section 155.1121 nor S.C. Code Ann. section 6-29-950—the only "state statutory law and local zoning law" cited in the complaint—stand for the propositions asserted by the Plaintiff. Neither requires a signature of the Zoning Administrator, and Plaintiff has pled no facts supporting his assertions that Zoning Compliance Verification or subsequent permits issued to Silfab were done without the Zoning Administrator's approval.[28]

Moreover, as discussed, *infra*, in response to the complaint's request for a writ of mandamus, S.C. Code Ann. section 6-29-950, as well as its companion provisions in the Zoning Code (§§ 155.1237(B)(5)-(6) and 155.1239), confirm that the relief sought by Plaintiff here amounts to a discretionary right held by the County and is not required. *See* § 6-29-950(A) ("The governing authorities of … counties *may* provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken …. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county … *may* … institute injunction … action or proceeding to prevent the unlawful … construction … or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land." (emphasis supplied)); *id.* § -950(B) (In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated

[28] To the contrary, the Zoning Interpretation issued by the Zoning Administrator confirmed its interpretation and agreement that solar panel manufacturing—like Silfab—could appropriately locate on the Parcel, *see* Ex. E, and permits issued to Silfab in the intervening period are evidence contradicting Plaintiff's assertions.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

administrative officer *may* in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance." (emphasis supplied)); Zoning Code § 155.1237(B)(5) ("Stop Work. With or without revoking permits, the County *may* issue a stop work order on any development, building, or structure on any land on which there is an uncorrected violation of a provision of this Chapter or a violation of a condition or qualification of a permit, certificate, approval, or other authorization previously granted by the County." (emphasis supplied)); *id.* § -1237(B)(6) ("Revocation of Permits and Approvals. The County *may* revoke all permits, certificates, plan or plat approvals, or other forms of authorization on any building, structure, land, or improvements upon land for which there is an uncorrected violation of any provision of this Chapter or of a condition or qualification of a permit, certificate, approval, or other authorization previously granted by the County.") (emphasis supplied); *id.* § -1239(A) ("Basis for Revocation. A permit or approval *may* be revoked by the Zoning Administrator at any time prior to the completion of the use, building, structure, development, site improvement, or subdivision for which the permit was issued, when the Zoning Administrator determines that one or more of the following conditions is present: (1) There is departure from the plans, specifications, or conditions as required under the terms of the permit; (2) That the permit was procured by materially incorrect information; (3) That the permit was issued in error; or (4) That any of the provisions of this Chapter are being violated.") (emphasis supplied); *see also id.* § -1239(B) (specifying the notice provisions required in the event the County's discretion is exercised); *id.* § -1238 (specifying the right to cure protections afforded permittees in the event of a notice of violation).

Thus, in every provision of applicable statutory and ordinance law, discretion to act is retained by the County. *See Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(2001) ("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute."). With the exception of the instances detailed in note 6, *supra*, the County has declined to exercise that discretion, which is further indicative of the likelihood of success of Plaintiff's contrary demands for mandatory action.

iii. Plaintiff Fails to Show He Has No Adequate Remedy at Law

Plaintiff makes no effort to show he lacks an adequate remedy at law, apart from relying on its unfounded misrepresentations of non-existent harm. Instead, the complaint merely recites the applicable injunctive relief element in a conclusory legal assertion that "Plaintiff is without adequate remedy at law." Compl. ¶¶ 19, 22, and 52. This is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell*, *supra*. While it is true that irreparable harm and an inadequate remedy are law are related concepts, *see* 35 Am. Jur. 2d Federal Tax Enforcement § 1054, Plaintiff's failure to articulate a harm he has suffered, as discussed above, ends the discussion. If there is no harm, there cannot be inadequate means to redress it. Missing the mark on this element solidifies the failure to state a claim for injunctive relief, requiring the claim's dismissal.

iv. Plaintiff Does Not Allege the County's Actions Were Arbitrary, Capricious, and Oppressive

In order "to enjoin a public corporation or department of government in the performance of actions or duties provided by statute, there must be allegations or showing that the public department or corporation has exercised its power in an arbitrary, oppressive or capricious manner." *Headdon v. State Highway Dep't*, 197 S.C. 118, 14 S.E.2d 586, 588 (1941); *see also Richland Cnty.*, 422 S.C. at 310, 811 S.E.2d at 767. The complaint fails to plead *any* facts

supporting a contention that the County's actions were arbitrary, capricious or oppressive. Thus, for this additional reason, Plaintiff's claim for injunctive relief should be dismissed.

C. Writ of Mandamus

Next, Plaintiff hopes this Court will require the County to issue a stop work order to Silfab because it believes Silfab is operating without a valid permit and is exceeding the scope of the approved use of the property. As explored above, these accusations are baseless. Beyond that, issuing a stop work order is an inherently governmental—not judicial—function that is discretionary; therefore, the County has no duty to act in the manner desired by Plaintiff, rendering the request non-ministerial in nature. For that reason and more, Plaintiff cannot state a claim for mandamus against the County.

It is axiomatic that "the primary purpose or function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. . . . Its principal function is to command and execute, and not to inquire and adjudicate." *Willimon v. City of Greenville*, 243 S.C. 82, 86–87, 132 S.E.2d 169, 170–71 (1963). Accordingly, to obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. *Redmond v. Lexington Cnty. Sch. Dist. No. 4*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994) (citing *Willimon*, 243 S.C. at 86–87, 132 S.E.2d at 170–71). In analyzing these factors, it must be emphasized that "[w]here for any reasons the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie. . . . Mandamus will

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ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

not issue to enforce doubtful rights." *Gardner v. Blackwell*, 167 S.C. 313, 321, 166 S.E. 338, 341 (1932).

First, the County has no duty to issue stop work orders. As discussed above, section 155.1237(B)(5) of the Zoning Code states,

> Stop Work. With or without revoking permits, *the County* ***may*** *issue a stop work order* on any development, building, or structure on any land on which there is an uncorrected violation of a provision of this Chapter or a violation of a condition or qualification of a permit, certificate, approval, or other authorization previously granted by the County.

(Emphasis added). Therefore, the decision to halt Silfab's development is within the County's discretion—it has no duty to do so.[29] Indeed, in this case, the County has exercised that discretion: as detailed above, the County has, in fact, acted to ensure that Silfab's development is in compliance with its ordinances, but the County, again in its discretion, has determined that the conditions set forth in section 155.1237(B)(5), justifying a permanent stop work order, have not been met in regard to the accusations made in the complaint. At its core, the complaint improperly challenges the *manner* in which the County's has exercised its discretion, seeking an order compelling the County to cater to Plaintiff's preferred outcome.[30]

Second, because the County has no legal duty to pause Silfab's project via a stop work order, it cannot be one that is ministerial. *See Edwards v. State*, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009) ("A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as *to leave nothing to the exercise of discretion*." (emphasis added)); *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 495 n.4, 685 S.E.2d 600, 606 n.4

---

[29] Despite Plaintiff's statements alluding to the contrary, nor does the County have an obligation to stop Silfab's project based on the BZA Order, for it is stayed, not final, and pending in the circuit court, and its import on the prior specific approval Silfab received is dubious.

[30] Such a result would improperly entangle the judiciary in the legislative and governmental decision-making of the County, offending foundational separation of powers principles. *See* S.C. Const. art. I, § 8.

(2009) ("Discretionary authority, however, is insufficient for mandamus." (citing *Redmond*, 314 S.C. at 438, 445 S.E.2d at 445 (stating a writ of mandamus is inappropriate for a discretionary authority))).

Third, Plaintiff has no specific legal right to a stop work directive aimed at Silfab. For one thing, by definition, one cannot claim entitlement to a discretionary act. For another, Plaintiff has not cited any case law demonstrating it has a clearly established right to the desired act. *See Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 184, 519 S.E.2d 567, 573 (1999) (finding the school district failed to demonstrate a clearly established right to force the county election commission to distribute a supplemental ballot handout when the district failed to cite any statute or case demonstrating such a right). An interest in a desired outcome does not equate to a legally cognizable right to that outcome.

Finally, other remedies are available to Plaintiff in its continued pursuit of stopping the County-approved development. In fact, he is already availing himself to others in his complaint. For example, although he has failed to meet the pleading standards in the complaint, Plaintiff is seeking declaratory judgment in this action, which necessarily undercuts his assertion that mandamus is appropriate. *Cf. Charleston Cnty. Sch. Dist.*, 336 S.C. at 184, 519 S.E.2d at 573 (finding that because the case could have been resolved under the Uniform Declaratory Judgments Act, the school district had another legal remedy such that mandamus was improper). In addition, the appeal procedures of the Zoning Code, discussed *supra*, were available to Plaintiff, but he did not avail himself of those administrative remedies. Not to mention the other two pending circuit court actions, each seeking that same goal. *See supra* note 1.

All in all, the circumstances presented here fall far short of those meriting any claim for such extraordinary relief as mandamus.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

D. Writ of Prohibition

Finally, the County neither acts as a court, court officials, or officers, nor does it exercise any manner of judicial or quasi-judicial powers; therefore, Plaintiff cannot sustain a claim for a writ of prohibition cannot lie against Defendants.

"A writ of prohibition may issue in a proper case to restrain a *judicial act*; and, on the other hand it will, according to the weight of authority, ordinarily issue only to restrain the exercise or performance of *judicial functions or acts, or acts which are quasi-judicial in their character*." *Holladay v. Hodge*, 84 S.C. 91, 95, 65 S.E. 952 (1909) (emphasis added). "The ancient prerogative writ of prohibition . . . should be used with forebearance [sic] and caution, and only in cases of necessity." *Ex Parte Jones*, et al., 160 S.C. 63, 158 S.E. 134, 137 (1931); *see also New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 187 S.E.2d 794 (1972). The writ's principal modern use, generally, "is to prevent the assumption and exercise of jurisdiction by an *inferior court or tribunal* in cases where wrong, damage, and injustice are liable to follow such action." *Jones*, 160 S.C. 63, 158 S.E. 134 (emphasis added).

> With regard to the function and scope of the writ, it has been settled in this state from an early period that it will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an *inferior court or tribunal*, or to prevent some great outrage upon the settled principles of law and procedure; but, if the *inferior court* or *tribunal* has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of *judicial* power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available.

Id. (emphasis added); *see Lindsay*, 258 S.C. 198, 187 S.E.2d 794. Therefore, the writ is primarily used to "prevent the assumption and exercise of jurisdiction by *a lower tribunal* in cases where wrong, damage, and injustice are liable to follow such action." *State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938) (emphasis added).

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

In other words, it is well settled that the context in which a writ of prohibition may conceivably lie is that which involves lower courts, court officials, or officers that have exercised, or attempt to exercise, extra-jurisdictional judicial or quasi-judicial powers. That context is absent here. Moreover, even if the writ were appropriately lodged at the County and its officials, it is undisputed that the subject matter of the acts complained of by Plaintiff, namely, approving zoning classifications, issuing zoning compliance verifications, issuing permits, issuing stop work orders, and revoking permits, are inherently legislative functions that reside exclusively within the jurisdiction of the County and its officials. 72A C.J.S. Prohibition § 7 ("A writ of prohibition may issue in a proper case to restrain a judicial or quasi-judicial act and, ordinarily, may issue only to restrain the exercise or performance of judicial functions or acts or acts that are quasi-judicial in their character. In the absence of a statute providing otherwise, prohibition will not lie to prevent legislative acts, or those of a ministerial nature, nor to prevent those of an administrative, prosecutorial, political, governmental, or executive character."). Again, the County—performing governmental functions—neither acts as a court, court officials, or officers, nor does it exercise any manner of judicial or quasi-judicial powers. Therefore, any error in the exercise of the County's legislative functions is one for which a writ of prohibition cannot lie. *See Berry v. Lindsay*, 256 S.C. 282, 292, 182 S.E.2d 78, 83 (1971) (holding that actions challenged were a quasi-legislative function for which "it is clear that the Writ [of Prohibition] sought here will not lie."); *see also State v. Price*, 441 S.C. 423, 456, 895 S.E.2d 633, 650 (2023) ("A writ of prohibition will not lie to correct the procedural irregularities in this case, nor will such a writ lie to prevent an erroneous result…."). That being the case, Plaintiff's misguided pursuit of a writ of prohibition must fail.

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IV. Plaintiff has failed to name a party necessary for just adjudication of this matter.

Dismissal is appropriate pursuant to 12(b)(7), SCRCP, for failure to join a necessary party under Rule 19, SCRCP. A party is necessary and must be joined if the action (1) does not afford complete relief among those already parties, or (2) impairs or impede the absent parties' ability to protect its interest, or (3) leaves parties already in the suit subject to substantial risk of incurring multiple or inconsistent obligations by reason of the absent party not being joined. *Stewart v. State Crop Pest Comm'n*, 307 S.C. 133, 139, 414 S.E.2d 121, 125 (1992).

Here, despite pleading that Silfab "is an affected party," Compl. ¶ 8, and seeking judicial intervention against Silfab by way of "cease and desist and stop work orders against the corporation and its general contractors and agents," Compl. ¶9, Plaintiff has not named Silfab as a defendant in this matter. As the permittee of the approvals and permits Plaintiff seeks to revoke, enjoin from further development, and the alleged offender state and local laws necessitating the extraordinary relief sought by this case, Silfab is unquestionably a necessary party. *Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 367 S.E.2d 160 (1988) (holding that a permittee is a necessary party as it is the most vitally interested party to an action to revoke a permit). Without its joinder, the Court cannot fashion effective relief, nor can Silfab protects its rights, especially considering the allegations the Complaint levels its way. For that reason, the Court should dismiss the Complaint for failure to join a necessary party.

CONCLUSION

For the reasons explained herein, Defendants respectfully moves this Court for an order dismissing Plaintiff's Complaint with prejudice.

[SIGNATURE PAGE FOLLOWS]

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Respectfully submitted,

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Attorneys for Defendants York County and Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director, each in their official capacities

Columbia, South Carolina
December 15, 2025

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EXHIBIT A

PLANNING & DEVELOPMENT SERVICES
York County, SC

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December 27, 2022

Judi Quinby
3343 Peachtree Rd NE Suite 1600
Atlanta GA 30326

Ref: Zoning Verification for 7190000201

To whom it may concern,

This letter is written to inform you that the laws and regulations of York County, South Carolina govern the referenced property, tax map parcel 7190000201. The property is located 7149 Logistics Lane in the Fort Mill community. It is currently owned by RG Baxter Lane LLC. The property zoned **Light Industrial District (LI).**

The intent of the **Light Industrial District (LI)** is to create and protect industrial areas for light manufacturing and distribution. LI is intended to accommodate less intensive industrial uses with operations primarily conducted indoors. The district's less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses. Whenever possible, this district should be separate from residential districts by natural or structural boundaries such as drainage channels, sharp breaks in topography, strips of vegetation, traffic arteries, and similar features. LI is generally appropriate for areas designated as Industrial, Employment Center, or I-77 Corridor Employment on the Future Land Use Map.

Within the Light Industrial District (LI) zoning district **Electrical Equipment, Appliance, And Component Manufacturing** as defined below is a permitted use.

Electrical Equipment, Appliance, And Component Manufacturing: Establishments that manufacture products that generate, distribute, and use electrical power, such as electric lamp bulbs, lighting fixtures, and parts; small and major electrical appliances and parts; electric motors, generators, transformers, and switchgear apparatus; and batteries, wire, and wiring devices.

The use as described in your request (manufacturing of photovoltaic cells and PV modules) is considered *electrical equipment, applicant, and component manufacturing* and is therefore principally permitted. Please be advised that establishment of this use at the subject site will require civil site plan review.

This letter does not constitute a permit. This letter only states that the site can, with the proper permits, be used for the aforementioned use. All of this information is determined by the York County, South Carolina Code of Ordinance. If you need any additional information regarding this, please feel free to contact me at (803) 909-7235.

Best Regards,

Emily Stephens
York County Zoning Technician

18 W. Liberty Street, PO Box 96, York, South Carolina 29745-0096
Phone: (803) 909-7200 Toll Free: (800) 922-7271 Fax: (803) 909-7227

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT B

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Ordinance No. 6623
Date Adopted: September 18, 2023

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN YORK COUNTY, SOUTH CAROLINA (THE "COUNTY"), SILFAB SOLAR CELLS SC INC., AND SILFAB SOLAR PV SC INC., COMPANIES PREVIOUSLY AND COLLECTIVELY IDENTIFIED AS "PROJECT MOUNTIE", WITH RESPECT TO CERTAIN PROPERTY, INCLUDING, WITHOUT LIMITATION, ECONOMIC DEVELOPMENT PROPERTY, IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF AD VALOREM TAXES; AND OTHER MATTERS RELATED THERETO.

WHEREAS, YORK COUNTY, SOUTH CAROLINA, a political subdivision of the State of South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with qualifying industry to encourage investment and projects constituting economic development property to which the industrial development of the State of South Carolina (the "State") will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; (ii) to covenant with such industry to accept certain payments in lieu of *ad valorem* taxes (a "FILOT") with respect to such investment; and, (iii) to create, in conjunction with one or more other counties in the State, a multi-county industrial or business park (a "Multi-County Park") in order to afford certain enhanced income tax credits to such industry; and

WHEREAS, Silfab Solar Cells SC Inc. and Silfab Solar PV SC Inc., both South Carolina corporations previously identified collectively as Project Mountie, and each acting for itself, one or more affiliates, and/or other project sponsors (each, a "Company" and collectively, the "Companies"), is considering the establishment and/or expansion of certain manufacturing and related facilities at one or more locations in the County (the "Project"), and anticipates that, should its plans proceed as expected, the Companies will invest, or cause to be invested, at least $150,000,000, in the aggregate, in the County at the Project site and will create, or cause to be created, at least 800 net, new full-time jobs, in the aggregate, in connection therewith, all within a period commencing on the first day that Project expenses have been, or will be, incurred and ending on eighth anniversary of the last day of the property tax year in which any portion of the Project is first placed in service; and

WHEREAS, pursuant to the authority of Section 4-1-170 of the Multi-County Park Act and Article VIII, Section 13 of the South Carolina Constitution, the County intends to cause the site on which the Project is or will be located, to the extent not already therein located, to be located in a Multi-County Park such that the Project will receive the benefits of the Multi-County Park Act; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Companies that the Project would qualify as a "project" and "economic development property"

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

as such terms are defined in the Negotiated FILOT Act and the Project would meet all other requirements of the Act and serve the purposes of the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Companies to locate the Project in the County, the County Council is enacting this Ordinance, which Ordinance is also intended to serve as an "inducement resolution" for purposes of Section 12-44-30(11) of the Negotiated FILOT Act, whereby the County agrees to provide the benefits of a FILOT and a Multi-County Park with respect to the Project, all as set forth in greater detail in a Fee in Lieu of Tax and Incentive Agreement (the "Fee Agreement") by and between the County and the Companies; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the Fee Agreement which the County proposes to execute and deliver; and

WHEREAS, it appears that the document above referred to, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED, by the County Council as follows:

Section 1. Based on information supplied by the Companies, it is hereby found, determined and declared by the County Council, as follows:

(a) The Project will constitute a "project" and "economic development property" as said terms are referred to and defined in the Negotiated FILOT Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Negotiated FILOT Act;

(b) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

(c) The Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs and addition to the tax base of the County, are proper governmental and public purposes; and

(e) The benefits of the Project are anticipated to be greater than the costs.

Section 2. The form, terms and provisions of the Fee Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and/or the County Manager are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Fee Agreement to be delivered to the Companies and cause a copy of the same to be delivered to the York County Auditor, Assessor and Treasurer. The Fee Agreement is to

be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Manager, upon advice of counsel, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The Chairman of County Council, the County Manager and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder.

Section 4. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 5. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This ordinance shall take effect and be in full force from and after its passage by the County Council.

[End of Ordinance]

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ENACTED in meeting duly assembled this 18th day of September, 2023.

YORK COUNTY, SOUTH CAROLINA

By: _____

Christi Cox
Chairwoman of County Council
York County, South Carolina

ATTEST:

By: _____

David Hudspeth
County Manager
York County, South Carolina

First Reading: March 6, 2023
Second Reading: August 21, 2023
Public Hearing: August 21, 2023
Third Reading: September 18, 2023

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, the undersigned Clerk to County Council of York County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of March 6 2023, August 21, 2023, and September 18, 2023, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Karen S. Sturgeon

Clerk to County Council,
York County, South Carolina

Dated: 12 19, 2023

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT C

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

By and Between

YORK COUNTY, SOUTH CAROLINA,

SILFAB SOLAR CELLS SC INC.

and

SILFAB SOLAR PV SC INC.

Dated as of September 18, 2023

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

SECTION 1.01 DEFINITIONS....2
SECTION 1.02 PROJECT-RELATED INVESTMENTS....7

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

SECTION 2.01 REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE COUNTY....7
SECTION 2.02 REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE CELL COMPANY....7
SECTION 2.03 REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE MODULE COMPANY...8

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

SECTION 3.01 THE PROJECT....8
SECTION 3.02 DILIGENT COMPLETION....9
SECTION 3.03 FILINGS AND REPORTS....9

ARTICLE IV

FILOT PAYMENTS

SECTION 4.01 FILOT PAYMENTS....9
SECTION 4.02 [RESERVED.]....11
SECTION 4.03 FAILURE TO ACHIEVE MINIMUM INVESTMENT REQUIREMENTS; FAILURE TO ACHIEVE WEIGHTED AVERAGE WAGE REQUIREMENT....11
SECTION 4.04 REMOVAL OF EQUIPMENT....12
SECTION 4.05 FILOT PAYMENTS ON REPLACEMENT PROPERTY....12
SECTION 4.06 REDUCTIONS IN PAYMENT OF TAXES UPON DIMINUTION IN VALUE; INVESTMENT MAINTENANCE REQUIREMENT....13

ARTICLE V

PARTICULAR COVENANTS AND AGREEMENTS

SECTION 5.01 CESSATION OF OPERATIONS....13
SECTION 5.02 RIGHTS TO INSPECT....13
SECTION 5.03 CONFIDENTIALITY....13
SECTION 5.04 LIMITATION OF COUNTY'S LIABILITY....14
SECTION 5.05 MERGERS, REORGANIZATIONS AND EQUITY TRANSFERS....14
SECTION 5.06 INDEMNIFICATION COVENANTS....14
SECTION 5.07 QUALIFICATION IN STATE....15
SECTION 5.08 NO LIABILITY OF COUNTY'S PERSONNEL....15
SECTION 5.09 ASSIGNMENT, LEASES OR TRANSFERS....15
SECTION 5.10 ADMINISTRATION EXPENSES....16
SECTION 5.11 PRIORITY LIEN STATUS....17

SECTION 5.12 INTEREST; PENALTIES 17
SECTION 5.13 SPONSOR AFFILIATE(S) 17
SECTION 5.15 INSURANCE; STANDBY LETTER OF CREDIT 17

ARTICLE VI

DEFAULT

SECTION 6.01 EVENTS OF DEFAULT 18
SECTION 6.02 REMEDIES UPON DEFAULT 18
SECTION 6.03 REIMBURSEMENT OF LEGAL FEES AND EXPENSES AND OTHER EXPENSES 19
SECTION 6.04 NO WAIVER 19

ARTICLE VII

MISCELLANEOUS

SECTION 7.01 NOTICES 19
SECTION 7.02 BINDING EFFECT 20
SECTION 7.03 COUNTERPARTS 21
SECTION 7.04 GOVERNING LAW 21
SECTION 7.05 HEADINGS 21
SECTION 7.06 AMENDMENTS 21
SECTION 7.07 FURTHER ASSURANCE 21
SECTION 7.08 INVALIDITY; CHANGE IN LAWS 21
SECTION 7.09 TERMINATION BY THE COMPANIES 22
SECTION 7.10 ENTIRE UNDERSTANDING 22
SECTION 7.11 WAIVER 22
SECTION 7.12 BUSINESS DAY 22

EXHIBIT A – DESCRIPTION OF LAND
EXHIBIT B – INVESTMENT AND JOB CREATION CERTIFICATION
EXHIBIT C – FORM OF JOINDER AGREEMENT

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

SUMMARY OF CONTENTS OF
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the "***Code***"), the parties have agreed to waive the requirements of Section 12-44-55 of the Code. The following is a summary of the key provisions of this Fee in Lieu of Tax and Incentive Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax and Incentive Agreement or a summary compliant with Section 12-44-55 of the Code.

Company Name(s)	Silfab Solar Cells SC Inc. and Silfab Solar PV SC Inc.	**Project Name**	Project Mountie
Projected Investment	$150,000,000	**Projected Jobs**	800
Location (Street)	7149 Logistics Lane, Fort Mill, SC 29715	**Tax Map No.**	7190000201
1. FILOT			
Required Investment	$150,000,000 (if create 125 jobs) or, alternatively, $400,000,000 (for 4% assessment ratio)	Required Jobs	125 (if required for 4% assessment ratio)
Investment Period	Ends, initially, eight (8) years from the Commencement Date (as defined herein)	Ordinance No./Date	No. [___], September 18, 2023
Assessment Ratio	4%	Term (Years)	30 years for each annual Phase (as defined herein)
Adjustable Millage	Five (5) year adjustable	Net Present Value (*If yes, discount rate)	N/A
Clawback Information	See Section 4.03		
2. MCIP			
Included in an MCIP	Yes		
If Yes, Name and Date	Agreement for Development of Joint County Industrial and Business Park (York and Chester Counties) dated as of November 11, 2002, as supplemented, modified, amended, or replaced from time to time.		
3. SSRC			
Percentage of Fees	N/A		
No. of Years	N/A		
Clawback Information	N/A		
4. Other information	N/A		

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the ***"Agreement"***) is made and entered into as of September 18, 2023 by and between **YORK COUNTY, SOUTH CAROLINA** (the ***"County"***), a body politic and corporate and a political subdivision of the State of South Carolina (the ***"State"***), acting by and through the York County Council (the ***"Council"***) as the governing body of the County, **SILFAB SOLAR CELLS SC INC.**, and **SILFAB SOLAR PV SC INC.** both South Carolina corporations previously identified collectively as Project Mountie, and each acting for itself, one or more affiliates, and/or other project sponsors (each, a ***"Company"*** and collectively, the ***"Companies"***).

RECITALS

1. The County, acting by and through the Council, is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the ***"Code"***), particularly Title 12, Chapter 44 of the Code (the ***"Negotiated FILOT Act"***) and Title 4, Chapter 1 of the Code (the ***"MCIP Act"***, and, together with the Negotiated FILOT Act, the ***"Act"***) and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the ***"State"***) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (***"FILOT"***) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and, (iii) to place property in a joint county industrial or business park (a ***"Multi-County Park"***) created with an adjoining county in the State pursuant to an agreement entered into pursuant to Section 4-1-170 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution in order to allow for certain enhanced income tax credits to investors.

2. The Companies are considering the establishment and/or expansion of certain manufacturing and related facilities at one or more locations in the County (the ***"Project"***), and anticipate that, should their plans proceed as expected, the Companies will invest, or cause to be invested, in the aggregate, at least $150,000,000 in the Project and will create, or cause to be created, in the aggregate, at least 800 new, full-time jobs within the County, all by the end of the Enhanced Investment Period (as defined herein) and as set forth in greater detail in this Agreement.

3. Based on information supplied by the Companies, the Council has evaluated the Project based on certain criteria including, but not limited to, the purposes of the Project, the anticipated dollar amount and nature of the investment, the employment to be created or maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(I)(1) of the Negotiated FILOT Act, the County finds that: (a) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

4. The Project is located, or if not so located as of the date of this Agreement, the County intends to use its best efforts to locate the Project, in a Multi-County Park.

5. The County has determined that it is in the best interests of the County to enter into this Agreement with the Companies, subject to the terms and conditions set forth herein, and, by Ordinance

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

No. [___] enacted by the Council on September 18, 2023 (the "***Ordinance***"), which Ordinance also serves as an "inducement resolution" for the purposes of Section 12-44-30(11) of the Negotiated FILOT Act, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, and the potential jobs to be created, or caused to be created, by the Companies which contributes to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions

The terms that this Article defines shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly requires otherwise:

"Act" shall mean, collectively, the Negotiated FILOT Act and the MCIP Act.

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to this Agreement including, without limitation, reasonable attorneys' fees and costs; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Companies a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other entity which owns all or part of any Company (or with respect to a Sponsor Affiliate(s), such Sponsor Affiliate(s)) or which is owned in whole or in part by any Company (or with respect to a Sponsor Affiliate(s), such Sponsor Affiliate(s)) or by any partner, shareholder, member or owner of any Company (or with respect to a Sponsor Affiliate(s), such Sponsor Affiliate(s)), as well as any subsidiary, affiliate, individual or entity who bears a relationship to any Company (or with respect to a Sponsor Affiliate(s), such Sponsor Affiliate(s)), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

"Agreement" shall mean this Fee in Lieu of Tax and Incentive Agreement, as originally executed and from time to time as supplemented or amended, as permitted herein.

"Cell Company" shall mean Silfab Solar Cells SC Inc., a South Carolina corporation previously identified, together with the Module Company, as Project Mountie, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or, any other person or entity which may succeed to the rights and duties of the Cell Company, subject to the Transfer Provisions (defined below) and any and all other notice and approval rights of the County, if any, as provided herein or under the Negotiated FILOT Act.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended, unless the context clearly requires otherwise.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"Commencement Date" shall mean the last day of the Property Tax Year during which the Project or the first Phase thereof is placed in service, which date shall not be later than the last day of the Property Tax Year which is three (3) years from the year in which the County and the Companies enter into this Agreement.

"Company" shall mean each of the Cell Company and the Module Company, each with respect to its respective portion of the Project

"Companies" shall mean the Cell Company and the Module Company collectively.

"Condemnation Event" shall mean any act of taking by a public or quasi-public authority through condemnation, reverse condemnation or eminent domain.

"County" shall mean York County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the Council as the governing body of the County.

"County Manager" shall mean the York County Manager, or the person holding any successor office of the County.

"County Assessor" shall mean the York County Assessor, or the person holding any successor office of the County.

"County Auditor" shall mean the York County Auditor, or the person holding any successor office of the County.

"Council" shall mean York County Council, the governing body of the County.

"County Treasurer" shall mean the York County Treasurer, or the person holding any successor office of the County.

"Defaulting Entity" shall have the meaning set forth for such term in **Section 6.02(a)** hereof.

"Deficiency Amount" shall have the meaning set forth for such term in **Section 4.03** hereof.

"Department" shall mean the South Carolina Department of Revenue.

"Diminution in Value" in respect of the Project shall mean any reduction in the value, using the original fair market value (without regard to depreciation) as determined in Step 1 of **Section 4.01(a)** of this Agreement, of the items which constitute a part of the Project and which are subject to FILOT Payments which may be caused by any Company's or any Sponsor Affiliate(s)'s removal and/or disposal of Equipment pursuant to **Section 4.04** hereof, or by its election to remove components of the Project as a result of any damage or destruction or any Condemnation Event with respect thereto.

"Economic Development Property" shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Negotiated FILOT Act and which are placed in service during the Investment Period, as selected and identified by any Company or any Sponsor Affiliate(s) in its annual filings of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time).

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"Enhanced Investment Period" shall mean the period commencing with the first day that Economic Development Property is purchased or acquired, whether before or after the date of this Agreement, and ending eight (8) years after the Commencement Date, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

"Enhanced Investment Minimum Requirement" shall mean, by the end of the Enhanced Investment Period, either (a) aggregate investment by the Companies and any Sponsor Affiliate(s) in the Project of at least $400,000,000, or (b)(i) aggregate investment by the Companies and any Sponsor Affiliate(s) in the Project of at least $150,000,000 and (ii) the creation of at least 125 new, full-time jobs at the Project.

"Equipment" shall mean machinery, equipment, furniture, office equipment, and other tangible personal property, together with any and all additions, accessions, replacements, and substitutions thereto or therefor.

"Event of Default" shall mean any event of default specified in **Section 6.01** hereof.

"Exemption Period" shall mean the period beginning on the first day of the Property Tax Year after the Property Tax Year in which an applicable portion of Economic Development Property is placed in service and ending on the Termination Date. In case there are multiple Phases of the Project, the Exemption Period applies to each such Phase.

"Existing Property" shall mean property which will not qualify for the negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) property acquired or constructed by or on behalf of any Company or any Sponsor Affiliate(s) during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Ordinance, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Economic Development Property; (b) property purchased by or on behalf of any Company or any Sponsor Affiliate(s) during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that such Company or such other Sponsor Affiliate(s) invests at least an additional $45,000,000 in the Project, exclusive of the property identified in this subsection (b); or, (c) modifications which constitute an expansion of the real property portion of Existing Property.

"FILOT" or ***"FILOT Payments"*** shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein, whether pursuant to the Negotiated FILOT Act or the MCIP Act.

"FILOT Act Minimum Investment Requirement" shall mean, with respect to the Project, an investment of at least $2,500,000 by each Company and any Sponsor Affiliate(s), as the case may be, or, alternately, of at least $5,000,000 by the Companies and any Sponsor Affiliate(s), in the aggregate, in Economic Development Property.

"Improvements" shall mean improvements to the Land, including buildings, building additions, building upfit and renovations, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"Investment Period" shall mean, and shall be equal to, the Enhanced Investment Period, unless the provisions of **Section 4.03(a)** shall apply, in which case the Investment Period shall be equal to the Standard Investment Period.

"Land" means the land upon which the Project will be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with **Section 3.01(c)** hereof.

"MCIP Act" shall mean Title 4, Chapter 1, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

"MCIP Agreement" shall mean the Agreement for Development of Joint County Industrial and Business Park (York and Chester Counties) dated as of November 11, 2002, as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

"Module Company" shall mean Silfab Solar PV SC Inc. a South Carolina corporation previously identified, together with the Cell Company, as Project Mountie, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or, any other person or entity which may succeed to the rights and duties of the Module Company, subject to the Transfer Provisions (defined below) and any and all other notice and approval rights of the County, if any, as provided herein or under the Negotiated FILOT Act.

"Multi-County Park" shall mean: (i) the joint county industrial park (York County and Chester County) established pursuant to the terms of the MCIP Agreement; and, (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the MCIP Act, or any successor provision, with respect to the Project.

"Negotiated FILOT Act" shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

"Non-Qualifying Property" shall mean that portion of the real and personal property located on the Land, which does not qualify as Economic Development Property, such property to include: (i) Existing Property; (ii) except as to Replacement Property, property which any Company or Sponsor Affiliate(s) places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which any Company or Sponsor Affiliate(s) has terminated the FILOT as provided herein.

"Phase" or ***"Phases"*** in respect of the Project shall mean that the components of the Project are placed in service during more than one year during the Investment Period, and the word "Phase" shall therefore refer to the applicable portion of the Project placed in service in a given year during the Investment Period.

"Project" shall mean the Land and all the Improvements and Equipment that any Company or any Sponsor Affiliate(s) determines to be necessary, suitable or useful for the purposes described in **Sections 2.02(b)** and **2.03 (b)** hereof, to the extent determined by any Company and any Sponsor Affiliate(s) to be a part of the Project, and any Replacement Property, but excluding Non-Qualifying Property, all to the extent, other than with respect to Replacement Property, such real and personal property is placed in service within the Investment Period.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"Property Tax Year" shall mean, with respect to any Company or any Sponsor Affiliate(s), the annual period which is equal to the fiscal year of such Company or such Sponsor Affiliate(s), as the case may be, *i.e.*, with respect to the Cell Company, the annual period ending on December 31 of each year, and, with respect to the Module Company, the annual period ending on December 31 of each year.

"Removed Components" shall mean components of the Project or portions thereof which any Company or any Sponsor Affiliate(s) elects to remove from the Project pursuant to **Section 4.04** hereof or as a result of any Condemnation Event.

"Replacement Property" shall mean any property which is placed in service as a replacement for any item of Equipment or any Improvements previously subject to this Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvements to the fullest extent that the Negotiated FILOT Act permits, all as set forth in Section 12-44-60 of the Negotiated FILOT Act.

"Sponsor Affiliate(s)" shall mean an entity that joins with the Companies and that participates in the investment in, or financing of, the Project and which meets the requirements under the Negotiated FILOT Act to be entitled to the benefits of this Agreement with respect to its participation in the Project, all as set forth in **Section 5.13** hereof. As of the original execution and delivery of this Agreement, **there are no Sponsor Affiliates.**

"Standard Investment Period" shall mean the period commencing with the first day that Economic Development Property is purchased or acquired, whether before or after the date of this Agreement, and ending five (5) years after the Commencement Date, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

"State" shall mean the State of South Carolina.

"Termination Date" shall mean, with respect to each Phase of the Project, and subject to the provisions of **Section 4.03(d) hereof**, the end of the last day of the Property Tax Year which is the twenty-ninth (29th) year following the first Property Tax Year in which such Phase of the Project is placed in service, provided that in such event, and subject to the provisions of **Section 4.03(d) hereof**, the intention of the parties is that the Companies will make at least thirty (30) annual FILOT Payments under **Article IV** hereof with respect to each Phase of the Project; and provided further, that if this Agreement is terminated earlier in accordance with the terms hereof, the Termination Date shall mean the effective date of such termination.

"Transfer Provisions" shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers and such other provisions contained herein which may grant the County any notice or approval rights including, but not limited to, the provisions contained in **Sections 5.05** and **5.09** below.

"Weighted Average Wage Requirement" shall mean the creation of at least 125 new, full-time jobs at the Project by the end of the Enhanced Investment Period with an aggregate weighted average hourly wage of at least $22.00/hour, when utilizing a 2000-hour work year.

Any reference to any agreement or document in this **Article I** or otherwise in this Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 1.02 Project-Related Investments

The term "investment" or "invest" as used herein shall include not only investments made by the Companies and any Sponsor Affiliate(s), but also to the fullest extent permitted by law, those investments made by or for the benefit of the Companies or any Sponsor Affiliate(s) with respect to the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT Payments by the Companies or any Sponsor Affiliate(s).

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01 Representations, Warranties, and Agreements of the County

The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the Council as its governing body. The County has duly authorized the execution and delivery of this Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Companies, the Project constitutes a "project" within the meaning of the Negotiated FILOT Act.

(c) The County has agreed that each item of real and tangible personal property which is selected for inclusion in the Project by any Company or any Sponsor Affiliate(s) and which is eligible to be Economic Development Property, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property (but excluding any Non-Qualifying Property and any Removed Components) shall be considered Economic Development Property.

(d) The millage rate set forth in Step 3 of **Section 4.01(a)** hereof is 414.2 mills, which is the millage rate in effect with respect to the location of the proposed Project as of June 30, 2022, as permitted under Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, and which millage rate shall be adjusted every five (5) years in accordance with Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act, during the Exemption Period to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.

(e) The County will use its best efforts to ensure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the MCIP Act and Article VIII, Section 13(D) of the State Constitution on terms which allow the Companies and any Sponsor Affiliate(s) to seek from the State any additional jobs creation tax credits for the Project afforded by the laws of the State for projects located within multi-county industrial parks.

Section 2.02 Representations, Warranties, and Agreements of the Cell Company

The Cell Company hereby represents, warrants, and agrees as follows:

(a) The Cell Company is a corporation organized and in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State, has power to enter into this Agreement, and has duly authorized the execution and delivery of this Agreement.

(b) The Cell Company intends to operate the Project as a "project" within the meaning of the Negotiated FILOT Act as in effect on the date hereof. The Cell Company intends to operate the Project for the purpose of manufacturing solar cells, solar modules, and related activities, and for such other purposes that the Negotiated FILOT Act permits as the Companies may deem appropriate.

(c) The execution and delivery of this Agreement by the County has been instrumental in inducing the Cell Company to locate the Project in the County.

(d) The Cell Company, together with the Module Company and any Sponsor Affiliate(s), will use commercially reasonable efforts to meet, or cause to be met, the Enhanced Investment Minimum Requirement within the Enhanced Investment Period.

Section 2.03 Representations, Warranties, and Agreements of the Module Company

The Module Company hereby represents, warrants, and agrees as follows:

(a) The Module Company is a corporation organized and in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State, has power to enter into this Agreement, and has duly authorized the execution and delivery of this Agreement.

(b) The Module Company intends that the Project be operated as a "project" within the meaning of the Negotiated FILOT Act as in effect on the date hereof. The Module Company intends that the Project be operated for the purpose of manufacturing solar cells, solar modules, and related activities, and for such other purposes that the Negotiated FILOT Act permits as the Companies may deem appropriate.

(c) The execution and delivery of this Agreement by the County has been instrumental in inducing the Module Company to locate the Project in the County.

(d) The Module Company, together with the Cell Company and any Sponsor Affiliate(s), will use commercially reasonable efforts to meet, or cause to be met, the Enhanced Investment Minimum Requirement within the Enhanced Investment Period.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.01 The Project

(a) The Companies intend and expect, together with any Sponsor Affiliate(s), to: (i) construct and acquire the Project as shall be determined in their sole discretion; and, (ii) meet the Enhanced Investment Minimum Requirement by the end of the Enhanced Investment Period. The Companies anticipate that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2024.

(b) Pursuant to the Negotiated FILOT Act and subject to **Section 4.01** hereof, the Companies and the County hereby agree that the Companies and any Sponsor Affiliate(s) shall identify annually those assets which are eligible for FILOT Payments under the Negotiated FILOT Act and which any

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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Company or any Sponsor Affiliate(s) selects for such treatment by listing such assets in its annual PT-300S form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Agreement to the contrary notwithstanding, the Companies and any Sponsor Affiliate(s) shall not be obligated to complete the acquisition of the Project; provided, however, if the Companies, together with any Sponsor Affiliate(s), do not meet the Enhanced Investment Minimum Requirement within the Enhanced Investment Period, the provisions of **Section 4.03** hereof shall control.

(c) Any Company may add to the Land such real property, located in the same taxing district in the County as the Land designated as of the original execution and delivery of this Agreement, as such Company, in its discretion, deems useful or desirable. In such event, such Company, at its expense, shall deliver an appropriately revised Exhibit A to this Agreement, in form reasonably acceptable to the County.

Section 3.02 Diligent Completion

The Companies agree to use their reasonable efforts to cause the completion of the Project, as shall be determined in their sole discretion, as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.03 Filings and Reports

(a) Each year during the term of the Agreement, each Company and any Sponsor Affiliate(s) shall deliver to the County, the County Auditor, the County Assessor and the County Treasurer a copy of its most recent annual filings with the Department with respect to its respective portion of the Project, not later than thirty (30) days following delivery thereof to the Department.

(b) The Companies shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor, and to their counterparts in the partner county to the MCIP Agreement, the County Manager and the Department within thirty (30) days after the date of execution and delivery of this Agreement by all parties hereto.

(c) Each Company and any Sponsor Affiliate(s) agree to maintain complete books and records accounting for the acquisition, financing, construction, and operation of its respective portion of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by such Company and any such Sponsor Affiliate(s) in accordance with **Section 3.03(a)** or **(b)** above with respect to property placed in service as part of the Project.

ARTICLE IV

FILOT PAYMENTS

Section 4.01 FILOT Payments

(a) Pursuant to Section 12-44-50 of the Negotiated FILOT Act, each Company and any Sponsor Affiliate(s), as applicable, are required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Companies anticipate an initial investment of sums sufficient for all, or a portion of, the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Negotiated FILOT Act, the County and the Companies have negotiated the amount of the FILOT Payments in accordance therewith. Each Company and any

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Sponsor Affiliate(s), as applicable, shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises its respective portion of the Project and is placed in service, as follows: each Company and any Sponsor Affiliate(s), as applicable, shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property it places in service during the Investment Period, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures required by the Negotiated FILOT Act):

Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Investment Period using original income tax basis for State income tax purposes for any real property and improvements without regard to depreciation (provided, the fair market value of real property, as the Negotiated FILOT Act defines such term, that any Company and any Sponsor Affiliate(s) obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the real property for the first year of the Exemption Period remains the fair market value of the real property and improvements for the life of the Exemption Period. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to any Company and to any Sponsor Affiliate(s) if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Negotiated FILOT Act specifically disallows.

Step 2: Apply an assessment ratio of four percent (4%) or, in the event that the Companies, together with any Sponsor Affiliate(s), fail to meet the Enhanced Investment Minimum Requirement by the end of the Enhanced Investment Period, an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the twenty-nine (29) years thereafter or such longer period of years in which the Negotiated FILOT Act permits any Company and any Sponsor Affiliate(s) to make annual FILOT Payments.

Step 3: Use an initial millage rate of 414.2 mills, which millage rate shall be adjusted every five (5) years in accordance with Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act, during the Exemption Period, and applied against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.

(b) In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Negotiated FILOT Act and/or the herein-described FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof (without increasing the amount of incentives being afforded herein) and so as to afford the Companies and any Sponsor Affiliate(s) with the benefits to be derived herefrom, the intention of the County being to offer the Companies and such Sponsor Affiliate(s) a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Agreement shall terminate, and the Companies and any Sponsor Affiliate(s) shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Companies and such Sponsor Affiliate(s). Any amount determined to be due and owing to the County from any Company and any Sponsor Affiliate(s), with respect to a year or years for which such Company

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or such Sponsor Affiliate(s) previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which such Company or such Sponsor Affiliate(s) would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of FILOT Payments such Company or such Sponsor Affiliate(s) had made with respect to its respective portion of the Project pursuant to the terms hereof.

Section 4.02 [Reserved.]

Section 4.03 Failure to Achieve Minimum Investment Requirements; Failure to Achieve Weighted Average Wage Requirement

(a) In the event the Enhanced Investment Minimum Requirement is not met by the end of the Enhanced Investment Period, then, so long as the FILOT Act Minimum Investment Requirement has been met by the end of the Standard Investment Period, beginning with the FILOT Payment due January 15 of the second (2nd) year following the final year of the Enhanced Investment Period, the FILOT Payments due shall be prospectively computed in the manner set forth in **Section 4.01(a)** hereof, except that an assessment ratio of six percent (6%) shall be substituted for four percent (4%). Further, in such event, (A) the Companies and any Sponsor Affiliate(s) shall make, or cause to be made, payment to the County of (i) an amount equal to the difference between the net FILOT Payments theretofore made by the Companies and such Sponsor Affiliate(s) with respect to the portions of the Project placed in service during the Standard Investment Period and the net FILOT Payments which would have been theretofore due from the Companies and such Sponsor Affiliates with respect to the Project had the assessment ratio been applied at six percent (6%), plus (ii) an amount equal to the Deficiency Amount (here, and hereinafter, as defined below) with respect to the remaining portion of the Project (that is, the portion placed in service after the Standard Investment Period but before the end of the Enhanced Investment Period), with interest on such Deficiency Amount at the statutory rate for the late payment of *ad valorem* taxes, and (B) the Investment Period hereunder shall be deemed to be the Standard Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be payable to the County on or before the second (2nd) January 15 following the last day of the Enhanced Investment Period.

(b) In the event the Enhanced Minimum Investment Requirement is not met by the end of the Enhanced Investment Period and the FILOT Act Minimum Investment Requirement is not met by the end of the Standard Investment Period, this Agreement shall terminate and the Companies and any Sponsor Affiliate(s) shall be obligated to pay the County an amount which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes, or FILOT Payments due pursuant to the MCIP Act, as applicable, as would result from taxes levied on the Project by the County, any municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Companies and such Sponsor Affiliate(s) would be entitled in such a case, through and including the end of the Standard Investment Period, over (ii) the total amount of FILOT Payments the Companies and such Sponsor Affiliate(s) have made with respect to the Economic Development Property (such excess, a ***"Deficiency Amount"***) for the period through and including the end of the Standard Investment Period. Any amounts determined to be owing pursuant to the foregoing provisions of this Section shall be payable to the County on or before the one hundred twentieth (120th) day following the last day of the Standard Investment Period.

(c) As a condition to the FILOT benefit provided herein, the Companies agree to provide the County Manager, the County Assessor, the County Auditor and the County Treasurer with an annual certification as to investment in the Project, and the cumulative number of new, full-time jobs created at the Project, by the Companies and any Sponsor Affiliate(s). Such certification shall be in substantially the

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

form attached hereto as Exhibit B, and shall be due no later than the May 1 following the immediately preceding December 31 of each year during the Investment Period.

(d) In the event the Weighted Average Wage Requirement is not met by the end of Enhanced Investment Period, the Termination Date shall automatically be reduced to be the end of the last day of the Property Tax Year which is the twenty-fourth (24th) year following the first Property Tax Year in which such Phase of the Project is placed in service, such that the intention of the parties in such event would be that the Companies would make at least twenty-five (25) annual FILOT Payments under Article IV hereof with respect to each Phase of the Project; provided that if this Agreement is terminated earlier in accordance with the terms hereof, the Termination Date shall mean the effective date of such termination. As a means of memorializing satisfaction of the Weighted Average Wage Requirement, the Companies agree to provide, on or before the end of the Enhanced Investment Period, written documentation to the County Economic Development Director reasonably reflecting satisfaction of the Weighted Average Wage Requirement.

Section 4.04 Removal of Equipment

Subject, always, to the other terms and provisions of this Agreement, each Company and any Sponsor Affiliate(s) shall be entitled to remove and dispose of components of the Project from the Project in its sole discretion with the result that said components shall no longer be considered a part of the Project and, to the extent such components constitute Economic Development Property, shall no longer be subject to the terms of this Agreement. Economic Development Property is disposed of only when it is scrapped or sold or removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent such property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.05 FILOT Payments on Replacement Property

If any Company or any Sponsor Affiliate(s) elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or any Company or any Sponsor Affiliate(s) otherwise utilizes Replacement Property, then, pursuant and subject to the provisions of Section 12-44-60 of the Negotiated FILOT Act, such Company or such Sponsor Affiliate(s) shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the FILOT, whether real or personal, which is disposed of in the same Property Tax Year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same Property Tax Year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the FILOT shall be recorded using its income tax basis, and the calculation of the FILOT shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the FILOT.

Section 4.06 Reductions in Payment of Taxes Upon Diminution in Value; Investment Maintenance Requirement

In the event of a Diminution in Value of the Economic Development Property, the FILOT Payment with regard to the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property as determined pursuant to Step 1 of **Section 4.01(a)** hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project remaining in the County based on the original income tax basis thereof (that is, without regard to depreciation), is less than the FILOT Act Minimum Investment Requirement, then beginning with the first payment thereafter due hereunder and continuing until the Termination Date, the Project shall no longer be entitled to the incentive provided in **Section 4.01**, and the Companies and any Sponsor Affiliate(s) shall therefore commence to pay regular *ad valorem* taxes thereon, calculated as set forth in **Section 4.01(b)** hereof.

ARTICLE V

PARTICULAR COVENANTS AND AGREEMENTS

Section 5.01 Cessation of Operations

Notwithstanding any other provision of this Agreement, each Company and any Sponsor Affiliate(s) acknowledges and agrees that County's obligation to provide the FILOT incentive ends, and this Agreement is terminated, if the Companies cease operations at the Project. For purposes of this Section, "ceases operations" means closure of the facility comprised in whole, or in part, by the Project or the cessation of commercial operations at the Project, in either case, following commencement of commercial operations, for a continuous period of twelve (12) months. The provisions of **Section 4.03(b)** hereof relating to retroactive payments shall apply, if applicable, if this Agreement is terminated in accordance with this Section prior to the end of the Investment Period. Each Company and any Sponsor Affiliate(s) agrees that if this Agreement is terminated pursuant to this Section, that under no circumstance shall the County be required to refund or pay any monies to any Company or any Sponsor Affiliate(s).

Section 5.02 Rights to Inspect

Each Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to have access to examine and inspect any Company's South Carolina property tax returns, as filed, with respect to its respective portion of the Project. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Companies shall prescribe, and shall be subject to the provisions of **Section 5.03** hereof.

Section 5.03 Confidentiality

The County acknowledges and understands that the Companies and any Sponsor Affiliate(s) may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (***"Confidential Information"***). In this regard, any Company and any Sponsor Affiliate(s) may

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

clearly label any Confidential Information delivered to the County "Confidential Information." The County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall disclose or otherwise divulge any such clearly labeled Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law. Each of the Companies and any Sponsor Affiliate(s) acknowledge that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. In the event that the County is required to disclose any Confidential Information obtained from any Company or any Sponsor Affiliate(s) to any third party, the County agrees to provide such Company and such Sponsor Affiliate(s) with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by such Company and such Sponsor Affiliate(s) to obtain judicial or other relief from such disclosure requirement.

Section 5.04 Limitation of County's Liability

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent any Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 5.05 Mergers, Reorganizations and Equity Transfers

Each of the Companies and any Sponsor Affiliate(s) acknowledges that any mergers, reorganizations or consolidations of such Company and such Sponsor Affiliate(s) may cause the Project to become ineligible for FILOT Payments under the Negotiated FILOT Act absent compliance by such Company and such Sponsor Affiliates with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the Negotiated FILOT Act or any successor provision, any financing arrangements entered into by any Company or any Sponsor Affiliate(s) with respect to the Project and any security interests granted by such Company or such Sponsor Affiliate(s) in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions.

Section 5.06 Indemnification Covenants

(a) Notwithstanding any other provisions in this Agreement or in any other agreements with the County, the Companies agree to indemnify, defend and save the County, its Council members, elected officials, officers, employees, servants and agents (each, an ***"Indemnified Party"***, and collectively, the ***"Indemnified Parties"***) harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project or the Land by any Company or any Sponsor Affiliate(s), their members, officers, shareholders, employees, servants, contractors, and agents during the term of this Agreement, and, the Companies further shall indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the term of this Agreement from (i) entering into and performing its obligations under this Agreement, (ii) any condition of the Project, (iii) any breach or default on the part of any Company or any Sponsor Affiliate(s) in the performance of any of its obligations under this Agreement, (iv) any act of negligence of any Company or any Sponsor Affiliate(s) or its agents, contractors, servants, employees or licensees, (v) any act of negligence of any assignee or lessee of any Company or any Sponsor Affiliate(s), or of any agents, contractors, servants, employees or licensees of any assignee or lessee of any Company or any Sponsor Affiliate(s), or (vi) any environmental violation, condition, or effect with respect to the Project. The Companies shall indemnify, defend and save the County harmless from and against all costs and expenses including, but not limited to, reasonable attorneys' fees incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

notice from the County, the Companies shall defend it in any such action, prosecution or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld).

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the FILOT, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by any Company or any Sponsor Affiliate(s), or by reason of the County's relationship to the Project or by the operation of the Project by any Company or any Sponsor Affiliate(s), including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Companies shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses including, but not limited to, reasonable attorneys' fees incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Companies shall defend them in any such action or proceeding with legal counsel selected by the Companies and acceptable to the County (the acceptance of which shall not be unreasonably withheld, conditioned, or delayed); provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to: (i) the grossly negligent acts or omissions or willful misconduct, of any Indemnified Parties; or, (ii) any material breach of this Agreement by the County.

(c) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by any Company or any Sponsor Affiliate(s), shall survive any termination of this Agreement.

Section 5.07 Qualification in State

Each of the Companies and any Sponsor Affiliate(s) warrants that it is duly qualified to do business in the State, and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 5.08 No Liability of County's Personnel

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any elected official, officer, agent, servants or employee of the County and no recourse shall be had against any member of the Council or any elected official, officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 5.09 Assignment, Leases or Transfers

The County agrees that any Company and any Sponsor Affiliate(s) may at any time (a) transfer all or any of their rights and interests under this Agreement or with respect to all or any part of the Project, or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing or other entity with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to any Company or any Sponsor Affiliate(s) or operates such assets for any Company or any Sponsor Affiliate(s) or is leasing the portion of the Project in question from any Company or any Sponsor Affiliate(s). In order to preserve the FILOT benefit afforded hereunder with respect to any portion of the Project so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to an Affiliate of any Company or of any Sponsor Affiliate(s), or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the transferor Company or Sponsor Affiliate(s), as applicable, shall obtain the prior consent or subsequent ratification of the County for any such transfer or assignment, which consent or subsequent ratification may be granted or withheld by the County in its sole discretion, with the understanding that the County's willingness to ratify a transfer will be adversely impacted if the request for ratification is raised by the Sponsor or the Sponsor Affiliate, as applicable, more than sixty (60) days following the date of the transfer; (ii) except when a financing entity which is the income tax owner of all or part of the Project is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the transferor Company or Sponsor Affiliate(s), as the case may be, hereunder, or when the County consents in writing, no such transfer shall affect or reduce any of the obligations of the transferor Company and Sponsor Affiliate(s), as the case may be, hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of, as the case may be, of the transferor Company or Sponsor Affiliate(s) (or prior transferee), as the case may be, in the portion of the Project transferred; (iv) the transferor Company or applicable Sponsor Affiliate(s), transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department a true and complete copy of any such transfer agreement; and (v) the transferor Company or Sponsor Affiliate(s), as the case may be, and the transferee shall comply with all other requirements of the Transfer Provisions. If the County and the Department do not receive written notification of the identity of each transferee and such other information as may be required by the Department with the appropriate returns within sixty (60) days after the date of the transfer, a penalty may be assessed by the Department for late notification for up to ten thousand dollars ($10,000.00) a year or portion of a year, up to a maximum penalty of fifty thousand dollars ($50,000.00) under Section 12-44-120(C)(1) of the Negotiated FILOT Act, as the same may be amended.

Subject to County consent when required under this Section, and at the expense of the transferor Company or Sponsor Affiliate(s), as the case may be, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of such Company or Sponsor Affiliate(s), as the case may be, under this Agreement and/or any release of such Company or Sponsor Affiliate(s), as the case may be, pursuant to this Section.

Each Company and each Sponsor Affiliate(s) acknowledges that such a transfer of an interest under this Agreement or in its respective portion of the Project may cause all or part of the Project to become ineligible for the FILOT benefit afforded hereunder or result in penalties under the Negotiated FILOT Act absent compliance by the Companies and any Sponsor Affiliate(s) with the Transfer Provisions.

Section 5.10 Administration Expenses

The Companies agree to pay any Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the

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County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and anticipates, in connection with the original execution and delivery of this Agreement, no out of pocket expenses, including legal fees, in connection with this Agreement and the transactions authorized hereby.

Section 5.11 Priority Lien Status

The County's right to receive FILOT Payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Negotiated FILOT Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code.

Section 5.12 Interest; Penalties

In the event any Company or any Sponsor Affiliate(s) should fail to make any of the payments to the County required under this Agreement, then the item or installment so in default shall continue as an obligation of such Company or such Sponsor Affiliate(s) until such Company or such Sponsor Affiliate(s) shall have fully paid the amount, and such Company and such Sponsor Affiliate(s) agrees, as applicable, to pay the same with interest thereon at a rate, unless expressly provided otherwise herein and in the case of FILOT Payments, of five percent (5%) per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT Payments, at the rate for non-payment of *ad valorem* taxes under State law and subject to the penalties the law provides until payment. If any such default relates to its obligations to make FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 5.13 Sponsor Affiliate(s)

Any Company may designate from time to time any Sponsor Affiliate(s) pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the Negotiated FILOT Act, which Sponsor Affiliate(s) shall join with the Companies and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be bound by the terms and provisions of this Agreement pursuant to the terms of a written joinder agreement with the County and the Companies, which such joinder agreement shall be in substantially the form attached hereto as Exhibit C. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate(s) designated by such Company pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate(s) has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the Negotiated FILOT Act, provided that delivery of the joinder agreement described above to the County and the Department shall satisfy such notice requirement.

Section 5.14 Insurance; Standby Letter of Credit

The Companies and any Sponsor Affiliate shall, procure and maintain pollution insurance for the duration of the Incentive Agreement in the amount of $1,000,000 naming Property Owner and the County as Additional Insureds and naming the County as a Certificate Holder. Proof of Insurance shall be provided to County by, or at the direction of the Companies or any Sponsor Affiliate, as applicable, on an annual basis during the term of the FILOT Agreement. Failure to maintain such insurance during the term of the FILOT Agreement shall constitute an Event of Default under, and subject to, Section 6.01(c) hereof.

Promptly following the execution and delivery of the FILOT Agreement, the Companies shall place a Standby Letter of Credit, in form and substance reasonably agreeable to the County and the Companies, in the amount of $50,000 on file with the York County Treasurer, renewable annually, for purposes ensuring access to funds in the event the Property Owner or the County or their respective designees reasonably determine they must address an occurrence necessitating site cleanup subsequent to a hazardous substance release, abandonment of product or component parts upon cessation of operations, or other environmental occurrence for which cleanup or remediation is necessary by Property Owner or the County, as determined by a State or other governmental agency of competent jurisdiction, including York County. Failure to maintain the Letter of Credit by a Company shall constitute an Event of Default under, and subject to, Section 6.01(c) hereof.

ARTICLE VI

DEFAULT

Section 6.01 Events of Default

The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean, whenever used with reference to this Agreement, any one or more of the following occurrences:

(a) Failure by any Company or any Sponsor Affiliate(s) to make the FILOT Payments described in **Section 4.01(a)** hereof, or any other amounts payable to the County under this Agreement when due, which failure shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; provided, however, that the Companies and any Sponsor Affiliate(s) shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by any Company or any Sponsor Affiliate(s) hereunder which is deemed materially incorrect when deemed made; or

(c) Failure by any Company or any Sponsor Affiliate(s) to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of thirty (30) days after written notice from the County to such Company or such Sponsor Affiliate(s) specifying such failure and requesting that it be remedied, unless such Company or such Sponsor Affiliate(s) shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the thirty (30) day period shall be extended to cover such additional period during which such Company or such Sponsor Affiliate(s) is diligently pursuing corrective action; or

(d) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of thirty (30) days after written notice from any Company to the County and any Sponsor Affiliate(s) specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the thirty (30) day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 6.02 Remedies Upon Default

(a) Whenever any Event of Default by any Company or any Sponsor Affiliate(s) (the "***Defaulting Entity***") shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions as to the Defaulting Entity only:

(i) terminate this Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder.

In addition to all other remedies provided herein, the failure to make FILOT Payments shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the Negotiated FILOT Act. In this regard, and notwithstanding anything in this Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT Payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, any Company and any Sponsor Affiliate(s) may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Agreement as to the acting party; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 6.03 Reimbursement of Legal Fees and Expenses and Other Expenses

Upon the occurrence of an Event of Default hereunder by any Company or any Sponsor Affiliate(s), should the County be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the County shall be entitled, within thirty (30) days of demand therefor, to reimbursement from the applicable Defaulting Entity of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 6.04 No Waiver

No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notices

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Any notice, election, demand, request, or other communication to be provided under this Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

If to the Cell Company:
Silfab Solar Cells SC Inc.
c/o Silfab Solar Inc.
Attn: Treff MacDonald, Chief Operating Officer
240 Courtneypark Drive East
Mississauga, ON, L5T 2S5, Canada

With a copy (which shall not constitute notice) to:
Maynard Nexsen PC
Attn: Tushar V. Chikhliker, Esq.
1230 Main Street, Suite 700 (29201)
P.O. Box 2426
Columbia, South Carolina 29202

If to the Module Company:
Silfab Solar PV SC Inc.
c/o Silfab Solar Inc.
Attn: Treff MacDonald, Chief Operating Officer
240 Courtneypark Drive East
Mississauga, ON, L5T 2S5, Canada

With a copy (which shall not constitute notice) to:
Maynard Nexsen PC
Attn: Tushar V. Chikhliker, Esq.
1230 Main Street, Suite 700 (29201)
P.O. Box 2426
Columbia, South Carolina 29202

If to the County:
York County
Attn: County Manager
6 South Congress Street
P.O. Box 66
York, South Carolina 29745

With a copy (which shall not constitute notice) to:
York County
Attn: Michael K. Kendree, Esq.
26 West Liberty Street (29745)
P.O. Box 299
York, South Carolina 29745

Section 7.02 Binding Effect

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This Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Companies and any Sponsor Affiliate(s), the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 7.03 Counterparts; Facsimile/Scanned Signatures

This Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument. The parties hereto agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties hereto as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

Section 7.04 Governing Law

This Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

Section 7.05 Headings

The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

Section 7.06 Amendments

The provisions of this Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 7.07 Further Assurance

From time to time, upon the request of any Company and any Sponsor Affiliate(s) and at the expense of such Company or such Sponsor Affiliate(s), the County agrees to execute and deliver to such Company or such Sponsor Affiliate(s) such additional instruments as such Company or such Sponsor Affiliate(s) may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Negotiated FILOT Act, the MCIP Act, and this Agreement to effectuate the purposes of this Agreement.

Section 7.08 Invalidity; Change in Laws

In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Agreement, the County hereby expresses its intention that the interpretation of this Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Agreement and the maximum incentive permissible under the Negotiated FILOT Act and the MCIP Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

most closely the legal, valid, and enforceable intent thereof and so as to afford the Companies and any Sponsor Affiliate(s) with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Companies and any Sponsor Affiliate(s) the strongest inducement possible, within the provisions of the Negotiated FILOT Act and the MCIP Act, to locate the Project in the County. In case a change in the Negotiated FILOT Act, the MCIP Act, or the laws of the State eliminates or reduces any of the restrictions or limitations applicable to any Company and any Sponsor Affiliate(s) and the FILOT incentive, the parties agree that the County will give expedient and full consideration to reformation of this Agreement, and, if the Council so decides, to provide the Companies and any Sponsor Affiliate(s) with the benefits of such change in the Negotiated FILOT Act, the MCIP Act, or the laws of the State.

Section 7.09 Termination by Companies

Any Company is authorized to terminate this Agreement at any time with respect to all or part of its respective portion of the Project upon providing the County with thirty (30) days' written notice; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto (including, without limitation, any amounts owed with respect to Article IV hereof) shall survive such termination; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all such property shall be subject to *ad valorem* taxation or such other taxation or fee in lieu of taxation that would apply absent this Agreement. Such Company's obligation to make FILOT Payments under this Agreement shall terminate in the year following the year of such termination pursuant to this Section.

Section 7.10 Entire Understanding

This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and none of the parties hereto has made or shall be bound by any agreement or any representation to the other parties which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 7.11 Waiver

Any party may waive compliance by any other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 7.12 Business Day

In the event that any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the County, acting by and through the Council, has caused this Agreement to be executed in its name and behalf by the Chairwoman of the County and the County Manager and to be attested by the Clerk of the Council; and the Companies have caused this Agreement to be executed by their duly authorized officers, all as of the day and year first above written.

YORK COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Christi Cox, Chairwoman of County
Council of York County, South Carolina

By: _____
David Hudspeth, County Manager
York County, South Carolina

ATTEST:

_____
Karen Brogdon, Clerk to County Council of
York County, South Carolina

[Signature Page 1 to Fee in Lieu of Tax and Incentive Agreement]

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

SILFAB SOLAR CELLS SC INC.

By: _____
Print Name: PAOLO MACCARIO
Its: CHIEF EXECUTIVE OFFICER

[Signature Page 2 to Fee in Lieu of Tax and Incentive Agreement]

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

SILFAB SOLAR PV SC INC.

By: _____
Print Name: PAOLO MACCARIO
Its: CHIEF EXECUTIVE OFFICER

[Signature Page 3 to Fee in Lieu of Tax and Incentive Agreement]

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT A

DESCRIPTION OF LAND

That certain parcel or tract of land, situate, lying and being in York County, South Carolina, containing approximately 53 acres, shown and designated as "Lot 2" on that certain plat by Nicholas L. Mansfield with Survey Matters, dated November 22, 2019, last revised August 22, 2022 entitled "Stateline 77 Subdivision Prepared For: RG Baxter Lane, LLC Property of: RG Baxter Lane, LLC Highway 21 Bypass North York County, South Carolina" and recorded on September 22, 2022, in the York County Clerk of Court's Office at Plat Book 170, Page 29-30.

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EXHIBIT B

INVESTMENT AND JOB CREATION CERTIFICATION

I _____, the _____ of _____, do hereby certify in connection with Section 4.03 of the Fee in Lieu of Tax and Incentive Agreement dated as of [_____, 2023] (the "***Agreement***") between York County, South Carolina, Silfab Solar Cells SC Inc., a South Carolina corporation (the "***Cell Company***"), and Silfab Solar PV SC Inc., a South Carolina corporation (the "***Module Company***", and together with the Cell Company, collectively, the "***Companies***"), as follows:

(1) The total investment made by the Companies and any Sponsor Affiliate(s) in the Project during the calendar year ending December 31, 20__ was $_____.

(2) The cumulative total investment made by the Companies and any Sponsor Affiliate(s) in the Project from the period beginning _____, 20__ (that is, the beginning date of the Investment Period) and ending December 31, 20__, is $_____.

(3) The number of full-time jobs at the Companies' facilities where the Project is located was _____ persons as of _____, 20__ (the beginning date of the Investment Period).

(4) The number of net new, full-time jobs created at the Project since _____, 20__ (the beginning date of the Investment Period) is _____ persons.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 20__.

_____

Print Name:_____

Its:_____

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT B

FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

Reference is hereby made to that certain Fee in Lieu of Tax and Incentive Agreement, dated as of [_____], 2023 (the "***Agreement***"), by and between York County, South Carolina (the "***County***"), Silfab Solar Cells SC Inc., a South Carolina corporation (the "***Cell Company***"), and Silfab Solar PV SC Inc., a South Carolina corporation (the "***Module Company***", and together with the Cell Company, collectively, the "***Sponsors***").

1. **Joinder to Agreement.**

[_____], a [_____] organized and existing under the laws of the State of [_____] (the "***Company***"), hereby: (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Agreement with respect to its portion of the Project, as a Sponsor Affiliate thereunder; and (b) acknowledges and agrees that (i) in accordance with the Agreement, the Company has been designated as a Sponsor Affiliate by the Sponsors for purposes of the Project and such designation has been previously consented to by the County in the Agreement in accordance with the Negotiated FILOT Act, but only to the extent that the Negotiated FILOT Act requires the County's consent, (ii) the Company qualifies or will qualify as a Sponsor Affiliate under the Agreement and Sections 12-44-30(20) and 12-44-130 of the Negotiated FILOT Act upon the execution and delivery to the County and the Department of this Joinder Agreement, and (iii) the Company shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Agreement with respect to its portion of the Project.

2. **Capitalized Terms.**

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Agreement.

3. **Representations.**

The Company, as a Sponsor Affiliate under the Agreement, represents and warrants to the County as follows:

(a) The Company is a [_____] validly existing and in good standing under the laws of the State of [_____] and is, or will be prior to operation of the Project, authorized to do business in the State of South Carolina, has all requisite power to enter into this Joinder Agreement and to carry out its obligations hereunder and under the Agreement, and by proper action has been duly authorized to execute and deliver this Joinder Agreement. The Company's fiscal year end is [_____] and the undersigned will notify the County of any changes in the fiscal year of the Company.

(b) The Company intends that its respective portion of the Project be operated for [_____] and related activities.

(c) To the best knowledge of the Company, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any

governmental authority or arbitration board or tribunal, which would materially adversely affect this Joinder Agreement or which would, in any way, adversely affect the validity or enforceability of this Joinder Agreement, or the transactions contemplated hereby.

4. Governing Law.

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to any principles of choice of law that would refer the governance of this Joinder Agreement to the laws of any other jurisdiction.

5. Notice.

Notices under Section 7.01 of the Agreement with respect to the Company shall be sent to:

[ ]

6. Multiple Counterparts.

This Joinder Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[Signature Page Follows]

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

_____
Date

[Name of Entity]

By:_____
Name: _____
Its:_____

IN WITNESS WHEREOF, the Sponsors consent to the addition of the above-named entity as a Sponsor Affiliate under the Agreement effective as of the date set forth above.

SILFAB SOLAR CELLS SC INC.

By: _____
Name: _____
Its:_____

SILFAB SOLAR PV SC INC.

By: _____
Name: _____
Its:_____

County Acknowledgement:

[REQUIRED ONLY FOR THOSE SPONSOR AFFILIATES FOR WHICH COUNTY CONSENT IS REQUIRED BY THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, CODIFIED AS TITLE 12, CHAPTER 44, CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.]

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Agreement effective as of the date set forth above.

YORK COUNTY, SOUTH CAROLINA

By:_____
Name: _____
Its:_____

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

SUMMARY OF CONTENTS OF
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the "***Code***"), the parties have agreed to waive the requirements of Section 12-44-55 of the Code. The following is a summary of the key provisions of this Fee in Lieu of Tax and Incentive Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax and Incentive Agreement or a summary compliant with Section 12-44-55 of the Code.

Company Name(s)	Silfab Solar Cells SC Inc. and Silfab Solar PV SC Inc.	**Project Name**	Project Mountie
Projected Investment	$150,000,000	**Projected Jobs**	800
Location (Street)	7249 Logistics Lane, Fort Mill, SC 29715	**Tax Map No.**	7190000201
1. FILOT			
Required Investment	$150,000,000 (if create 125 jobs) or, alternatively, $400,000,000 (for 4% assessment ratio)	Required Jobs	125 (if required for 4% assessment ratio)
Investment Period	Ends, initially, eight (8) years from the Commencement Date (as defined herein)	Ordinance No./Date	No. [___], September 18, 2023
Assessment Ratio	4%	Term (Years)	30 years for each annual Phase (as defined herein)
Adjustable Millage	Five (5) year adjustable	Net Present Value (*If yes, discount rate)	N/A
Clawback Information	See Section 4.03		
2. MCIP			
Included in an MCIP	Yes		
If Yes, Name and Date	Agreement for Development of Joint County Industrial and Business Park (York and Chester Counties) dated as of November 11, 2002, as supplemented, modified, amended, or replaced from time to time.		
3. SSRC			
Percentage of Fees	N/A		
No. of Years	N/A		
Clawback Information	N/A		
4. Other information	N/A		

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT D

PLANNING & DEVELOPMENT SERVICES
18 W. LIBERTY STREET, PO BOX 96
YORK, SC 29745-0096
PHONE (803) 909-7200 / FAX (803) 909-7227

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Zoning Code Interpretation Application & Checklist

This checklist is to assist with the submittal of a request for an interpretation in the Zoning Code and should be used to ensure all appropriate documentation is submitted. The review and determination on a Zoning Code interpretation cost $150 and can take up to ten (10) business days. Use additional sheets when necessary.

Any submittals that are determined to be incomplete will not be processed, and the applicant will be notified with an explanation of the submittal's deficiencies. To prevent any delays in the review process, please use this checklist as a guide.

All Code Interpretation requests should contain the following information:

- ☐ Completed for below
- ☐ Written narrative explaining the nature of the request
- ☐ Other relevant factors pertaining to the request

Applicant Name: Walter Buchanan

Address: 256 Baxter Ln, Fort Mill, S.C.

Phone: 803 547 7609 **Email:** WallyNEsther@MSN.COM

The section of the Zoning Code, standard, or condition that is allegedly ambiguous or needing clarification:

See Attached file

Applicant Signature: Walter Buchanan **Date submitted:**

Delivered in Person

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Pursuant to Section 155.1092, please provide an interpretation of the following codes:

1. If you are protecting us (and the air we breathe), how do you allow a use that produces deadly toxic air pollutants next to two schools and nearby residences? Section 155.041 (2) states: "The district's less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses."
2. Section 155.042 (2) states: "Uses allowed in this district typically are not compatible with other, non-industrial land uses and therefore are intended to be separated and buffered from adjacent development." Why was Silfab not required to be in an Industrial Development (ID) district when they are obviously exhausting highly toxic air pollutants that are "not compatible" with both existing and new developments nearby. These developments include two schools currently under development next to the proposed Silfab plant site, an assisted living facility opening soon, and several surrounding residential areas. Both purpose statements show that Silfab should not be in Light Industrial (LI). Silfab seems perfectly suited for ID Zoning and not LI Zoning.
3. According to Section 155.948 (C) it states "There shall be NO EMISSION of ANY fumes, vapors, or gases of a noxious, toxic, or corrosive nature, which CAN cause ANY damage or irritation to health, animals, vegetation, or to any form of property", why is Silfab allowed in **ANY** zoning district when they have noxious Volatile Organic Compounds (VOCs), toxic Hydrofluoric (HF) Acid, Toluene and corrosive Hydrochloric Acid (HCl) air pollutants emitted into our air when, knowing **up front,** Silfab will be in violation of the above referenced standard because any one of these pollutants (and certainly the combination of all) can cause damage or irritation?
4. In Section 155.1301, Defined Terms (page 557 of the zoning code) for LI, why is Silfab allowed in LI when the definition states it ordinarily does not create noise, smoke, FUMES, odors, glare, or HEALTH or SAFETY hazards OUTSIDE the building or lot?
5. In Section 155.1301, Defined Terms (page 557 of the zoning code) for LI, why is Silfab allowed in LI when the definition states the processing is housed entirely within a building and Silfab's highly toxic exhaust is obviously going outside into our air?
6. Shouldn't Silfab be in more of a heavy industrial district, when in Section 155.1301, Defined Terms (page 557 of the zoning code) the definition of **heavy industrial** states, "ordinarily have greater than average impacts on the use and ENJOYMENT of adjacent property in terms of ... FUMES ... HEALTH, and SAFETY HAZARDS? Since we cannot enjoy our neighborhood parks or go for a jog for fear of breathing in deadly air pollutants, then this falls into **heavy industrial** as referred to in Section 155.041 (2). The purpose statement of light industrial states "LI is intended to accommodate less intensive industrial uses with operations primarily conducted indoors. The district's less intensive uses **protect nearby residential areas from the encroachment of HEAVY INDUSTRIAL uses.**"
7. Since this is the first time ever for a solar manufacturing use in York County and "solar" is not listed in Use Table 155.271-2, why was Silfab allowed in LI when in Section 155.270 (G) it states "**Unlisted Uses Prohibited.** Any use not listed for an applicable zoning district in the Use Table is prohibited"?

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EXHIBIT E

PLANNING & DEVELOPMENT SERVICES
York County, SC

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Sent Via Email 2/16/24

February 16, 2024

Walter Buchanan
256 Baxter Lane
Fort Mill, SC

RE: Zoning Code Interpretation, Various Sections Related to Industrial Uses

Dear Mr. Buchanan:

This Zoning Code interpretation is in response to a request submitted to the York County Planning and Development Services Department on February 1, 2024, attached, seeking clarification of several code sections related to industrial uses. Part 10 of the York County Zoning Code indicates that the purpose of a Zoning Code Interpretation is to provide clarification on any ambiguities. The Zoning Administrator may approve a request if there is an ambiguity or need for clarification demonstrated by the application. Additionally, the Zoning Administrator may deny or reject the request if there is no ambiguity or need for clarification demonstrated by the applicant.

Your request included seven questions on various code sections, which are paraphrased in material part below. I have provided responses to each question below.

1. How do you allow a use [in the Light Industrial District] ...Section 155.041(2) The district's less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses.

   Response: *§ 155.041(A)(2) is part of the Purpose Statement for the Light Industrial district, describing the intent of the district's creation. It provides no regulatory provisions in and of itself. There is no ambiguity or need for clarification in this statement.*

2. Section 155.042(2) states: Uses allowed in this district typically are not compatible with other, non-industrial land uses and therefore are intended to be separated and buffered from adjacent development. Why was Silfab not required to be in an Industrial Development (ID) district...?

   Response: *§ 155.042(A)(2) is part of the Purpose Statement for the Industrial Development district, describing the intent of the district's creation. It provides no regulatory provisions in and of itself. There is no ambiguity or need for clarification in this statement.*

   It is my understanding that you are seeking clarification on the zoning district(s) that permit solar panel manufacturing facilities, which I infer from the reference to "Silfab", shorthand for Silfab Solar, Inc. The uses defined in the Zoning Code are informed by the North American Industry Classification System (NAICS). This system is commonly used by jurisdictions across the country to help inform and define uses in zoning code, including York County. While this system was created to track economic activities, it was developed on the principle that businesses that are similar in form or function, or that use similar production processes should be grouped together.

   "Solar panel manufacturing", as a narrowly-defined business, is grouped in NAICS under National Industry 334413 Semiconductor and Related Device Manufacturing, which includes fuel cells, semiconductors, microprocessors, photovoltaic cells and devices, silicon wafers, and solar cells, among other related products manufactured by such businesses (see https://www.census.gov/naics). 334413 Semiconductor and Related Device Manufacturing is an industry under the 334 Computer and Electronic Product Manufacturing NAICS subsector.

"Computer and Electronic Product Manufacturing" is also a defined use in the Zoning Code, permitted in the Light Industrial (LI), Industrial (ID), Business and Technology Park (BT), and Urban Development (UD) zoning districts. Therefore, any specific type of manufacturing industry that falls under the 334 Computer and Electronic Product Manufacturing NAICS subsector is a permitted use in those districts.

3. Section 155.948(C) states: There shall be NO EMISSION of ANY fumes, vapors, or gases of a noxious, toxic, or corrosive nature, which CAN cause ANY damage or irritation to health, animals, vegetation, or to any form of property.

   Response: *The Performance Standards section of the York County Zoning Code is intended to protect the public health, safety, welfare, and quality of life by regulating the emission or existence of dangerous, detrimental, and objectionable environmental elements. The standards apply as long as the emitting land uses are in existence; the uses must "perform" according to the expected standard.*

   The Performance Standards do not outright ban any emission of noise, radiation, fumes, vibration, humidity, or odor, nor do they preclude any specific uses, materials, or operations from locating in the County. Rather, the standards are implemented through substantiated evidence of a breach in performance, evaluated in terms of the controlling state or federal standard that are set for any particular emission.

4. In Section 155.1301: Defined Terms for [Industrial, Light], why is [solar panel manufacturing] allowed in LI when the definition states that it ordinarily does not create noise, smoke, fumes, odor, glare, or health or safety hazards outside the building or lot?

   Response: *A definition is not regulatory in and of itself. There is no ambiguity or need for clarification for the defined term "Industrial, Light." Regarding why a solar panel manufacturing facility is permitted in LI, please refer to the response to #2.*

5. In Section 155.1301: Defined Terms for [Industrial, Light], why is [solar panel manufacturing] allowed in LI when the definition states the processing is housed entirely within a building...?

   Response: *Please refer to the response to #4.*

6. Shouldn't [solar panel manufacturing] be in more of a heavy industrial district, when in Section 155.1304: Defined Terms the definition of [Industrial, Heavy] states "ordinarily have greater than average impacts on the use and enjoyment of adjacent property in terms of noise, fumes, odors, glare, health, and safety hazards...?

   Response: *Referenced are the definition of Heavy Industrial and the Purpose Statement of the Light Industrial District. There is no ambiguity or needs for clarification for either code section. Regarding why a solar panel manufacturing facility is permitted in LI, please refer to the response to #2.*

7. Since this is the first time ever for a solar manufacturing use in York County and "solar" is not listed in Use Table 155.271-2, why [is solar panel manufacturing] allowed in LI when in Section 155.270(G) it states "Unlisted Uses Prohibited. Any use not listed for an applicable zoning district in the Use Table is not permitted"?

   Response: *Please refer to the response to #2.*

If you believe you are aggrieved by this determination, you may elect to submit an administrative appeal application by **March 18, 2024**. Please be advised appeals of Zoning Code interpretations are heard by the Board of Zoning Appeals at a public hearing. The application should be filed with the Planning & Development Services Department in person at 18 W. Liberty Street, York, SC 29745 or via mail to P.O. Box 96, York, SC 29745. If you have any questions, please do not hesitate to contact me at 803-909-7204 or Rachel.Grothe@yorkcountygov.com.

Sincerely,

R. Grothe

Rachel Grothe, MCRP
Zoning & Development Standards Administrator

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EXHIBIT F

BOARD OF ZONING APPEALS
ADMINISTRATIVE APPEAL APPLICATION

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

GENERAL INFORMATION

Walter Buchanan — wallynesther@msn.com

APPLICANT'S NAME — EMAIL ADDRESS

ADDRESS: 256 Baxter Lane

NUMBER — STREET — APARTMENT/BOX NUMBER

Fort Mill — 29715

CITY — STATE — ZIP CODE

PHONE: 803-547-7609 (WORK) — 803-547-7609 (HOME)

Judi Quinby — EMAIL ADDRESS

PROPERTY OWNER'S NAME

ADDRESS: 3343 Peachtree Rd NE, Suite 1600

NUMBER — STREET — APARTMENT/BOX NUMBER

Atlanta — GA — 30326

CITY — STATE — ZIP CODE

PHONE: _____ (WORK) — _____ (HOME)

PROPERTY INFORMATION

PROPERTY ADDRESS: 7149 Logistics Lane, Fort Mill, SC 29715

PROPERTY DIRECTIONS: _____

PROPERTY CONDITIONS: _____

PROPERTY TAX MAP #: 7190000201

PLAT: PLEASE ATTACH TO APPLICATION

LOT AREA: ACRES: _____

SQ. FEET: _____

ZONING DISTRICT: LI

USE OF PROPERTY: Distribution Center

CONCEPTUAL SITE PLAN: _____

RELEVANT FACTORS PERTAINING TO THE ADMINISTRATIVE APPEAL

1. **APPLICANT HEREBY APPEALS TO THE BORAD OF ZONING APPEALS FROM THE ACTION OF THE PLANNING & DEVELOPMENT SERVICES STAFF AFFECTING THE PROPERTY DESCRIBED IN THIS APPLICATION ON THE GROUNDS THAT AN INTERPRETATION OF THE ZONING CODE WAS ERRONEOUS AND CONTRARY TO PROVISIONS OF THE ZONING CODE IN SECTION** See attached sheet **AS FOLLOWS:**

   Please see attached sheet

2. **APPLICATION IS AGGRIEVED BY THE ACTION OR DECISION IN THAT:**

   Please see attached sheet

3. **APPLICANT CONTENDS THAT THE CORRECT INTERPRETATION OF THE ZONING CODE AS APPLIED IS:**

   Please see attached sheet

4. **APPLICANT REQUESTS THE FOLLOWING RELIEF:**

   Please see attached sheet

5. **IF YOU ARE SUBMITTING ADDITIONAL INFORMATION, PLEASE LIST BELOW:**

   Please see attached sheet

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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Relevant Factors Pertaining to the Administrative Appeal

-Walter (Wally) Buchanan

Section 1 & 3 Erroneous interpretation of the code by Zoning staff and correct interpretation of the zoning code.

1. **§155.015 (A)** The staff states the purpose statements are not regulations. Zoning staff put a period where there is a comma and it in fact states, The purpose statements are not regulations, but rather a summary of the district character and **regulatory intent.**

   The purpose statement for LI is: §155.041 (A) (2) LI is intended to accommodate less intensive **industrial uses** with operations primarily conducted indoors. The district's less intensive uses protect nearby residential areas from the encroachment of **heavy industrial uses.**

   The definition of **heavy industrial** is: "The assembly, fabrication, finishing, manufacturing, packaging, processing, or distribution of goods and materials by means that ordinarily have **greater than average impacts on the use and enjoyment of adjacent property** in terms of noise, **fumes,** odors, glare, health and **safety hazards,** or that **otherwise does not constitute light manufacturing**".

   The definition of light industrial is: The assembly, fabrication, or processing of goods and materials by means that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where the assembly, fabrication, or processing takes place; where the processing is housed entirely within a building. **LIGHT INDUSTRIAL does not include hazardous material treatment and storage facilities**, plating or enameling, or petroleum and gas refining.

2. **155.270 (G) Unlisted Uses Prohibited.** Any use not listed for an applicable zoning district in the Use Table is prohibited. Note: It does not give any reference to NAICS (North American Industry Classification System) therefore the reference in the staff response to justify Silfab being approved in LI is not valid. There is no reference in the code that if it is not listed we refer to NAICS. Furthermore, The NAICS has a category and code for Solar cell manufacturing **by itself**. It is not combined with electrical components.

3. **155.948 Performance Standards** Our question was stated, **KNOWING UP FRONT**, they will violate the code, was not acknowledged in the staff response. § 155.948 Performance Standards is shown below. It has no reference to the property line compared to other standards. Nowhere does the code state that we rely or refer to DHEC.

   § 155.948 OTHER PERFORMANCE STANDARDS.

   (A) Fire and Explosive Hazards. All activities and all storage of flammable and explosive materials at any point shall be provided with adequate safety devices against the hazards of fire and explosion including adequate firefighting and fire suppression equipment.

   (B) Radioactive Emissions. There shall be no radiation emitted from radioactive emission measured at the lot line.

   (C) Fumes, Vapors, and Gases. There shall be **no emission** of any fumes, vapors, or gases of a noxious, toxic, or corrosive nature, which can cause **any damage or irritation to health, animals, vegetation, or to any form of property.**

   (D) Vibration. There shall be no perceptible earth vibrations measured at the lot line.

(E) **Heat, Cold, Dampness, or Movement of Air.** Activities that could produce any adverse effect on the temperature, motion, or humidity of the atmosphere beyond the lot line are prohibited.

(F) **Odor.** There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive at the lot line. Any process that may involve the creation or emission of any such odor shall be provided with both a primary and a secondary safeguard system so that control may be maintained in the event of failure of the primary safeguard system.

(G) **Glare.** There shall be no direct or sky reflected glare, whether from floodlights, high temperature processing, combustion, welding, or any other source, so as to be visible in any residential district.

4. Three of our questions referred to the definitions. The staff response was that the definitions were not regulations. However, the definitions are legally binding, otherwise why would they be in there?

5. **§ 155.975 APPROVAL CRITERIA.** In considering an appeal of an administrative decision, the Board shall apply the standards of this Chapter, other applicable law, and previous interpretations of this Chapter by the Board. What we would like to see is a previous approval of a 70-foot smokestack or show me where this has been denied. Therefore, your decision will set a precedent that all light industrial districts will be allowed to have a 70-foot smoke stack emitting toxic pollutants and will be allowed to have hazardous waste.

Section 2. Applicant is aggrieved by the action or decision in that:

This will allow highly toxic air pollution to be released and hazardous waste and explosive chemicals to be kept onsite in close proximity to my home that will endanger me and my family. Our property includes four generations of family members, one with COPD will be especially negatively affected.

Section 3. (Listed above with section 1)

Section 4. Applicant requests the following relief.

Silfab must be considered heavy industrial and not allowed to do business at the current location where it is zoned Light Industrial. It must be placed where it is safe for heavy industrial businesses to manufacture.

Section 5. Additional information

Andy Lytle will speak as my representative at the Zoning Administrative Appeal Hearing.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

I CERTIFY THAT ALL INFORMATION PRESENTED BY ME IN THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BENEFIT:

Walter Bushong 3/14/24

APPLICANT **DATE**

I (WE) CERTIFY THAT I (WE) ARE THE OWNERS OF THE PROPERTY INVOLVED IN THIS APPLICATION AND FURTHER THAT I (WE) DESIGNATE THE PERSON SIGNING AS APPLICANT TO REPRESENT ME (US) IN THIS APPLICATION.

Walter Bush 3/14/24

PROPERTY OWNER (S) **DATE**

***ATTACHED OWNER'S NOTARIZED WRITTEN AUTHORIZATION IF OWNER'S SIGNATURE CANNOT BE OBTAINED.**

OFFICE USE ONLY

AMOUNT PAID: _____ **CHECK #:**_____ **CASH AMOUNT:** _____

DATE RECEIVED: _____ **RECEIPT NUMBER:** _____

DATE FILED: _____ **MEETING DATE:** _____

ACCEPTED BY:

_____

STAFF SIGNATURE **DATE**

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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EXHIBIT G

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

FOR USE OF BOARD OF ZONING APPEALS ONLY
(FINAL DECISION)

REQUESTED ADMINSITRATIVE APPEAL REQUEST FOR: WALTER BUCHANAN

FOR: WALTER BUCHANAN IS APPEALING THE ADMINISTRATIVE DECISION MADE BY THE YORK COUNTY ZONING ADMINISTRATOR TO A ZONING CODE INTERPRETATION, VARIOUS SECTIONS RELATED TO USES PERMITTED IN THE LIGHT INDUSTRIAL (LI) DISTRICT. CASE NUMBER Z24-2 AA

REQUEST AN ADMINSITRATIVE APPEAL TO: THE APPLICANT REQUESTS AN ADMINSTRATIVE APPEAL OF THE ZONING CODE INTERPRETION MADY BY THE YORK COUNTY ZONING ADMINISTRATOR REGARDING A USE IN THE LIGHT INDUSTRIAL ZONING DISTRICT.

ANY PREVIOUS REQUESTS FOR SAME VARIANCE: ( ) YES (X) NO

IF "YES," APPEAL TAX REFERENCE NUMBER AND DATE: _____

1. PUBLIC HEARING SET FOR **MAY 9, 2024**
2. ADVERTISED IN: **THE HERALD** DATE: **MARCH 24, 2024**
3. PUBLIC HEARING HELD: **YORK COUNTY GOVERNMENT CENTER** DATE: **MAY 9, 2024**
4. THE BOARD OF ZONING APPEALS HELD A PUBLIC HEARING ON **MAY 9, 2024** TO CONSIDER an administrative appeal by Walter Buchanan requesting that the Board reverse the Zoning Administrator's Interpretation that Solar Panel Manufacturing is a Permitted Use within the Light Industrial Zoning District and further determine that Solar Panel Manufacturing be considered a Heavy Industrial use.
5. In her Interpretation of the York County Zoning Code, the Zoning Administrator determined that Solar Panel Manufacturing is classified as Computer and Electronic Products Manufacturing as defined in the York County Zoning Code. The Zoning Administrator's conclusion resulted after consultation with the North American Industry Classification System (NAICS), a system created and developed by the U.S. Bureau of Labor Statistics to track economic activities in North America on the principle that businesses that are similar in form or function, or that use similar production processes, should be grouped together. NAICS is utilized by countless jurisdictions across the Country to assist with classification of uses. Additionally, the York County Zoning Code is heavily informed by NAICS, as evinced by the numerous defined uses and manufacturing subsectors that are shared (verbatim) between the York County Zoning Code and NAICS.
6. THE BOARD MAKES THE FOLLOWING FINDINGS OF FACT WHICH ARE SUPPORTED BY THE EVIDENCE: Upon consideration of all presentations, evidence, and testimony presented before

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

the Board of Zoning Appeals regarding whether the Zoning Administrator erred in determining that Solar Panel Manufacturing exists within the York County Zoning Code under the Use "Computer and Electronic Products Manufacturing" and as a result, is a permitted use in the Light Industrial District, the Board finds: that the Zoning Administrator erred in determining that Solar Panel Manufacturing is a permitted use in the Light Industrial District; that while the Zoning Administrator is not prohibited from using the North American Industry Classification System (NAICS) as an aid in making classification interpretations under the Zoning Code, NAICS is not referenced in the York County Code of Ordinances as the authority by which such determinations are made, and staff presented insufficient evidence that any analysis independent of NAICS was utilized in making the determination that Solar Panel Manufacturing fits within the Computer and Electronic Products Manufacturing Use, which is a Permitted Use in the Light Industrial District; that Solar Panel Manufacturing is not expressly listed as a Permitted Use in the Light Industrial District, and as a result, is Prohibited pursuant to the Zoning Code § 155.270(G), which states that any use not listed for an applicable zoning district in the Use Tables provided in the Code is prohibited.

7. UPON CONSIDERATON OF THE FOREGOING, THE BOARD CONCLUDES: The Zoning Administrator erred in determining that Solar Panel Manufacturing is a Use under Computer and Electronic Products Manufacturing permitted in Light Industrial; and, that Solar Panel Manufacturing is not listed as a Use applicable for the Light Industrial Zoning District and is therefore prohibited pursuant to § 155.270 (G), York County Code of Ordinances.

THE BOARD, THEREFORE, UPON MOTION AND VOTE OF 5-0, **REVERSED** THE INTERPRETATION OF THE ZONING ADMINISTRATOR THAT SOLAR PANEL MANUFACTURING IS PERMITTED IN THE LIGHT INDUSTRIAL DISTRICT UNDER THE COMPUTER AND ELECTRONIC PRODUCTS MANUFACTURING USE.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

EXHIBIT H

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

PART 13: ZONING COMPLIANCE

§ 155.1120 PURPOSE.

Zoning compliance is a process that allows the Zoning Administrator to review new uses, structures, activities, and developments prior to establishment of the use or commencement of development activities to ensure they comply with the standards in this Chapter, have appropriate design and infrastructure, and comply with any conditions of rezoning, special exception use, or variance approval.

§ 155.1121 APPLICABILITY.

(A) This Part applies to an application for zoning compliance approval. Unless elsewhere exempted by this Chapter, an applicant shall obtain zoning compliance approval prior to:

(1) Establishing a new conditional or special exception use;

(2) Changing an existing use;

(3) Reestablishing a use after a period of non-use of 180 days or more;

(4) Constructing, moving, adding to, or structurally altering a building or other structure;

(5) Constructing, enlarging, moving, or replacing a sign;

(6) Commencing shoreline stabilization activities, removing trees measuring more than six inches DBH, or initiating land disturbance activity of any kind in a riparian buffer;

(7) Removing trees measuring more than six inches DBH or initiating land disturbance activity of any kind in a cemetery buffer; and

(8) Demolishing, destroying, removing, relocating, or renovating an historically or architecturally significant site, structure, or landmark located in the Historic Sites Overlay District.

(B) This Part does not apply to any change to or replacement of the permanent copy on an existing lawful sign if the copy change does not change the size or nature of the sign in such a manner as to render the sign in violation of this Chapter.

(C) Zoning compliance applications for communications towers or small wireless facilities are subject to the requirements in this Part and in Part 4

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(E) : Communications Towers Permits and Part 7 : *Small Wireless Applications*, as applicable.

(F) This Part does not apply to home occupation permits, which are provided for in Part 5 *Home Occupation Permits.*

§ 155.1122 INITIATION.

(A) **Applicant Eligibility.** A zoning compliance application may be initiated by:

(1) The lot owner or tenant of the lot proposed for use or development; or

(2) An agent of the lot owner or tenant of the lot proposed for the use or development.

(B) **Application Requirements.** A zoning compliance application:

(1) Shall be filed with the Zoning Administrator on an application form provided by the Planning and Development Services Department;

(2) May be filed concurrently with a commercial building plan review application;

(3) May be filed concurrently with a non-residential or multi-family construction plan application;

(4) May be filed concurrently with a building permit application for a residential dwelling or sign structure.

§ 155.1123 DECISION.

(A) **Approval Authority.** A zoning compliance application is reviewed and approved, approved with conditions, or disapproved by the Zoning Administrator.

(B) **Two-Part Approval.**

(1) Zoning compliance applications have two components of approval:

(a) Site plan approval; and

(b) Final zoning compliance approval.

(2) For a zoning compliance application proposing the establishment of a new use or change in use that does not require any associated construction or land development activities, the Zoning Administrator may issue final zoning compliance approval at the same time as site plan approval.

(3) For a zoning compliance application proposing any construction or land development activities, the Zoning Administrator shall approve or approve with conditions the

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

site plan prior to the issuance of building or land development permits, but shall not issue final zoning compliance approval until construction or land development is complete, except as provided in Paragraph (C), below.

(4) Prior to the issuance of a certificate of occupancy by the Building Official, the Zoning Administrator or Building Official shall conduct a field inspection to ensure the use(s) and structure(s) comply with the approved zoning compliance site plan.

(a) If the Zoning Administrator finds the use(s) and structure(s) comply with the approved zoning compliance site plan, the Administrator shall issue final zoning compliance approval.

(b) If the Zoning Administrator finds the use(s) or structure(s) does not comply with the approved zoning compliance site plan, the Administrator shall not issue final zoning compliance approval until the applicant corrects all deficiencies.

(C) **Temporary Zoning Compliance Approval for Non-Residential Uses.**

(1) Upon the applicant's request and prior to the issuance of a certificate of occupancy by the Building Official, the Zoning Administrator may issue a temporary zoning compliance approval for a non-residential use if the applicant has met all requirements of this Chapter, except for the completion of impervious surfaces in parking areas, driveways, roads, sidewalks, and other areas.

(2) This does not include accessible parking spaces and accessways, which shall be surfaced prior to issuance of a temporary zoning compliance approval.

(3) A temporary zoning compliance approval may include certain safeguards and conditions in order to protect the safety of the occupants and the public.

(4) If the Zoning Administrator issues a temporary zoning compliance approval, the applicant shall submit to the Administrator financial assurance in the form of cash, a bank or cashier's check, or an irrevocable letter of credit. The financial assurance shall be filed in an amount equal to 150% of the cost to install and complete the improvements.

(5) Upon approval of the financial assurance for the proposed improvements, the applicant shall complete the improvements within 180 days of the financial assurance approval date.

(6) If the applicant fails to complete the required improvements satisfactorily within the required period of time, the financial assurance shall be forfeited and applied to the cost of completion of the required improvements.

(7) This provision in no way releases the applicant from financial liability incurred above the value of the financial assurance in making the required improvements. A request for a temporary certificate of occupancy and the posting of a financial assurance will constitute a waiver and absolute forfeiture of the right to request a variance from the above referenced requirements of this Chapter.

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(D) **Zoning Compliance Approval for Activities in a Riparian or Cemetery Buffer.**

(1) Activities in a riparian or cemetery buffer require two inspections by the Zoning Administrator.

(2) Prior to site plan approval, the Zoning Administrator shall conduct an inspection to ensure that the request meets the requirements of the Chapter.

(3) If all applicable requirements for the project have been met, the Zoning Administrator shall issue site plan approval and the proposed work may begin.

(a) Prior to the initiation of work, the applicant shall install survey flagging to clearly indicate the location of:

1. The shoreline, river bank, stream bank, or cemetery boundary, as applicable;
2. The interior edge of the buffers;
3. All trees six inches DBH or greater;
4. All trees proposed to be removed; and
5. All areas proposed to be disturbed on the subject lot.

(b) The applicant shall have a period of 180 days from the issuance of the approval to complete the proposed work, at which time the permit shall expire.

(4) Upon completion of the work, the applicant shall notify the Zoning Administrator, and the second inspection shall be conducted to ensure that the scope of the work conforms to the activity authorized in the approved site plan.

(a) If the Zoning Administrator finds the work complies with the approved zoning compliance site plan, the Administrator shall issue final zoning compliance approval.

(b) If the Zoning Administrator finds the work does not comply with the approved zoning compliance site plan, the Administrator shall not issue final zoning compliance approval until the applicant corrects all deficiencies.

(5) Prior to the second inspection of work in a riparian buffer, the applicant shall install permanent survey markers indicating the location of the interior edge of the buffer in accordance with Subchapter D, Part 3, Subpart 3.5, § 155.853: *Marking of Buffers*.

§ 155.1124 APPROVAL CRITERIA.

(A) The Zoning Administrator shall review the zoning compliance application for compliance with this Chapter with respect to the following:

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(1) The application's compliance with applicable provisions of the Zoning Code including, but not limited to:

(a) Subchapter B: *Zoning Districts*;

(b) Subchapter C: *Use Regulations*;

(c) Subchapter D: *Development and Design Standards*;

(2) The relationship of the development to adjacent uses in terms of compatibility, access, setbacks, and any other possible negative impacts;

(3) The design and location of off-street parking and loading facilities to ensure that all such spaces are usable and are safely and conveniently arranged;

(4) The use of landscaping and fencing, walls, or berms to provide adequate screening to shield lights, noise, movement, or activities from adjacent lots where required; and

(5) The use of outdoor lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection upon adjacent lots.

(B) When a zoning compliance application includes two or more lots proposed for development as a single, unified site, all setback, bufferyard, and screening requirements apply only to the exterior lot lines of the unified development site and not to internal lot lines within the unified site.

(C) The Zoning Administrator shall not issue a zoning compliance approval except in conformity with the provisions of this Chapter, unless the Administrator receives a written order from the Board of Zoning Appeals in the form of an administrative appeal, special exception use, or variance as provided by this Chapter.

§ 155.1125 SCOPE OF APPROVAL.

(A) **Approval of Zoning Compliance Site Plans.** Approval of a zoning compliance site plan is considered authorization to proceed with:

(1) Activity in a riparian or cemetery buffer, which must be completed within 180 days of site plan approval;

(2) Application for or issuance of a building permit for the lot(s) (see Chapter 150: *Building Regulations*); and

(3) Application for or issuance of land development permits as required by Chapter 151: *Floodplain Management*, Chapter 152: *Stormwater Management and Sediment Control*, and Chapter 154: *Land Development Code*, as applicable.

(B) **Temporary Zoning Compliance Approval.** Temporary zoning compliance approval:

ELECTRONICALLY FILED - 2025 Dec 15 4:32 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(1) Is valid for a period not to exceed 180 days following approval of the financial assurance; and

(2) Authorizes the issuance of a temporary certificate of occupancy in accordance with Chapter 150, *§ 150.05: Temporary or Conditional Certificates of Zoning Compliance and Occupancy*.

(C) **Final Zoning Compliance Approval.** Final zoning compliance approval is considered authorization to proceed with:

(1) Establishment of the proposed use; and

(2) Application for or issuance of a certificate of occupancy.

§ 155.1126 RECORDKEEPING.

The Zoning Administrator shall maintain a record of all zoning compliance applications and related materials. A copy shall be furnished upon a written request of any person.

§ 155.1127 RESERVED.

§ 155.1128 RESERVED.

§ 155.1129 RESERVED.

§ 155.1130 RESERVED.

§ 155.1131 RESERVED.

§ 155.1132 RESERVED.

§ 155.1133 RESERVED.

§ 155.1134 RESERVED.

STATE OF SOUTH CAROLINA

----------x

DENNIS FLOYD BIVENS,

Plaintiff,

Case No.

-against- 2025-CP-46-4007

YORK COUNTY, ET AL,

Defendant.

----------x

December 16, 2025

York, S.C.

B E F O R E:

HONORABLE G.D. Morgan

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

J. Cameron Halford,

Attorney for the Plaintiff

Chad N. Johnson, Justin Morgan,

Samantha Dorward, Austin T. Reed,

Attorneys for the Defendant

Aileen Butler

Official Court Reporter

THE COURT: All right, the next matter, Bivens versus York County, 2025-CP-46-4007.

All right, if you all identify yourself for the record and who you represent starting with the plaintiff.

MR. HALFORD: Yes, sir, I'm Cameron Halford. I'm here for Dennis Floyd Bivens the plaintiff.

MR. JOHNSON: Good afternoon now, Justin Morgan and Chad Johnson with Burr & Forman representing the defendants.

MS. DORWARD: Samantha Dorward with Burr & Forman representing the defendants.

Mr. REED: Good afternoon, Your Honor, Austin Reed of Smith Robinson also representing the defendants.

THE COURT: All right. Defendant's motion to dismiss. I'll hear from you.

MR. JOHNSON: Thank you, Judge Morgan and may it please the Court. Again, Chad Johnson, with the Burr & Forman Law Firm in Columbia. Also with me is Miss Dorward with my firm and Mr. Reed with the Smith Robinson's firm. Together we represent the defendants in this matter, York County; Josh Edwards, county manager; Josh Reinhardt, county development

services manager; Jonathan Buono, county planning and development services director. All of them sued in their official capacities.

As set forth in our motion and supporting memorandum which we filed yesterday dismissal of this action is appropriate on a number of grounds under 12(b)(1),(6),(7) and (8).

Your Honor, I have a copy of our motion and the supporting exhibits if you would like a copy.

THE COURT: I read them. I got them. You e-filed them.

MR. JOHNSTON? I did?

THE COURT: Yeah, I got them.

MR. JOHNSTON: Mr. Halford, do you have a copy?

MR. HALFORD: I got them.

MR. JOHNSON: Your Honor, before diving into the motion, I think it is beneficial to give the Court a lay of land as we did in our memo, including the many duplicative pending cases regarding this project as I think it will help inform this Court's judgement as to why the case should be dismissed. And I apologize at the outset. There's a lot of ground to cover.

I'm not going to belabor the issues, but I do want to give this Court a complete picture of the issues that are honestly lacking from the Complaint. I plan on relying on my brief as to the 12(b)(8) ground for dismissal unless there's a question of the Court or response to Mr. Halford's argument. By my count this is the sixth case that has been filed against the county, Silfab Solar Company or both. Based on the case that you just heard, Your Honor, there is a seventh case pending against Silfab as well. My colleague, Mr. Halford, has been or is, counsel of record in all of those cases. Each case that has been filed is based on the same project, which is under development in York County in the Fort Mill community. Three of those cases are pending in the Circuit Court which I will discuss momentarily.

The fourth case challenged an air permit issued to Silfab by the Department of Environmental Services that was filed as a contested case proceeding in the administrative law court, but it was dismissed as untimely. Reconsideration was also denied.

The fifth case sought the original

jurisdiction of the Supreme Court. It was filed by the mother of the plaintiff in this case and it similarly requested writs of mandamus and prohibition against the county. It also sought the issuance of stop work orders and revocation of all permits issued to Silfab. That petition was denied before the county could respond.

The sixth case, which is correctly pending, was filed by a nonprofit entity called the Citizens Alliance for Governmental Integrity, which I will refer to as CAGI, C-A-G-I. It also seeks original jurisdiction of the Supreme Court and like this case and the first case before the Supreme Court it also seeks writs of mandamus and prohibition and it is also seeking issuance of stop work orders and revocation of permits issued to Silfab.

Before moving to the three pending Circuit Court matters, including this case, I think a few baseline facts are necessary to put these matters into proper context. So what is the cause of all of this angst and litigation.

In late 2022 a Canadian solar panel manufacturer, called Silfab Solar, began

engaging the county about locating a facility within it's corporate limits. It first sought what is known as a zoning compliance approval from the county zoning office. This is a routine process under the zoning code. It's provided in section 155.1120 of the code. It's not unique to York County. There were similar provisions in zoning codes across the State, and when you think about it it makes sense. Businesses or individuals want certainty before they invest the proceeds. So they use these times of verifications on the front end of development and the purpose is to determine whether a proposed use fits within the zoning of the parcel. Silfab sought a zoning compliance verification as to the parcel located in the multi-county industrial park in Fort Mill. The parcel was and still is today zoned light industrial. Based on the information supplied by Silfab on December 27th of 2022 the county planning development services department issued Silfab a zoning compliance verification letter. That letter confirmed that Silfab's proposed operations would be compatible and compliant with the

parcel zoning. That verification is included as Exhibit A to our memorandum. And just as a side note, Your Honor, we included a footnote on this in our memorandum, but we submit the consideration of the exhibits that we attached to our memorandum is appropriate without converting this motion into one for summary judgement. We cited case law to that effect because where a document is either referenced or served as the foundation for those facts its appropriate.

Importantly, although that zoning compliance verification can be challenged by any interested party -- and that's section 155-980 of the zoning code. Nobody challenged the verification. It is final. It is not before this court or any court for review.

Now, at the same time that the Silfab was seeking that zoning compliance verification Silfab and the county began negotiating and settlement agreement for them to locate in the county. To that end on March 6th, of 2023 county counsel introduced and gave first reading to an inducement ordinance regarding Silfab. That's included as Exhibit B to our

memorandum. A second reading and public hearing occurred on August 21st and then September 28th of 2023 counsel voted and passed the inducement ordinance. The ordinance legislatively authorized the county to enter into a tax, FILOT agreement with Silfab. The ordinance also contained a clause which stated, quote, all ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict hereby repealed.

Now, also on September 28th, the day the inducement ordinance was passed, the county and Silfab executed the FILOT agreement. That's Exhibit C to our memorandum. Relevant here are two things in the FILOT agreement. First, FILOT specified that the project was to be located at the parcel for which Silfab got the zoning compliance verification. And second, it provides that quote, by ordinance enacted by the county on September 8, 2023, the county approved the full item and conditions of this FILOT agreement and ratified all prior actions taken with respect to the project. So the county through formal legislative action of its county counsel has approved and specifically

induced Silfab to locate in the county on the parcel.

In addition, by expressly ratifying all prior actions taken with respect to project, counsel has legislatively approved the zoning compliance verification issued by the zoning office to Silfab which predated the Inducement Agreement and the FILOT Agreement.

Now, since that time, Silfab has begun developing the site. Based on the information provided by Silfab to the county some of which you just heard, but also in the normal course under the FILOT.

The company has expended millions of dollars on the development today. However, the development is not yet complete. Operations have not yet fully commenced on the site and that's a critical fact that I'll discuss more in debt in a moment. So circling back to the three pending circuit court cases.

First, on February 21st or -- excuse me, February 1st of 2024 a Mr. Walter Buchanan filed a request for a zoning interpretation from the county. That's included as Exhibit D to our amendment.

Mr. Buchanan is a resident of Fort Mill and he is the brother-in-law of the plaintiff in this case. He is also the son-in-law of the petitioner in the first petition for original jurisdiction to the Supreme Court.

Now, zoning interpretations are permitted under the zoning code. That's at 155.1090. The purpose of zoning interpretations, according to the code, is to quote, clarify ambiguities in the zoning code and to resolve any ambiguity in future amendments.

Mr. Buchanan's request sought no clarifications of ambiguity in the zoning code. Instead, it presented seven questions directed specifically at the Silfab development, which at that point was well under way.

The zoning administrator declined to answer any of the seven questions finding that those questions did not meet the standard for interpretation under the code. That's Exhibit E to our amendment. The letter did provide other explanations related to certain of the questions, and in particular the letter did confirm that solar panel manufacturing fell under a list of authorized uses for a light

industrial sighting.

On March 14th of that year, 2024, Mr. Buchanan appealed the letter to the Board of Zoning Appeals. That's Exhibit F to our memo. In that finding -- or in that filing, Mr. Buchanan challenged certain of those explanations included in the letter. On May 9th the BZA held a hearing on that appeal. Following the hearing the BZA voted to reverse the interpretation. It also issued a written order to that effect. That's Exhibit G to our memo.

The BZA order characterized the questions that were presented by the appeal as the following; number one, whether quote, solar panel manufacturing is a permitted use within light industrial zoning district and two, whether solar panel manufacturing is considered a heavy industrial use. Neither of those questions proposed by the BZA in it's order were presented by Mr. Buchanan in his original zoning interpretation request. Nor did the BZA answer the threshold question of whether an appeal was cognizable in light of the fact that zoning administrator declined to answer any of

the seven questions posed in the interpretation request. The BZA's order had two conclusions. That the zoning administrator had erred in determining that solar panel manufacturing is permitted -- is a permitted use in light industrial and because solar panel manufacturing is not listed in the use table for light industrial it is prohibited. Critically, the BZA order did not mention Silfab, did not mention the project or the parcel. After that order came out Silfab wanting to not have this cloud over its development, both it and the landlord of the parcel appealed that to the circuit court. This is the first of the the three pending circuit court matters.

Silfab requested pre-suit mediation in that case which occurred on April 21st of this year. It was unsuccessful. The county is not a direct party to that case. Mr. Buchanan is a party and he's is represented by Mr. Halford.

Under the zoning code and specifically one 155.9825(C), the BZA order is stayed pending resolution of that appeal. Again, 155.9825(C) stays the BZA order.

On September 1st of last year CAJI brought a second case in this Court. It was filed as a punitive class action, but it effectively sought a declaratory judgement. The defendants in that action are again the county, Silfab, and landlord of the parcel. It seeks a declaration that the subsequently issued BZA order which reversed the zoning interpretation, controls over the prior specific zoning compliance verification issued to Silfab.

All defendants moved to dismiss that action. While the motion to dismiss was pending, CAJI also filed a motion for preliminary injunction seeking to stay or revoke all permits issued by the county to Silfab. A hearing was held before Judge Martha Rivers just about a year ago in this very courtroom. Following the hearing she issued an order. She declined to rule on any of the motions and she stayed the lawsuit pending resolution of the BZA appeal. In effect, and I think correctly in my view, Judge Rivers determined that an action seeking a declaratory judgement as to the import of the BZA order could not be decided when the BZA is stayed and is being challenged on appeal. It's

not final. Mr. Halford has twice sought reconsideration of that stay order. Both times Judge Rivers had denied that motion. Which finally brings us to this case.

The case before you seeks declaratory judgement, permanent injunction and writs of mandamus and prohibition.

The declaratory judgement sought in this case is based in part on assumptions that the BZA order is both correct and final. The injunctive relief sought in this case, revocation of all permits, is identical to the relief sought by CAJI in the stayed circuit court action. It's also identical to the relief sought in the first petition for original jurisdiction to the supreme court which was denied and it's identical to the relief sought in the pending petition by CAJI to the Supreme Court. The writs of mandamus and prohibition sought in this case are likewise identical and duplicative in the relief sought in those two other cases.

Now, Your Honor, I know that was a lot on background. I'm happy to pause here and answer any sort of questions that you may have.

THE COURT: You can continue on.

MR. JOHNSON: Thank you, Your Honor. Again, we submit there are four grounds for dismissal. The complaint under 12(B). As I mentioned we'll rely on our brief as to the Rule 12(B)(8).

The second ground for dismissal is Rule 12(B)(1). We submit that the claims advanced in the complaint are nonjusticiable for two reasons. First, plaintiff lacks standing and second, the claims are not ripe. As this Court knows justiciability is a threshold inquiry. Does the litigation present an active case for controversy. A case must be justiciable at the outset and it must continue all the way through the case. It involves the doctrines of standing, mootness and ripeness.

Here regarding standing, a litigant must have a personal stake in the subject matter of litigation. Court's have described that as a heavy burden and that heavy burden relies -- lies and resides solely with the plaintiff. There are three general avenues that a plaintiff can achieve standing. The first is by statute. Where a statute, a specific

statute, provides a defined path. The general assembly has deemed to have supplied the standing to a qualifying person. The second is through the traditional three part constitutional standing test; suffering and injury in fact. Injury is traceable to the conduct of the defendant. Meaning it's causation, and that the injury is redressable by a favorable decision by the Court.

Now, it is not readily apparent from the complaint which avenue of standing the plaintiff is pursuing in this case.

Mr. Halford filed a memorandum over the weekend in which first asserts that they're relying on statutory standing. I would point out that in reviewing my motion to dismiss the courts are constrained by allegations in the complaint rather than arguments of counsel or submitted memoranda that attempt to shore up a pleading. But out of an abundance of caution our memo in support addressed -- and I will discuss today both statutory standing and constitutional standing.

The complaint as submitted is sufficient as to either. Although again, not clear, the

plaintiff appears to contend that South Carolina Code Section 6-29-950 provides him statutory standing. Now, we don't disagree generally that the statute is a source of statutory standing. The application of the statute by its plain terms has two conditions precedent and plaintiff does not satisfy either. So 6-29-950 is not a source of standing for plaintiff here. Specifically it says, one, the first condition is a property is being used or is proposed to be used in violation of an ordinance adopted under the chapter and, two, for that adjacent or neighboring property owner they must be specially damaged by that violation. Again, plaintiff fails both conditions as to its application.

So first, plaintiff contends that the Silfab development is in violation of section 155-1121 of the zoning code. In particular the complaint contends that section 1121 requires alternatively the written approval or the signature of the zoning administrator. We've attached 155-1121 to our memo. It's Exhibit H. In short, it does no such thing. Neither

written approval, nor the signature of the zoning administrator are specified in that section. It is not entirely clear that 155-1121 applies here at all because it only specifies the conditions under which an applicant can seek a zoning compliance verification. We also provided a link to the full zoning code in our memo in a footnote. That document is searchable. And no other section of the code requires either written approval or signature. For that reason alone plaintiff's claim should be dismissed. But there's another fact that is entirely fatal to plaintiff's claim here and that is the inducement ordinance. Through the inducement ordinance the county counsel adopted a specific ordinance which is applicable to Silfab's development of the parcel.

The complaint does not reference the inducement ordinance at all, nor does plaintiff's memorandum in opposition. The inducement ordinance specifically directs that Silfab's development is to occur on the parcel. So contrary to the assertion that the development is being conducted in violation of

an ordinance, which is, again, the first condition precedent to 950 statutory standing claim. In fact, it is being developed pursuant to and at the expressed direction of a specific ordinance adopted by the county counsel to induce that development on the parcel.

In addition, the FILOT agreement which was presented to counsel with the inducement ordinance. It was authorized for execution in the inducement ordinance and it specifically identified the parcel for development including the property description of the parcel included as Exhibit A(1) to the FILOT agreement. And again, the FILOT agreement included a finding that expressly, quote, ratified all prior actions taken with respect to the project. Which again, includes the zoning compliance verification.

To anticipate another potential question or argument it is black letter law in South Carolina that a more specific ordinance controls over a general application ordinance. Here without question, the inducement ordinance is specific to the Silfab development. Unless there be any doubt, the inducement ordinance

contained a supremacy clause and that I read to Your Honor earlier, which is clear indication of counsel's legislative intent.

As to the second requirement for statutory standing. The complaint makes no attempt to articulate special damages. The Supreme Court announced in the Carnival Cruise Line case, which is a zoning case cited in our memo, that the special damages requirement of 6-29-950 requires the equivalent showing of a particularized injury requirement under constitutional standing. It's essentially a codification of that. To satisfy that injury in fact, it must be an invasion of a legally protected interest. It must be a concrete injury. It must be particularized to the plaintiff. It must be actual and imminent and it can not conjectural or hypothetical. In other words, it must be a current injury not a possibly injury in the future.

The complaint fails to plead any facts that would satisfy that injury in fact. In fact the complaint does not allege the plaintiff would be specially damaged. Neither the word damage, or any derivative of that word, or injury

appear in the complaint. Nor does it identify an actually injury that has occurred. Every assertion of the complaint is conjectural. It's forward looking and it's hypothetical. It's worth reiterating again that Silfab is not yet fully operating on the parcel, nor has any of the alleged injuries that are alleged to be certain to befall both plaintiff and the community at large actually occurred. They are the opposite of concrete and particularized. They are the opposite of actual and imminent. They are without question conjectural and hypothetical. But a fear of future harm no matter how fervently held is insufficient to satisfy that injury in fact.

Standing. Element of standing. Again, without an injury there can be no damage and certainly no special damages. And even if this Court were to construe the complaint's allegations as already occurring, they're only described as generalized grievances not specific or particularized to the plaintiff which is required under 950. The Supreme Court said in Carnival that generalized grievances are insufficient for standing under 950 for a

zoning claim. So the inducement ordinance and the FILOT agreement are fatal to the claim of statutory standing under section 950. And even without the specific ordinance, the inducement ordinance, the complaint is devoid of any facts that would support the required showing of special damages here.

In the alternative, the complaint fails to demonstrate constitutional standing either. We've already addressed the first element, the injury in fact. As to causation, I won't belabor these points as they're fully briefed, but where the causal link between the complaint of activity and the alleged injuries is superceded by the actions of third parties. The injuries are not fairly traceable to government activity. Here the alleged wrongful conduct of the county, according to the complaint, is making determinations and issuing permits in the normal course and scope of it's governmental duties, failing to have the zoning administrator sign the determinations and permits. The alleged injuries by contrast are future health concerns regarding Sifab's future operations.

Now, we don't concede that there is wrongful conduct or injuries, but even if you assume that there are for this purpose, we're a third party action even if authorized by government license or permit would be the cause of those injuries, the causal link is broken. The injury is not fairly traceable to the complaint of government activity. We cite a number of those cases in our brief. Multiple United States Supreme Court cases.

Same is true for the third element of standing, redressability. This element is really tied to the relief the complaint seeks. Here a declaratory judgement as posed by the complaint can not be supported as a matter of law. We'll discuss that in a moment. Same for mandamus and prohibition. Neither of those claims are redessable by this court either.

Very briefly, on that second item of just disability ripeness. As I mentioned before the DJ is based in part on the alleged illegality of permits which have been issued to Silfab based on that BZA order. Again, the BZA order is stayed. It's not final, so those claims are not ripe. Even if the BZA order was final,

none of those injuries that have been alleged here have actually occurred. They're all contingent and hypothetical. The courts have said declaratory judgement actions under those circumstances should not be issued.

Second basis for dismissal, 12(B)(6). Complaint fails to plead facts sufficient to constitute a cause of action for declaratory judgement, mandamus or prohibition.

Regarding the declaratory judgement claim and beyond the justiciability that I just laid out, the facts plead by plaintiff here can not state a cause of action in the face of the ball that plainly contradicts it. The complaint seeks a declaration that any determination or permit that lacks the zoning administrator's signature is invalid and void ab initio. Complaint cites two sources for that proposition. The first, again, is 155-1121. It's Exhibit H to our memo. The second, is 6-29-950. And again, unfortunately for plaintiff neither of those authorities say that a signature is required.

Now, the reason I think that this is an issue in this case is because the initial

zoning compliance verification issued by the county to Silfab was signed by a zoning staff member instead of the zoning administrator. Plaintiff in this and every other pending lawsuit has try to seize on that point and make a huge to do about it. They're say a zoning compliance verification must be signed by the zoning administrator. No one else in the zoning office is permitted to issue one of those letters. There's only one problem with that. Neither the zoning code nor Section 950 actually say that. In fact table 155.957-1 cited in our memo, which is in the zoning code and provides for the procedures for approvals for permits says "staff" is the "decision making body for zoning compliance verifications" further undercutting the plaintiff's argument that it can only come from the zoning administrator and must be signed. But here there's a larger more fatal defect to plaintiff's argument.

As I mentioned, the zoning code has an appeals procedure for zoning determinations and permits. That's part three of Subchapter E of the zoning code. It provides that an appeal

from an administrative decision may be initiated by a person aggrieved by the order or decision made by the zoning administrator or any other administrative official in the enforcement of this chapter, etc. That's Section 155.982(A). The appeal must be lodged within 30 days. That's 982(B). The zoning compliance verification as well as every permit issued by the county to Silfab are administrative decisions that are subject to the appeal requirement under the zoning code.

As I mentioned, neither plaintiff, nor any other party initiated an appeal of the zoning compliance verification issued to Silfab timely or otherwise. Nor has any permit or approval issued to Silfab been challenged or appealed. As such, plaintiff has failed to exhaust his administrative remedies.

In this declaratory judgement cause of action seeking to overturn the verification and the permits constitutes an improper collateral attack on those unappealed administrative decisions. The doctrine of exhaustion of administrative remedies is again, black letter law in this state. It stands for the

proposition that a party seeking relief from an administrative action or a decision of an administrative agency must pursue all available administrative remedies before seeking such relief from the courts. We cite a number of cases to that effect in our memoranda.

One in particular stands out. I'll give a brief overview. It's the Lominick versus City of Aikin case of the Supreme Court, 244 S.C. 32. There a citizen bought a piece of property for development. He consulted with a city attorney and other building official for the city about zoning. City officials said you're good to go. You can build there. They issued him a building permit. The city code contained a similar appeals provision as our county zoning code does. No appeal was instituted, but a neighboring property owner caught wind of the development and didn't like it. They complained to city counsel and they convinced city counsel to take action to revoke the building permit, which it did. The citizen then brought an action against the city. A circuit court initially ruled against the citizen but on appeal the Supreme Court

reversed. In relying on the appeals provision in the city zoning code the court found that neither of the neighboring property owner, nor the city itself, had availed itself of the proper administrative remedy by appealing. And even in the face of that official action taken by the city counsel to revoke the permit, the court found that they had failed to exhaust their administrative remedies and had barred the claim. The Lominick decision is directly applicable here. No challenge to the zoning verification or permits was instituted. Having not done so to quote the Supreme Court they cannot now attack the validity of the decision. Plaintiff has failed to exhaust his administrative remedies.

The injunction relief claims are likewise deficient. As the Court knows the standard for injunctive relief, irreparable harm, likelihood success on the merits, inadequate remedy of law. But here because the county is a governmental entity a fourth element attaches to the injunctive relief claims. In addition, the plaintiff must plead facts to satisfy a finding that the county acted in an arbitrary,

capricious, or oppressive manner. The complaint is lacking as to all four elements. We cover this in detail in our brief.

It really only articulates the bare bone elements of an injunction. It literally just cites there's harm and it's irreparable. We will succeed on the merits. We don't have an adequate remedy of law. We submit that doesn't satisfy the pleadings standards. The harm that the plaintiff has identified is not individual to plaintiff. Instead it's that this has resulted in improper spot zoning or site specific zoning. The complaint pleads no facts supporting the assertion of the parcel has been rezoned. And again, it is a fact that it has not been rezoned. There is also no articulation of harm. Even assuming it to exist it's not irreparable. By definition, legislative action of a county can be reversed or appealed. It also doesn't implicate a legally protected interest of the plaintiff.

Regarding likelihood of success. It merely cites the zoning code that we discussed previously and the statute. Neither of those stand for the proposition asserted.

An adequate remedy of law. Again, plaintiff had one available in the appeal provisions of the code. He didn't avail himself of that remedy. There is no pleading. No facts that would support a fourth element as to the county being a governmental entity. No allegations that the county's actions were arbitrary, capricious or oppressive. So the injunctive relief should also be dismissed.

Very briefly on the Writ of Mandamus. The issuance of a stop work order or revocation of permits is inherently government, not judicial. It's discretionary. The zoning code makes this point plainly. It says that the county quote, may do each of those things, but it's not required to do so. Were the code or statute uses a permissive term like may there is no getting back. When there is no duty it can't be ministerial. Writs of Mandamus can only issue where there's a duty to act, the requested action is ministerial, the applicant has a legal right to a discharge duty and no other legal remedy is available. Again, there is no duty to act here by the county to issue stop work orders. By definition that means

that it's not ministerial. There's discretion. The plaintiff has no legal right to require revocation of Silfab's permits and plaintiff has and is availing himself of other legal remedies as evidenced by this litigation and multiple other pieces of litigation.

Writ of Prohibition is likewise straight forward. Easy to dispose of. It only lies in the circumstances of a restraining judicial or quasi-judicial conduct. The county is not a court, nor is it a court official or an officer and despite plaintiff's creative arguments and citations to cases in the 1800's the more recent case law coming out of the Supreme Court has made clear that the Writ of Prohibition only applies to judicial or quasi-judicial conduct. The actions complained of here are inherently governmental or legislative in nature. So the exercise of the county's governmental or legislative functions can not support a Writ of Prohibition.

Last, Rule 12(b)(7), dismissal for failure to join the necessary party. Despite pleading that Silfab is quote, an affected party and seeking this Court's intervention against

Silfab to quote, cease and desist and stop work orders against the corporation and its general contractors and agents, the complaint does not name Silfab in this case. But the Supreme Court said in the Spanish Wells Property Owners Association case, it's 295 S.C. 67, that a permittee is unquestionably a necessary party to litigation when that permit is being challenged by a request for stop work or revocation.

Your Honor, I thank you for your patience on that. I'm happy to answer any sort of questions.

THE COURT: All right, thank you, sir. Let me hear from plaintiff.

MR. HALFORD: Cameron Halford again for Dennis Floyd Bivens, Your Honor. I appreciate you hearing us this morning -- or this afternoon, and it is rare that I get a 45 page 12(b)(6) page brief to defend against. I agree with counsel on one matter. I don't think the Court should view this under Rule 56. However, if you're going do so this came in late last night. It's just recently been published to the website. I would like to

submit one thing for your consideration that is the deed restriction.

Let's go back to some terms that counsel has used that I need to basically bring to the attention of the Court. Zoning Compliance Verification. No such thing in the code. No such thing in the eight exhibits he attaches. That's viewing the facts and the inferences most favorable to the movant, your Honor, and you shouldn't do that under Rule 12.

I will go through all the 12(B)(1), 12(B)(6), 12(B)8, 12(B)(7) in just a minute, but the problem here and I hate to cite the president or existing congress of the United States but there is a big beautiful bold word and it's called reversed. It's not ambiguous. And what we seem to be misconstruing here, is the county administrative government has continued to issue permits, and I'll get into whether a signature is required that they have argued. That's not required. What is required is the approval of the zoning administrator. That is explicit by statute 6-29-950(A). You are going to notice those two statutes 6-29-950(A) and (B), but it is unequivocal that

you must have the approval of a zoning administrator.

Now the zoning administrator resigned. She won't talk to us and I presume she won't talk with him, but the point is she was here through March of this year and at the time these approval permits begin you got the zoning technician third and a department and they're asking you to infer facts again most favorable to them as the movant. You shouldn't do it Your Honor.

We'll get into the duplicate litigation. They seem to make some to do about me representing all these parties. I'm proud and I am honored to do so because we got a rogue Canadian corporation, you got a rogue county that won't enforce the law. That Board of Zoning Appeals -- you know, he cited several terms to you just a minute ago, judicial or quasi-judicial. They're the quasi-judicial body of the legislative branch here in the county and that's the problem for the defendant when they talk about this fee in lieu agreement. Go back and look at it judge. It says nothing about zoning.

I would like to also amend and add one thing. There's an affidavit on file currently with the Supreme Court of Allison Love, and I would like to provide to Your Honor or Your Honor can go out and look at the Supreme Court records on line, but Allison Love has stated that this had nothing to do with zoning. They claim inducement. We told you earlier about the seven million dollars. There's two million state grant, seven million federal DOE grant. There's no inducement here, Your Honor. They had a set of eyes when they coming in here, and Silfab is nothing more than a tenant who has tried to proceed with a change of use. Too much is being said here about the zoning code and it's important, but what this case really is is a land use case and you heard him say it, a proposed use. So when we get into Mr. Bivens being an adjoining neighbor, first of all, he has concrete standing under the statute. That's the 6-29-950(A). Concrete standing. They can't get around that. It permits an adjoining landowner. What's the immediate injury? The immediate injury apparently they've agreed. Page five, paragraph 19, spot

zoning. This man and his relatives -- he mentioned Walter Buchanan who intervened in the appeal Silfab filed against the York County Government, meaning the York County BZA's decision that they disliked, but that's the law of the case now, judge. But the reason you shouldn't drag out reviewing this place and frankly the reason you should specifically deny it now is because the Supreme Court has been asked to exercise -- this is not an appeal -- they've been asked to exercise the original jurisdiction here and I -- we believe it to be imminent. So, I don't think the Court needs to carry this review forward. If you are going to carry it review forward I would just respectfully ask to show you the deed restrictions and to show you the affidavit.

So, there's a lot there, but there's nothing duplicate about this litigation. Certainly this corporation and the county have made a mess of things here in York County.

Bivens has moved for Writ of Mandamus, Injunctive Relief, Writ of Prohibition. That's different from the nonprofit citizens group, Your Honor, and that citizens group did get

stayed by Martha Rivers. It was from my territory, so that's not there.

With regard to the Supreme Court action, counsel is the same counsel that's representing them here. So I don't know why they take issue with how many cases I've chosen to represent with the people coming forward.

The three pending cases, Buchanan is on a scheduling order. CAJI is stayed, and then, Your Honor, this one has now appeared where they're trying to deprive Dennis Floyd Bivens his right to be heard by the Court. The Court may very well if you provide him the opportunity to be heard, deny him outright. I understand that. Mr. Bivens understands that. But we shouldn't cut Mr. Bivens short because as they cite the statute, the word "Must" is pretty affirmative. It's not discretionary. They talk about discretionary act or administerial act. The statute requires approval and they don't have it. They've never had it. They had the zoning administrator through March of this year. We don't need her signature. We need her approval. The zoning technician can't do it. The zoning department

can't do it and this is where I've argued the Court should strictly construe the statute according to it's plain and ordinarily meaning. It requires the zoning administrator's approval. They don't have it. So, the inducement ordinance in the inducement paper of December 2024, the zoning administrator issued an opinion. She got reversed. The only thing they do have in fact -- and again, I'm not arguing you need her signature. The only thing they got signed by her is a letter this use they want to do which is a manufacturing -- chemical manufacturing plant on a light industrial parcel. The problem for the county and for Silfab is that they didn't check with the legislature first. Zoning is inherently a legislative function in this state. No way around that.

Secondly, they've cited in one of there exhibits which says by implication -- if I hear them right -- that they're saying that it repealed the zoning code. It didn't repealed the zoning code. The zoning stands and it's light industrial and you don't put something like this next school children, schools and

homes, but they did and incident progress warped speed. So Mr. Bivens is rightly concerned. Has a concrete particularized injury, that's spot zoning, which is already cited for in the complaint. If in fact that is occurring, Your Honor, then the current injury begins when they begin an investment by full construction of something they don't have zoning approval of first. You got to go there first, and again, the county legislative body -- I think it's a very talented argument, took nothing up about zoning when they approved a tax incentive. That's all the FILOT was, was a multi-million dollar tax incentive. Had nothing to, didn't bring up the zoning code. Didn't alter it. There's no change of use petition here, Judge. There's no variance petition here. With all their money and with all their time and with all their lawyers they can't look at the deed restrictions. They can't look at the zoning code. Are they really asking Your Honor to globally repeal the zoning code because of FILOT decision that has nothing to do with zoning. Now that is a lie. So they've expended a whole ton of money. No

doubt about that, but nothing about that is a vested interest. And one thing they don't bring up here today that I'll bring up, vested interest. That means the use. The use they propose has to have existed before Silfab got here and it doesn't.

The warehouse that they are up fitting and reconstructing, that was an industrial distribution house. A very large one, 700,000 something square feet. It was big. It wasn't a chemical operation. So that use didn't exist prior to Silfab. They can't claim it's vested now. There's Supreme Court authority on that.

But, Your Honor, again, the declaratory judgement I kind of agree with counsel on that. That one might not fly, but obviously Mr. Bivins has a right to be heard on petitioning this Court. It's not before Your Honor today thank goodness and I would presume you don't want to take this one home with you, but these motions, the reason they are ripe is Mr. Bivens has standing now. He's been relying on the zoning code some thirty years since he lived there. So the effect of this is in fact a construction of a project that violates zoning

code.

The difficulty that they face here today is one they created for themselves. We didn't create it. The citizens group didn't create it. Mr. Buchanan didn't create it. So the 12(B)(6) ground, if you view it most favorably -- and I'm going to presume Your Honor is taking this under Rule 12 approach from here on out. If you view all these facts especially the paragraph that I just cited to you in the complaint spot zoning which is on page five, paragraph 19. Apparently counsel didn't read that. The point is, Your Honor, that is a immediate concrete harm. They don't have to turn the key or press the red button on this plant to have implicated my client's immediate constitutional rights. He got a right to rely on zoning. He's got a right to rely on the Board of Zoning Appeals. Valid exercise. Valid exercise of police power. And again, if they proceeded -- and they're the appellant now. They are the person who appealed the Board of Zoning Appeals. If they proceeded in defiance of that ruling, they proceeded in violation -- or not violation, defiance of the

legislature bodies, judicial or quasi-judicial ruling. I realize that some of the people on that board -- and God bless them because it must be a high pressure, unpaid, unforgiving job, but all five of them came back unanimous and they got no way around that until the appeal was filed.

We're on briefing, Your Honor, whatever they've expended was, you know, at their peril. The question becomes whether or not Dennis Floyd Bivens has immediate standing and argue the Carnival Cruise case he cites, there's a logical relationship to his home. He sitting adjacent to a chemical plant that's coming to operation soon probably. There's a concrete particularized harm. He has got the right to be concerned about the environment around his home.

Actual injury. They keep referring to a speculative or a hypothetical injury that is not current. It's current right now when they proceeded in defiance of the Board of Zoning Appeals. And this is -- to boil it down simply why you should view the facts most favorable to the nonmoving party, which is my client, zoning

isn't the key issue here. Zoning is inherently a legislative process. What is a key issue here is he has the right and standing per statute -- if you look at the plain language of that statute, to seek relief of the court and he should have his day in court on that even if he loses. It's his home. He's sitting right adjacent to the plant, Your Honor. And then lastly, Your Honor, the Spanish Wells case they site, under 12(B)(7) Mr. Johnson has cited some items that I want to address under the statute.

The statute and the zoning code he references in particularly the fee in lieu agreement. There's just nothing in there that references what he says here. Notice the term. Artful term of art. Great term. Zoning compliance verification. If you go through and you find that on any of his eight attachments -- again, I would request to submit too if I could because I got it late. You see that word with all those terms used together rule against me. If you find that in any of the statutes or any of the attachments he cites vote him down and let my client have his day in court.

Thank you.

THE COURT: Thank you, sir. All right, anything in reply, very briefly.

MR. JOHNSON: Very briefly, Your Honor.

To address the point that was just raised. Your Honor, section 155-1120 of the zoning code -- again we included a link to the full code in our memo. The title of that is zoning compliance. The result of a zoning compliance approval process under 155-1120 is the issuance of a verification. The verification, Your Honor, is attached as Exhibit One to our complaint. So he's accusing me I think of playing word salad with that, but the zoning compliance approval process is in the zoning code and the issuance is a zoning verification that a parcel is compliant with that zone.

He referenced the BZA several times as being judicial or quasi-judicial. They're not a party in this case. We're not seeking any sort of relief from them so BZA order has no reference or -- is really not relevant to the issues before this Court. He references this BZA order being the law of the case.

Your Honor, I cited the specific stay provision of the zoning code that says that BZA

order is stayed pending appeal. It's not final. There can be no law of the case when it's not final. Again, there's no change in use. No change in zoning that has occurred here. And he references the harm being the spot zoning or site specific zoning, but he never articulates what the actual harm of that is. What is the harm even assuming that site specific zoning or spot zoning has occurred. What is the harm, actual harm, to the neighboring property owner. Not only that, but they have to show special damages under 6-29-950. The Supreme Court says that expressly, special damages. And just lastly, I will leave you with this, Your Honor.

Mr. Halford said that the zoning process is inherently a legislative process. We agree. And they're asking you to weigh in -- asking this Court to invade the providence of county counsel in its inherently legislative and government activities. It induced, formerly induced through the inducement ordinance Silfab to locate on the parcel. Contrary to what Mr. Halford says, the parcel description is included in the FILOT agreement. The zoning

compliance verification predated both the inducement ordinance and the FILOT agreement were ratified actions under that FILOT agreement.

If the Court has no further questions we would respectfully request that the action be dismissed.

THE COURT: All right, thank you both. I will take it under advisement and read everything again and let you know my decision. Thank you.

MR. HALFORD: Do you mind if I submit those two items that I requested?

THE COURT: Go ahead and submit them. If you would just E-file them and then I'll determine whether I will consider them or not, but go ahead and file them.

MR. HALFORD: Thank you.

MR. JOHNSON: Thank you, Your Honor.

(END OF TRANSCRIPT)

CERTIFICATE

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Family Court for York County, South Carolina, on the 16th day of December, 2025.

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

February 18, 2026

Aileen Butler

EXETER 7149 LOGISTICS, LP
FIRST AMENDMENT
to RG Baxter Lane, LP Deed Restrictions
10/4/2023 - Record Book 20981 at 253-266

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YORK COUNTY, SC	
2023031332RESTRICTIVE COVENANT	
RECORDING FEES	$25.00
STATE TAX	$0.00
COUNTY TAX	$0.00
10-04-2023	02:47:36 PM
BK:RB 20981	PG:253-266

Upon Recording Return To:

The Chase Law Group
1447 York Road, Suite 505
Lutherville, MD 21093
Attn: Todd Chase, Esq.

LSU: SCFA23-2757

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

This FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "**Declaration**") is made and entered into as of the 3rd day of October, 2023 (the "**Effective Date**") by EXETER 7149 LOGISTICS, L.P., a Delaware limited partnership ("**Declarant**").

RECITALS

WHEREAS, RG Baxter Lane LLC was the developer of certain real property located in York County, South Carolina containing approximately 76 acres, more or less, described in **Exhibit "A-1"** attached hereto (the "**Original Property**"), consisting of "Lots 1, 2 and 3 and New 60' Right of Way" on that certain plat by Nicholas L. Mansfield with Survey Matters, dated November 22, 2019, last revised August 22, 2022, entitled "Stateline 77 Subdivision" and recorded on September 22, 2022 in the Office of the Register of Deeds for York County ("**ROD**") in Plat Book 170, Page 29-30 (the "**Plat**"), and known as the "Stateline 77" project upon the Original Property (the "**Project**"); and

WHEREAS, Baxter conveyed a portion of the Original Property consisting of the "New 60' Right-of-Way" on the Plat to York County pursuant to that certain Grant of Right-of-Way for Street or Road (Logistics Lane) on or about August 2, 2022, said grant of right-of-way to be held and recorded by the York County on or about the two year anniversary of acceptance by the York County Council; and

WHEREAS, Baxter recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements on or about October 3, 2022 in the ROD office Book 20433, Page 251 ("**Original Declaration**") upon the Property; and

WHEREAS, pursuant to a Limited Warranty Deed dated October 3, 2023 and recorded October 4, 2023 in the ROD office Book 20980, Page 448, Baxter conveyed a portion of the Original Property consisting of Lots 1, 2, and 3 on the Plat described on **Exhibit "A-2"** attached hereto (the "**Property**") to Declarant;

WHEREAS, pursuant to an Assignment and Assumption of Declarant Rights dated October 3, 2023 and recorded October 4, 2023 in the ROD office Book 20980, Page 444, Baxter assigned all rights and interests of Declarant under the Original Declaration to Declarant; and

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WHEREAS, Baxter did not take any action to form an Association and Declarant desires to amend the Original Declaration to eliminate the need for an Association (as defined in the Declaration) and such other matters as are more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Declaration and other good and valuable consideration, the Original Declaration is hereby amended as follows:

1. Article I; Definitions.

A. The following definitions are hereby deleted from Article I in their entirety: "Annual Assessments", "Articles", "Assessments", "Association", "Association Easements", "Association Property", "Board of Directors", "By-Laws", "Declarant", "Declaration", "Defaulting Owner", "Director", "Enforcing Party", "Enforcement Costs", "Interest Rate", "Late Fee", "Member", "Other Association Charges", "Parking Areas", "Plat", "Project", "Property", "Special Assessments", "Specific Assessments", and "Turnover of Control."

B. Section 12. "Common Areas" is hereby deleted in its entirety and the following inserted in lieu thereof:

> "Section 12. "Common Areas" shall mean and refer to (i) all real property and improvements designated as such by Declarant in this Declaration. The Common Areas shall include, without limitation, the Project Sign (including the landscaping and the land upon which it will be constructed) and the Detention Basin located upon Lot 3 (but not any other detention or retention basins within the Project), some of which may be upon Lots, and all fixtures, apparatus, and other personal property appurtenant thereto. If any Common Area is dedicated or conveyed to and accepted by a utility company or public authority, then such Common Area shall cease to be a Common Area from and after the date of such dedication or conveyance to such utility company or pubic authority and acceptance thereof, except that the Association may, at its election, supplement any landscaping or maintenance of such dedicated Common Areas, the cost and expense of which shall be deemed a Common Area Expense."

C. Section 13. "Common Area Expenses" is hereby deleted in its entirety and the following inserted in lieu thereof:

> "Section 13. "Common Area Expenses" shall mean all costs, charges and expenses that are attributable to the operation, maintenance, repair and replacement, as necessary (but not the initial construction and installation), of the Common Areas including, without limitation, (i) real estate taxes and assessments for Lot 3; (ii) Common Area utilities, grounds maintenance and landscaping; (iii) paving, repaving, pothole repair, restriping, and snow and debris removal, as necessary, from the Project Road, if not performed by the County, and the road constructed within the Shared Access Area; (iv) insurance coverages attributable solely to Lot 3; (v) cost of causing the Common Areas to comply with applicable laws; and (vi) necessary capital replacement costs; (vi) Common Areas Landscaping; (vii) costs

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associated with any repair and maintenance obligations of the Project Road Area that the Declarant is obligated to provide to the County after the dedication of the Project Road and prior to final acceptance for public maintenance. All Common Area Expenses shall be based on the actual costs, expenses and/or materials paid or incurred by the Lot 2 Owner to maintain the Common Areas. Common Area Expenses shall be reduced by the proceeds of insurance or eminent domain awards or settlements received by Lot 2 Owner with respect to items of Common Area Expenses or recoveries from warranty claims related to Common Areas. Nothing herein shall preclude the Lot 2 Owner from engaging an independent management company for the provision of management or other services required hereunder, the cost of which shall be additional Common Area Expenses."

D. Section 18. "Detention Basin" is hereby deleted in its entirety and the following inserted in lieu thereof:

"Section 18. "Detention Basin" shall mean and refer to the wetlands, wetland buffers and detention/retention basins which are expected to be located on any of the Lots. It is acknowledged and agreed that each Detention Basin shall also include any detention basin improvements including, but not limited to, storm water pipes, headwalls, rip rap, outlets, inlets and drainage facilities. The Property is served by a Detention Basin located upon Lot 3 which was constructed by Baxter at its expense. Other than the Detention Basin located upon Lot 3, any Detention Basin located upon a Lot shall not be a part of the Common Area, and shall instead be maintained by the Owner of such Lot at is expense, in accordance with the standards required under this Declaration."

E. Section 38. "Retaining Wall" is hereby deleted in its entirety and the following inserted in lieu thereof:

"Retaining Wall" shall mean the retaining wall located along and north of the Project Road (labeled "Retaining Wall A" in Exhibit B), which was constructed by Baxter."

2. Articles II, III, V and VI. Articles II, III, V and VI are hereby deleted in their entirety, and the following inserted in lieu thereof:

"ARTICLE II
PROPERTY RIGHTS AND MAINTENANCE

Section 1. Title to the Common Areas. When completed and installed as provided herein and certificates of completion shall have been issued by all applicable governmental authorities, if any, title to the Common Areas shall, as provided in **Exhibit C** attached hereto, be vested in the Owner of the Lot upon which any portion of the Common Areas is located, subject in each instance to the terms and conditions set forth in this Declaration and the easements created herein.

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Section 2. Maintenance of Common Areas. It is acknowledged and agreed that Lot 3 serves the Property with a Common Area Detention Basin and Project Sign, and that the majority of remaining Common Areas is located on Lot 2. The Lot 2 Owner shall therefore maintain, repair and replace all Common Areas as may be necessary to keep the same in good condition and working order and in compliance with this Declaration and all applicable laws, rules, regulations, codes, ordinances and governmental orders and decrees, including without limitation, the maintenance or replacement of any road surfaces, entrance improvements, sidewalks, landscaping, signage, lighting or other improvements located within said improvements.

Section 3. Maintenance of Lots and Improvements. Each Owner shall keep, maintain, repair, manage and operate its Lot(s) and all building(s), improvement(s) (including surface area parking lots (the "**Parking Areas**"), driveways, utility lines exclusively serving its Lot and building signs) and Landscaping thereon, whether occupied or unoccupied, in good and clean order, and in a state of condition and repair, without public or private nuisance, except only for any Landscaping or other maintenance by the Lot 2 Owner as part of the Common Areas and as a Common Area Expense which such landscaping or maintenance shall be maintained in accordance with Section 2, hereinabove.

ARTICLE III
[Intentionally Omitted]

ARTICLE V
[Intentionally Omitted]

ARTICLE VI
MAINTENANCE OF COMMON AREAS

Section 1. Maintenance Easement. (a) The Lot 2 Owner, shall maintain, manage keep in good condition and repair, and where necessary after initial construction, replace the Common Areas. Lot 2 Owner shall have an easement for the performance of such maintenance over Lot 1 and Lot 3 as may be reasonably required in connection therewith; provided, Lot 2 Owner shall not access any portion of Lot 1 or Lot 3 not reasonably necessary to perform such obligations.

Section 2. Allocation of Costs. Each Owner shall be responsible for its share of the Common Areas Expenses in the following percentages:

Lot 1	21.94%
Lot 2	78.06%
Lot 3	0%

Lot 1 Owner shall reimburse the Lot 2 Owner for its share of the Common Area Expenses within thirty (30) days following receipt of an invoice. Upon request, Lot 2 Owner will provide Lot 1 Owner copies of invoices or other reasonable evidence of costs of such work. If an Owner has not provided the Lot 2 Owner with another address then such invoices may be sent to the address for which real property tax bills for the subject Lot are sent. If an Owner fails to pay any

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

amount it owes under this Declaration when due and such amount remains unpaid for more than thirty (30) days after written notice to the delinquent Owner, such Owner shall pay to the Lot 2 Owner interest on such amount, from the date such amount is due until it is paid, at the lesser of eight percent (8%) per annum or the maximum rate allowed by applicable law. Any amounts payable under this Declaration shall be an obligation running with the land and shall comprise a lien on the Lot owned by the Owner who failed to pay such amount until the same is paid; provided, such lien shall be subordinate to any mortgage or deed of trust encumbering such Lot. The Owners each hereby acknowledge and unconditionally consent to such lien being placed upon its Lot in the event of such Owner's failure to pay any amount it owes under this Declaration."

3. Article VII; Easements.

A. Article VII Section 1(c) is hereby amended to delete the phrase "to the extent the Claims are not covered by the insurance the Association is required to maintain pursuant to Article III of this Declaration" and insert the following in lieu thereof: "to the extent the Claims are not covered by insurance."

B. Article VII Section 1(c)(i) is hereby amended to delete the following words: "Declarant, the Association, and".

C. Article VII Section 2 is hereby deleted in its entirety and the following inserted in lieu thereof:

"Section 2. Easements in Favor of Lot 2 Owner. Lot 2 Owner, its successors, assigns, agents and employees, shall have a non-exclusive, blanket easement in, on, under, over across and through the Common Areas for the purpose of carrying out all duties assigned to Lot 2 Owner under this Declaration."

D. Article VII Sections 3, 7, and 8 are hereby deleted in their entirety.

E. Article VII Section 5 is hereby deleted in its entirety and the following inserted in lieu thereof:

"Section 5. Additional Easements for Utilities. There is hereby reserved for the benefit of Lot 2 Owner and its respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; and (ii) an area across every Lot twenty (20') feet in width along the front boundary lines thereof, and ten (10') feet in width along the side boundary lines thereof, and ten (10') feet in width along the rear boundary lines thereof; for the purpose of installing, replacing, repairing and maintaining all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, cable, water and sewer lines. Such easements may be granted or accepted by the Lot 2 Owner as the party maintaining the Common Areas, its successors or assigns. To the extent possible, all utility lines and facilities serving the Project and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or

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servicer, with respect to the portions of the Project so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

F. Article VII Section 9 is hereby deleted in its entirety and the following inserted in lieu thereof:

"Section 9. Assignment. The Lot 2 Owner shall have the right to assign any of the easements created for its benefit hereunder to a private or public utility or to a municipal utilities authority, provided, however, that the Lot 2 Owner may not make any assignment of any easements created hereunder unless (i) the proposed assignee agrees in writing (which writing shall be recorded promptly after execution) to assume all of the obligations of the Lot 2 Owner in connection with any easements to be assigned, and (ii) each Owner consents to such assignment, which consent shall not be unreasonably withheld or delayed, but each Owner agrees that its consent shall not be required if the easement is for utility purposes and the proposed assignee is a utility company regulated or licensed by the State, or such similar local, county, state or federal board, body, agency or authority.

G. Article VII Section 11 is hereby amended to delete the following last phrase in its entirety: "but shall be considered a Specific Assessment."

4. Article VIII; Use Restrictions.

A. Article VIII Section 1 is hereby amended to delete the following words in their entirety: ""the Association, Declarant or".

B. Article VIII Section 2 is hereby amended to delete the following last phrase in its entirety: "or any rule or regulation promulgated by the Association."

C. Article VIII Section 6 is hereby amended to delete the second and third sentences in their entirety.

5. Article IX – General Provisions. Article IX is hereby deleted in its entirety and the following inserted in lieu thereof:

"ARTICLE IX
GENERAL PROVISIONS

Section 1. Indemnity. Each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all third party claims and resulting lawsuits, liabilities, damages, costs and expenses arising or resulting from any negligence or willful misconduct of such Owner arising in connection with its use of the easements set forth in this Declaration, except

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to the extent arising or resulting from an act or omission of another Owner or any of its agents, employees, contractors or representatives.

Section 2. Paragraph Headings. The paragraph headings used herein are for reference and convenience only and shall not enter into the interpretations hereof. Wherever the singular is used herein, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa as the context shall require.

Section 3. Partial Invalidity. If any item, covenant or condition of this Declaration or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Declaration or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

Section 4. Governing Law. It is the intention of the parties hereto that all questions with respect to the construction of this Declaration and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of South Carolina.

Section 5. Attorneys' Fees. In the event a lawsuit or other similar legal proceeding is brought to enforce or construe any of the terms of this Declaration, the prevailing party in such lawsuit or legal proceeding shall be entitled to recover its reasonable attorneys' fees, litigation expenses and court costs from the non-prevailing party.

Section 6. No Waiver. No waiver of any provision of this Declaration shall be deemed to have been made unless expressed in writing and signed by the party charged with making such waiver. No delay or omission in the exercise of any right or remedy accruing upon a breach of this Declaration shall impair such right or remedy or be construed as a waiver of such breach, and the waiver of any breach shall not be deemed a waiver of any other breach of the same or any other provision of this Declaration.

Section 7. Exhibits. All exhibits referenced herein are attached to this Declaration and incorporated herein by reference.

Section 8. Estoppel Certificates. Within fifteen (15) business days after receipt of a written request from any Owner (a "**Requesting Owner**"), the Owner receiving such request shall agree to execute and deliver to the Requesting Owner an estoppel certificate addressed to the Requesting Owner, setting forth (i) the continued effectiveness of this Declaration and any amendments or modifications hereto, (ii) whether, to the certifying party's knowledge, there is a default in the performance of any provision of this Declaration, and (iii) any other factual information that is reasonably requested by the Requesting Owner. Such estoppel certificate shall be addressed to, and may be relied upon by, the Requesting Owner and any tenant, lender, purchaser or other party designated by the Requesting Owner.

Section 9. Covenants Running With Land. All of the terms of this Declaration shall run with the land and shall be binding upon and inure to the benefit of each of the Owners and Declarant and their successors-in-interest. Likewise, each and every agreement, covenant, promise, undertaking, condition, easement and right (herein collectively referred to as

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

"**Obligations**") made, granted or assumed, as the case may be, by any party is made for the benefit of all parties and provisions of this Declaration shall be covenants running with the land. Any owner of a Lot shall automatically be deemed, by acceptance of the title of such Lot or any part thereof, to have assumed all Obligations of this Declaration and agreed to be bound by the terms of this Declaration to the extent the same relate to such Lot; provided, a person or entity shall only be bound by and subject to the terms of this Agreement to the extent the same related to periods when it owns a Lot, as applicable, and it shall not be responsible for satisfying any obligations or liabilities related to any Lot to the extent the same arise or relate to periods when it does not own the same.

Section 10. Amendment. This Declaration may be amended, modified or terminated only by a written instrument duly executed by all of the Owners of the Lots.

Section 11. Invalidation. This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship among any owner or occupant of the Lots or their tenants or licensees. No waiver by Declarant or Owner of any provision hereof shall be deemed to imply or constitute a further waiver thereof or of any other provision set forth herein.

Section 12. Declarant; No Ongoing Obligations. As of the Effective Date, Declarant, as Declarant, shall have no further rights or obligations with respect to this Declaration.

Section 13. Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by email with original to follow via overnight courier, or (d) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, and such notices shall be addressed as follows:

To Lot 1 Owner: Exeter 7149 Logistics, L.P.
Five Radnor Corporate Center
100 Matsonford Road, Suite 250
Radnor, PA 19087
Attention: J. Peter Lloyd
Email: pete.lloyd@eqtexeter.com

To Lot 2 Owner: Exeter 7149 Logistics, L.P.
Five Radnor Corporate Center
100 Matsonford Road, Suite 250
Radnor, PA 19087
Attention: J. Peter Lloyd
Email: pete.lloyd@eqtexeter.com

To Lot 3 Owner: Exeter 7149 Logistics, L.P.
Five Radnor Corporate Center
100 Matsonford Road, Suite 250
Radnor, PA 19087
Attention: J. Peter Lloyd
Email: pete.lloyd@eqtexeter.com"

6. Exhibit C. Exhibit C to the Original Declaration is hereby amended and the **Exhibit C** attached hereto inserted in lieu thereof.

Signatures begin on following page

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed on the date written above.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1

Witness #2/Notary

DECLARANT:

EXETER 7149 LOGISTICS, L.P., a Delaware limited partnership

By: Exeter 7149 Logistics GP, LLC, a Delaware limited liability company, its general partner

By: EQT Exeter Industrial Core-Plus Fund IV REIT II, LP, a Delaware limited partnership, its sole member

By: _____
Name: J. Peter Lloyd
Title Vice President

COMMONWEALTH OF Pennsylvania

COUNTY OF Delaware

I, Lisa Bianchini, a Notary Public in and for the County and Commonwealth aforesaid, do hereby certify that J. Peter Lloyd, the vice president of EQT Exeter Industrial Core-Plus Fund IV REIT II, LP, a Delaware limited partnership, the sole member of Exeter 7149 Logistics GP, LLC, a Delaware limited liability company, the sole general partner of EXETER 7149 LOGISTICS, L.P, a Delaware limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument on behalf of said limited partnership as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28 day of September, 2023.

Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal
Lisa Bianchini, Notary Public
Delaware County
My commission expires November 25, 2026
Commission number 1011466

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LIST OF EXHIBITS

EXHIBIT A-1	Description of the Original Property
EXHIBIT A-2	Description of Property
EXHIBIT C	Common Areas

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EXHIBIT A-1

DESCRIPTION OF THE ORIGINAL PROPERTY

ALL those certain pieces, parcels or tracts of land, situate, lying and being in York County, South Carolina, shown and designated as "**Lot 1**", "**Lot 2**", "**Lot 3**", and "**New 60' Right-of-Way**", on that certain plat by Nicholas L. Mansfield with Survey Matters, dated November 22, 2019, last revised August 22, 2022, entitled "Stateline 77 Subdivision Prepared For: RG Baxter Lane, LLC Property of: RG Baxter Lane, LLC Highway 21 Bypass North York County, South Carolina" and recorded on September 22, 2022, in the York County Clerk of Court's Office at Plat Book 170, Page 29-30. Said parcels having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

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EXHIBIT A-2
DESCRIPTION OF PROPERTY

The Land referred to herein below is situated in the County of York, State of South Carolina, and is described as follows:

Parcel "A"

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of York, containing 16.403 acres (714,512 S.F.), more or less, and being shown and designated as LOT 1 on plat entitled "STATELINE 77 SUBDIVISION", prepared for RG Baxter Lane, LLC by Survey Matters, LLC, Nicholas L. Mansfield, PLS #27454, dated 11/22/2019 and recorded 9/22/2022 in Plat Book 170, Pages 29 and 30, in the Office of the Register of Deeds for York County; said plat is incorporated herein by reference for a more complete metes and bounds description.

Parcel "B"

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of York, containing 2.156 acres (93,928 S.F.), more or less, and being shown and designated as LOT 3 on plat entitled "STATELINE 77 SUBDIVISION", prepared for RG Baxter Lane, LLC by Survey Matters, LLC, Nicholas L. Mansfield, PLS #27454, dated 11/22/2019 and recorded 9/22/2022 in Plat Book 170, Pages 29 and 30, in the Office of the Register of Deeds for York County; said plat is incorporated herein by reference for a more complete metes and bounds description.

Parcel "C"

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of York, containing 53.191 acres (2,316,994 S.F.), more or less, and being shown and designated as LOT 2 on plat entitled "STATELINE 77 SUBDIVISION", prepared for RG Baxter Lane, LLC by Survey Matters, LLC, Nicholas L. Mansfield, PLS #27454, dated 11/22/2019 and recorded 9/22/2022 in Plat Book 170, Pages 29 and 30, in the Office of the Register of Deeds for York County; said plat is incorporated herein by reference for a more complete metes and bounds description.

TMS No. 719-00-00-203 (Lot 1)
TMS No. 719-00-00-204 (Lot 3)
TMS No. 719-00-00-201 (Lot 2)

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EXHIBIT C

COMMON AREAS

COMMON AREA	MAINTENANCE RESPONSIBILITY
Project Sign (entrance and directional signage and associated landscaping), including cleaning, repainting, repairing or replacing, as necessary, and any landscaping.	Lot 2 Owner
Shared Access Area	Lot 2 Owner
Landscaping along Project Road (but only to and including the cul-de-sac thereon)	Lot 2 Owner
Retaining Wall	Lot 2 Owner
Detention Basin on Lot 3, including maintenance, landscaping and compliance with all applicable laws. (Any other Detention Basins outside of Lot 3 are not Common Areas, and shall be owned and maintained by the Owner thereof.)	Lot 2 Owner

RJ BAXTER LANE, LLC - DEED RESTRICTIONS
i/2022 Declaration of Covenants. Restrictions and Easesn
as recorded RB 20433 at Pages 251-280

Paragraph (23)
Hazardous Substances

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YORK COUNTY, SC	
2022042628	RESTR COVEN
RECORDING FEES	$25.00
STATE TAX	$0.00
COUNTY TAX	$0.00
10-03-2022	02:33:11 PM
BK:RB 20433	PG:251-280

Upon recording return to:
Womble Bond Dickinson (US), LLP
Attn: Thomas L. Harper, Jr.
5 Exchange Street
Charleston, SC 29401

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereinafter "**Declaration**") is made on this 29th day of September, 2022, by **RG BAXTER LANE LLC**, a Delaware limited liability company, having an address of 1271 Avenue of Americas, 24th Fl., New York, NY 10020 ("**Declarant**").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in the County of York, and State of South Carolina consisting of approximately 76 acres and described on the attached **Exhibit A** (the "**Property**"), which Property, as of the date hereof, is comprised of three (3) separate parcels of land (such parcels, as the same may be subdivided, reconfigured, consolidated or re-subdivided into lots from time to time, hereinafter singularly referred to as a "**Lot**" and collectively as the "**Lots**") and the Project Road Area (as defined herein), subject to any prior or future public dedication of the Project Road Area; and

WHEREAS, Declarant intends to develop an industrial park commonly known as "Stateline 77" upon the Property (the "**Project**"); and

WHEREAS, Declarant proposes to impose upon the Project mutually beneficial covenants and restrictions under a general plan of improvement for the benefit of the Owners (as defined herein) of each of the Lots within the Project and to establish procedures for the overall development, administration, maintenance and preservation of the Project and all Common Areas (as defined herein) located therein, and in furtherance thereof, Declarant has caused Stateline 77 Owners Association, Inc., a South Carolina non-profit corporation (the "**Association**") to be created to serve as a vehicle for the purpose of (i) providing for the development, maintenance, preservation, control, management and/or ownership of the Common Areas and certain cross and reciprocal easements created by this Declaration or hereafter created by Declarant for the benefit of the Owners and Declarant, and (ii) for such other purposes as shall be set forth in this Declaration, as the same may be amended from time to time, and as set forth in the By-laws of the Association.

NOW, THEREFORE, the Declarant hereby declares that (i) the Common Areas shall be developed by Declarant as herein provided and shall be maintained, preserved, repaired, replaced, controlled, managed and, to the extent provided herein, owned by the Association, (ii) various easements shall be created and maintained pursuant to the terms hereof for the benefit of

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

each of the Lots and each of the Owners, the Declarant and the Association, as applicable, and (iii) the Lots, as they may be subdivided, reconfigured, consolidated or re-subdivided in the future, shall be held, sold and conveyed, leased, mortgaged, and/or transferred subject to the terms and conditions of this Declaration, which terms and conditions shall run with the land.

ARTICLE I
DEFINITIONS

Section 1. "Adverse Impact" shall mean (i) a material adverse impact or effect on any existing building or related site improvements within any Lot, any access thereto or any utilities or services to be provided thereto; or (ii) any material increase of the obligations or liabilities (whether direct or indirect) of any Owner or any tenant under any lease in any Lot, excluding, however, any sums approved by the Board of Directors for Common Area Expenses or other costs or expenses incurred by the Association for services required to be performed under this Declaration.

Section 2. "Annual Assessments" shall mean those fees or charges levied by the Association on each Owner for the purposes of adequately satisfying the Common Area Expenses, except that no Assessments shall be levied against the Association for Lots owned by the Association as Association Property.

Section 3. "Articles" means the Articles of Incorporation of the Association which have been filed in the office of the Secretary of State of South Carolina, as such Articles may be amended from time to time.

Section 4. "Assessments" shall mean Annual Assessments, Special Assessments and Specific Assessments.

Section 5. "Association" shall have the same meaning ascribed to it in the preamble of this Declaration.

Section 6. "Association Easements" shall mean and refer to those easement areas and easement rights in favor of the Association which are set forth in this Declaration, as such easements may be enlarged, relocated, modified or expanded by the Association from time to time pursuant to the terms hereof.

Section 7. "Association Property" shall mean those elements, facilities, parts or portions of the Common Areas which are or will be deeded to the Association by the Declarant or any other real or personal property as may hereafter be acquired by the Association, all of which may be enlarged, modified, relocated or expanded by the Association from time to time in accordance with the terms hereof. For avoidance of doubt, all of Lot 3 (as described more fully on **Exhibit A** attached hereto and made a part hereof ("**Lot 3**")), including the Detention Basin and Project Sign located or to-be-located thereon, is intended by Declarant to be Association Property.

Section 8. "Authorized Parties" shall have the meaning ascribed to the term in Article VII, Section 1 hereof.

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 9. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 10. "By-laws" shall mean the by-laws of the Association, as the same may be adopted and amended from time to time by the Association.

Section 11. "Claims" shall have the meaning ascribed to the term in Article VII, Section 1(c) hereof.

Section 12. "Common Areas" shall mean and refer to (i) all real property designated as such by Declarant in this Declaration or any subsequent instrument referring to this Declaration recorded in the Register of Deeds for York County, SC or on any plat or map of the Property or any portion thereof recorded in the Register of Deeds for York County, SC, (ii) the Association Property, and (iii) all real or personal property that the Association holds possessory or use rights in for the common use and enjoyment of all owners, and any improvements constructed for such common use on any of the foregoing. The Common Areas shall include, without limitation, the Project Sign (including the landscaping and the land upon which it will be constructed) and the Detention Basin located upon Lot 3 (but not any other detention or retention basins within the Project), some of which may be upon Lots, and all fixtures, apparatus, and other personal property appurtenant thereto, as the same may be amended, expanded, reconfigured, enlarged or relocated from time to time by the Declarant (if prior to a Turnover of Control) or the Association, provided the same does not have an Adverse Impact (unless the Owner so adversely impacted consents to the same), and provided any necessary consents or approvals are obtained. If any Common Area is dedicated or conveyed to and accepted by a utility company or public authority, then such Common Area shall cease to be a Common Area from and after the date of such dedication or conveyance to such utility company or pubic authority and acceptance thereof, except that the Association may, at its election, supplement any landscaping or maintenance of such dedicated Common Areas, the cost and expense of which shall be deemed a Common Area Expense.

Section 13. "Common Area Expenses" shall mean all costs, charges and expenses that are attributable to the operation, maintenance, repair and replacement, as necessary (but not the initial construction and installation), of the Common Areas (excluding any charges for repairs to Common Areas attributable to defective initial design, construction or installation of the Common Areas by or for the Declarant for which the Declarant shall be solely and fully responsible) including, without limitation, (i) real estate taxes and assessments for Lot 3; (ii) Common Area utilities, grounds maintenance and landscaping; (iii) paving, repaving, pothole repair, restriping, and snow and debris removal, as necessary, from the Project Road, if not performed by the County, and the road constructed within the Shared Access Area; (iv) salaries and other compensation including payroll taxes payable to employees, independent contractors or agents of the Association performing services in connection with the operation, repair and maintenance of the Common Areas; (v) insurance coverages as set forth in Article III of this Declaration; (vi) cost of causing the Common Areas to comply with applicable laws (excluding costs associated with curing any non-compliance with laws as a result of the failure of the Declarant to construct and install the Common Areas in accordance with all applicable laws in effect at the time of the initial construction of the Common Areas); (vii) [Intentionally Omitted];

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(viii) annual management and administrative fees similar to the then prevailing rates in South Carolina for management of common areas in industrial parks comparable to the Project; (ix) other expenses and costs reasonably necessary for the purpose of developing, operating, maintaining and safeguarding the Common Areas or for the purpose of carrying out the powers and duties of the Association; and (x) other expenses and costs as authorized by this Declaration or in accordance with the By-laws of the Association. All Common Area Expenses shall be based on the actual costs, expenses and/or materials paid or incurred by the Association. Common Area Expenses shall be reduced by the proceeds of insurance or eminent domain awards or settlements received by the Association with respect to items of Common Area Expenses or recoveries from warranty claims. Nothing herein shall preclude the Association from engaging Rockefeller Group Development Corporation or any of the Declarant's affiliates for the provision of management or other services required hereunder, the cost of which shall be additional Common Area Expenses. Notwithstanding anything herein to the contrary, Common Area Expenses shall not include:

a. cost of any landscaping work on the Project or any Lots, except to the extent part of the Common Areas (which shall include landscaping installed by Declarant and maintained by the Association along the Project Road), provided, however, that nothing contained herein shall preclude the Association from supplementing any landscaping within the Project (including along the Project Road) to the extent approved by the Board of Directors;

b. legal and other professional fees and expenses, leasing commissions, finders fees, space planners fees, entertainment and travel expenses, advertising and promotional expenses and other costs incurred in connection with the development or leasing of the Project, or in connection with negotiations or disputes with tenants, occupants or prospective tenants or occupants including, without limitation, costs of enforcement of any tenant leases; provided, however, that nothing contained herein shall serve to preclude the Association from assessing an Owner as a Common Area Expense its pro rata share of any costs and expenses incurred by the Association in connection with its efforts (i) to resolve disputes with and/or among Owners, (ii) to enforce the provisions of this Declaration, and/or (iii) to pursue claims against others for reimbursement or damages;

c. interest or principal payments on any financing incurred in connection with the development of the Project or on any ground lease or other underlying lease;

d. any cost or expense for which the Association is entitled to reimbursement from any person (other than as payment for Common Area Expenses) including, but not limited to, (1) work or service performed or items furnished on any Lot upon request of the Owner of such Lot (which work or service shall be performed or items furnished at the sole cost and expense of the Owner of such Lot), (2) the cost of any item for which and to the extent the Association is paid or reimbursed by insurance proceeds, warranties, service contracts, condemnation proceeds or otherwise, and (3) increased insurance or taxes assessed specifically to any tenant or Owner of any portion of the Project;

e. insurance costs for any Lot, except that nothing contained herein shall preclude the Association from maintaining insurance coverages as set forth in Article III of

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

this Declaration and assessing the Members therefor as a Common Area Expense;

f. costs of any Hazardous Materials abatement or remediation work with respect to Hazardous Materials (that are in violation of any applicable laws) located within all or any portion of the Common Areas on the date hereof or thereafter caused to be placed thereon by Declarant;

g. costs associated with any repair and maintenance obligations that the Declarant is obligated to provide to the County after the dedication of the Project Road and prior to final acceptance for public maintenance.

Section 14. "County" shall mean York County, a political subdivision of the State of South Carolina.

Section 15. "Declarant" shall have the same meaning ascribed to it in the preamble of this Declaration.

Section 16. "Declaration" shall have the same meaning ascribed to it in the preamble of this Declaration, as the same may be amended from time to time in accordance with the terms and provisions hereof.

Section 17. "Defaulting Owner" shall have the meaning ascribed to the term in Article IX, Section 2 hereof.

Section 18. "Detention Basins" shall mean and refer to the wetlands, wetland buffers and detention/retention basins which are expected to be located on any of the Lots. It is acknowledged and agreed that each Detention Basin shall also include any detention basin improvements including, but not limited to, storm water pipes, headwalls, rip rap, outlets, inlets, and drainage facilities. It is anticipated that the Project shall be served by a Detention Basin to be located upon Lot 3 which shall be constructed by Declarant and its expense, and thereafter conveyed to the Association and owned, operated and maintained by the Association for the benefit of the Project as Association Property, the costs of which shall be Common Area Expenses. Other than the Detention Basin located upon Lot 3, any Detention Basin located upon a Lot shall not be a part of the Common Area, nor maintained by the Association, and shall instead be maintained by the Owner of such Lot at its expense, in accordance with the standards required under this Declaration.

Section 19. "Director" shall mean an individual serving on the Association's Board of Directors.

Section 20. "Enforcing Party" shall have the meaning ascribed to the term in Article IX, Section 1 hereof.

Section 21. "Enforcement Costs" shall have the meaning ascribed to the term in Article IX, Section 2 hereof.

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 22. "Grantee" shall have the meaning ascribed to the term in Article VII, Section 1(c) hereof.

Section 23. "Hazardous Materials" means any "Hazardous Material", "Hazardous Substance", "Pollutant or Contaminant", "Petroleum" and "Natural Gas Liquids" as those terms are defined or used in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), hazardous waste, toxic substance, and any other substances regulated because of their effect or potential effect on the public health and environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible, and infectious materials. If a law or regulation defines any of the foregoing terms more broadly than another, the broader definition shall apply.

Section 24. "Interest Rate" shall have the meaning ascribed to the term in Article VI, Section 7(a) hereof.

Section 25. "Landscaping" shall means trees, plants, grass and other vegetation located upon the Lots.

Section 26. "Late Fee" shall have the meaning ascribed to the term in Article VI, Section 7(a) hereof.

Section 27. "Lot" or "Lots" shall have the same meaning ascribed to these terms in the preamble of this Declaration.

Section 28. "Member" shall mean every Owner that owns a Lot, except that the Association shall not be a Member even though it may own Lot 3 or any other Lot. In the event there is more than one Owner of a Lot, they shall collectively be deemed a "Member."

Section 29. "Other Association Charges" shall mean the Late Fee and Interest Rate, court costs incurred in any collection process or foreclosure suit, reasonable attorneys' fees and other costs, charges and/or expenses imposed upon a Lot or an Owner pursuant to this Declaration other than Assessments.

Section 30. "Owner", with respect to each Lot, shall mean and refer to the fee simple record title owner or owners of such Lot, except that the term "Owner" shall expressly exclude the Association with respect to any Lots owned by the Association that are Association Property (including, as applicable, Lot 3).

Section 31. "Parking Areas" shall have the meaning ascribed to the term in Article II, Section 3 hereof.

Section 32. "Plat" means that certain on that certain plat by Nicholas L. Mansfield with Survey Matters, dated November 22, 2019, last revised August 22, 2022, entitled "Stateline 77 Subdivision Prepared For: RG Baxter Lane, LLC Property of: RG Baxter Lane, LLC Highway 21 Bypass North York County, South Carolina" and recorded on September 22, 2022, in the York County Clerk of Court's Office at Plat Book 170, Page 29-30.

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 33. "Project" shall have the same meaning ascribed to it in the preamble of this Declaration.

Section 34. "Project Road" shall mean the interior roadway constructed or to be constructed within the Project Road Area, and identified as "Logistics Lane". It is anticipated that the Project Road will be, or prior to the date hereof has been, dedicated to the County as a public right of way, and the recording of this Declaration is not intended to impair or otherwise affect any such public dedication.

Section 35. "Project Road Area" shall mean the portion of the Property described and depicted as "New 60' Right-of-Way" on the Plat.

Section 36. "Project Sign" shall mean the signage located at the entrance of the Project on Lot 3, which shall be owned by the Association as Association Property, and used to identify the Project but not the specific businesses operated therein. The Project Sign is distinct from the separate monument signs which may be erected upon Lot 1 and Lot 2 for the benefit of the Owners of and business(es) operated on such Lots, which shall not be Association Property.

Section 37. "Property" shall have the same meaning ascribed to it in the preamble of this Declaration.

Section 38. "Retaining Wall" shall mean the retaining wall located along and north of the Project Road (labeled "Retaining Wall A" in Exhibit B), which has been or will be constructed by Declarant, and thereafter maintained by the Association as provided herein.

Section 39. "Shared Access Area" shall mean the portion of the Project described or depicted on **Exhibit B**, a portion of which is located upon Lot 1 and the remaining portion is located upon Lot 2.

Section 40. "Special Assessments" shall mean and refer to those fees or charges levied by the Association from time to time upon the Owner of each Lot (other than a Lot owned by the Association as Association Property) for the purpose of defraying, in whole and in part any unbudgeted expenses or expenses in excess of those budgeted by the Association, including, without limitation, capital replacement of any Common Area following the initial construction of the Common Areas.

Section 41. "Specific Assessments" shall mean and refer to those fees or charges levied by the Association from time to time upon the Owner(s) of a Lot (other than a Lot owned by the Association as Association Property) for the purpose of paying (a) the costs of work or services performed or items furnished on any Lot, (i) at the request of the Owner of such Lot (e.g., maintaining the Parking Areas, Landscaping, etc.), (ii) as a result of the failure of any Owner to meet its maintenance obligations as provided in Article II, Section 5 hereof, or (iii) as otherwise provided in this Declaration, and (b) for the maintenance, repair or replacement of the Common Areas arising out of or caused by the willful or negligent act of an Owner, its tenants, invitees or licensees, except to the extent of insurance proceeds actually received by the

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Association with respect thereto.

Section 42. "State" shall mean the State of South Carolina.

Section 43. "Turnover of Control" shall have the meaning ascribed to the term in Article V, Section 2.

ARTICLE II
PROPERTY RIGHTS AND MAINTENANCE

Section 1. Title to the Common Areas. When completed and installed as provided herein and certificates of completion shall have been issued by all applicable governmental authorities, if any, title to the Common Areas shall, as provided in **Exhibit C** attached hereto, be either vested in the Association or retained by the Owner of the Lot upon which any portion of the Common Area is located, subject in each instance to the terms and conditions set forth in this Declaration and the easements created herein.

Section 2. Maintenance of Common Areas. The Association shall maintain, repair and replace the Common Areas as may be necessary to keep the same in good condition and working order and in compliance with this Declaration and all applicable laws, rules, regulations, codes, ordinances and governmental orders and decrees. In addition, the Association shall have the right to supplement the maintenance and improvements of the Project Road and the road constructed within the Shared Access Area, which shall include, without limitation, the maintenance or replacement of any road surfaces, entrance improvements, sidewalks, landscaping, signage, lighting or other improvements located within said improvements. The foregoing obligations of the Association will be discharged when and in such a manner as the Board of Directors determines in its judgment to be appropriate.

Section 3. Maintenance of Lots and Improvements. Each Owner shall keep, maintain, repair, manage and operate its Lot(s) and all building(s), improvement(s) (including surface area parking lots (the "**Parking Areas**"), driveways, utility lines exclusively serving its Lot and building signs) and Landscaping thereon, whether occupied or unoccupied, in good and clean order, and in a state of condition and repair, without public or private nuisance, except only for any Landscaping or other Association Property maintained by the Association as part of the Common Areas and as a Common Area Expense. If any improvements within the Project (other than Association Property) shall be damaged by fire or other casualty, the Owner of the Lot on which such improvement is located shall have no obligation to repair, rebuild or restore same, provided, however, such Owner shall, at such Owner's sole cost and expense raze the remaining portions of such buildings or improvements not rebuilt, remove all debris resulting therefrom, and pave such areas for parking or landscape such areas in a sightly manner and comply with applicable laws. If any portion of such Lot and/or improvements thereon falls into disrepair or is not so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Association will have the right, but not the duty, upon ten (10) days' prior written notice, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance, and the cost thereof will be charged to the appropriate Owner(s) as a Specific Assessment. The foregoing shall not limit the rights of another Owner to

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

be an Enforcing Party as provided in Article IX below.

Section 4. Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns the right to make minor changes and realignments in the boundaries of the Common Areas and any Lots owned by Declarant, including the minor realignment of boundaries between adjacent Lots and Common Areas owned by Declarant.

Section 5. Dedication of Association Property. The Declarant and the Association may dedicate portions of the Association Property to the County, or to any other local, state or federal government or quasi-governmental entity.

ARTICLE III
INSURANCE

Section 1. Insurance to be Maintained by Association. The Association shall maintain, at all times, insurance in the following types and amounts:

(a) Property insurance covering all the improvements comprising the Common Areas. Such insurance shall be in an amount equal to the full replacement value of such improvements with an "agreed amount endorsement." The insurance is to afford protection against at least the following:

(i) loss or damage by reason of hazards covered by the all-risk extended coverage endorsement, to include, but not be limited to, debris removal, cost of demolition, vandalism, malicious mischief, windstorm (if available at a commercially reasonable rate) and water damage and to include a waiver of subrogation to the extent of insurance provided; and

(ii) such other risks as shall customarily be covered with respect to similar improvements in projects similar in construction, location and use. Such insurance shall name the Association as the insured for the benefit of the Owners;

(b) Comprehensive general liability insurance covering the Common Areas, including the Association Property, and activities of the Association, its directors, officers, agents and employees in connection with the maintenance thereof, in an amount not less than $2,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence. Such insurance policy shall contain a "severability of interest" clause or endorsement if generally available in the insurance marketplace which clause or endorsement shall preclude the insurer from denying a claim of an Owner or its tenant because of the negligent acts of the Association or other Owners or other tenants, and shall name the Association as insured for the benefit of the Owners and tenants in the Project. This policy shall, by endorsement, name Owners and tenants as additional insureds;

(c) Worker's compensation and employer's liability insurance as required by law, as well as South Carolina disability benefits;

(d) Directors and officers liability insurance in an amount not less than

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

$1,000,000.00; and

(e) Comprehensive disappearance and fidelity bond or equivalent insurance coverage against dishonest acts on the part of officers, directors, managers and employees of the Association and all others who handle or are responsible for the handling of funds of the Association, such bond or insurance to name the Association as the obligee or insured. Such bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond or insurance shall provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to any first mortgagees of Lots who have given notice of their interest to the Association; and

(f) Such additional insurance as the Board of Directors, in its best business judgment, determines advisable.

Section 2. Insurers. The insurance set forth in this Article shall be maintained with reputable insurance companies authorized to transact business within the State.

Section 3. Waiver of Negligence. No Subrogation. Each Owner and each person claiming by, through or under it (collectively the "**Releasing Owner**") hereby releases and waives for itself, each other Owner and each person claiming by, through or under it (collectively the "**Released Owner**") from any loss or damage to all property of such Releasing Owner located on the Releasing Owner's Lot, regardless of the cause of any such claim or loss, including without limitation the fault or negligence of any party or their respective agents, employees or contractors, to the extent of the proceeds payable under any insurance maintained by the Releasing Owner. Each Owner (i) shall obtain an appropriate clause in, or endorsement on, each of its all-risk insurance policies pursuant to which the insurer waives all right of subrogation or consents to a waiver of right of recovery against the Released Owner, and (ii) agrees to cause, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release herein above given.

ARTICLE IV
[Intentionally Omitted]

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership in the Association; Voting Rights. Every Owner shall be a member of the Association and shall be subject to all provisions of this Declaration and the By-laws. The Association will have two (2) classes of voting memberships which are as follows:

Class A: Class A Members will be the Owners of the Lots. Each Class A Member shall have a number of votes equal to the percentage of total Common Area Expenses allocated to such Owner (as determined in accordance with the

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

provisions of Article VI, Section 6(b) of this Declaration) multiplied by 100 and rounded to the nearest whole number. Each Owner shall notify the Association of the name, address, telephone number, and email address of the Owner's representative authorized to act on behalf of the Owner in connection with the Association.

Class B: The Class B Member will be Declarant or its designee. Prior to Turnover of Control, the Class B Member will be entitled to three (3) votes for each vote held by the Class A Members. After Turnover of Control, the Class B Member will exercise votes only as to its Class A Memberships, if any.

Section 2. As provided in Article IV of the By-laws, the affairs of the Association shall be managed by the Board of Directors originally comprised of three (3) Directors. The initial Board of Directors shall be appointed by the Declarant. The Owner of Lot 1 shall be entitled to appoint one (1) Director, and the Owner of Lot 2 shall be entitled to appoint two (2) Directors. The Owner of Lot 3 shall not be entitled to appoint a Director. Each Director shall be entitled to cast the number of votes equal to the number of votes held by its appointing Owner for the Lot with respect to which the Director was appointed. Notwithstanding anything contained in this Declaration or the By-laws to the contrary, Declarant shall have the right to appoint the Board of Directors of the Association, and be entitled to elect officers thereof until the earliest of: (a) the conveyance of all Lots by the Declarant to unaffiliated third party purchaser(s), (b) twenty (20) years after the date this Declaration is recorded in the York County Register of Deeds Office, or (c) the release of all rights and interest in the Project by the Declarant pursuant to a written instrument recorded in the Register of Deeds for York County, SC (each a "**Turnover of Control**").

Section 3. In the event there are multiple Owners of a Lot, the Owners shall be treated as a single owner for the purposes of this Declaration. Said Owners must designate one person to represent their interests as a Member of the Association and shall notify the Association of the name, address, telephone number, and email address of the person authorized to act on behalf of the Owners in connection with the Association.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Authority to Levy Assessments. The Association, acting through the Board of Directors, will have the right, power and duty to levy Assessments against the Owners and the Lots for costs incurred by the Association and the Board of Directors in carrying out their purposes, including, but not limited to the costs of enforcing this Declaration, and for all other Common Area Expenses. Each Owner, by acceptance of a deed, ground lease or other instrument of conveyance establishing an interest to a Lot, whether or not it is so expressed in such deed, ground lease, or instrument, will be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the By-laws and this Declaration, and further consents and agrees to the lien rights provided herein against such Lot.

Section 2. Creation of a Lien and Personal Obligation for Assessments.

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(a) No Owner of any Lot may waive or otherwise avoid liability for the payment of the Assessments or Other Association Charges by claiming non-use of the Common Areas or the abandonment of the Owner's Lot(s) or otherwise.

(b) Assessments shall become a lien on a Lot at the time levied by the Association. Other Association Charges shall constitute a lien on a Lot from and after the date incurred. The lien for Assessments and Other Association Charges shall be superior to all other liens except (i) the liens of any taxes, assessments and other levies which by law would be superior, and (ii) as to Assessments that accrue prior to a foreclosure or conveyance by deed in lieu of foreclosure, the lien or charge of any first mortgagee of record made in good faith and for value.

(c) For so long as an Owner owns a Lot, the Owner shall be personally liable for payment of Assessments and Other Association Charges against its Lot to the extent arising during the period of the Owner's ownership of the Lot or for any period prior thereto.

(d) Any such lien may be enforced by the Association in any manner permitted under the laws of the State, including enforcement by foreclosure.

Section 3. Annual Assessments. The amount of the Annual Assessment shall be fixed by the Board of Directors in a sum expected to meet the Common Area Expenses of the Project for the ensuing year. From time to time, the Board of Directors may modify the Annual Assessment and the monthly payments of the Owners shall be modified accordingly. Annual Assessments shall be collected quarterly assuming a three hundred sixty (360) day year, three (3) months in advance, or on such other basis as the Board of Directors may determine from time to time. If any Annual Assessment is not paid when due, all such quarterly installments may be accelerated and will thereupon be due in one lump sum. By way of example, payment of Annual Assessments for the quarter commencing October 1 will be due and payable on July 1. The first payment of Annual Assessment will be adjusted according to the number of days remaining in the calendar year. Adjustments made necessary by changes in the Assessments during a particular year or at the beginning of a new year will be made as the Board of Directors reasonably determines, but until notified otherwise, Owners will continue to pay installments in the same amount as the most recent previously due installment.

Section 4. Special Assessments. In addition to the Annual Assessments authorized herein, the Board of Directors may also levy in any year, one or more Special Assessments applicable to that year. Any such Special Assessment shall be payable in such manner and at such times as determined by the Board of Directors, and, to the extent approved by the Board of Directors, may be payable in installments extending beyond the fiscal year in which the Special Assessment is levied.

Section 5. Specific Assessments. In addition to the Annual Assessments and the Special Assessments, the Board of Directors may also levy Specific Assessments.

Section 6. Computation of Annual and Special Assessments.

(a) At least thirty (30) days before the beginning of each fiscal year, the Board of

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Directors shall prepare a budget covering the estimated Common Area Expenses during the coming year. Annual Assessments shall be levied against all Lots as provided herein and shall be set at a level which is reasonably expected to produce income for the Association equal to the total budgeted Common Area Expenses. The Board of Directors shall send a copy of the budget and notice of the amount of the Annual Assessment for the following year to each Owner at least fifteen (15) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved by the Declarant prior to Turnover of Control, and following a Turnover of Control, shall become effective unless disapproved at a meeting of the Owners representing at least 75% of the total votes in the Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of an Owner as provided for special meetings in the By-laws, which petition must be presented to the Board of Directors within 10 days after delivery of the notice of the budget and assessments. If the proposed budget is disapproved at the special meeting or if the Board of Directors fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding fiscal year shall continue for the current fiscal year, adjusted to take into account any increase in the CPI for the preceding year, and also adjusted to reflect any actual increases for any uncontrollable charges such as taxes, insurance, utilities, snow removal, costs to comply with law, security costs and costs as a result of any collective bargaining agreement. The term "**CPI**" shall mean the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor (1982-84 = 100), or any successor index thereto, appropriately adjusted; provided that if there shall be no successor index, a substitute index shall be reasonably selected by the Owners.

(b) Except as may be otherwise provided in this Declaration, an Owner's liability for the payment of Annual and Special Assessments shall be computed for each Lot by multiplying the total amount of the Assessment by the following percentages:

Lot 1	21.94%
Lot 2	78.06%
Lot 3	0%

Except as otherwise provided in this Declaration, the product thereby arrived at shall be used to calculate each Owner's share of any Annual or Special Assessment levied by the Board of Directors.

(c) No later than April 15th of any year, the Association shall provide to each Member a summary of all of the Common Area Expenses incurred by the Association in the preceding calendar year. If such summary indicates that the Association collected more or less than was necessary, the Owners shall promptly pay their proportionate share of any deficiency, if any, and the Association shall promptly refund any overpayment on a pro-rata basis or apply the same to the next installment becoming due.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) If any Assessment or Other Association Charges is not paid within thirty (30)

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

days from the date same is due and payable, a late fee shall be payable in an amount equal to two percent (2%) of the past due amount (the "**Late Fee**") and interest shall accrue on all outstanding balances from the date the same were due and payable until paid at a rate equal to two percent (2%) in excess of the floating Prime Rate (the "**Interest Rate**") charged from time to time by JPMorgan Chase Bank, N.A., or any successor to its commercial customers or, if JPMorgan Chase Bank, N.A., or its successor is no longer in existence or no longer publishes or employs a Prime Rate, the Board of Directors shall select another bank or source to use as a standard for the purpose of determining the Prime Rate of interest to be charged to the Owners from time to time, but in no event shall the Interest Rate ever exceed the maximum rate allowable by law.

(b) Liens for Assessments or Other Association Charges which remain unpaid for greater than a thirty (30) day period after the Assessments and Other Association Charges become due and payable, shall be deemed delinquent and the Association by action of its Board of Directors is hereby empowered to file a claim of lien for delinquent assessments against the affected Lot and may bring an action at law or in equity against the Owner of the Lot and/or may foreclose the assessment lien against the Lot under legal or equitable proceedings in the courts of the State. Recovery shall include expenses, court costs, and reasonable attorneys' fees.

(c) In addition to the right of the Association to foreclose the lien aforesaid, the Association may accelerate any unpaid portion of any Annual or Special Assessment for the balance of the year in which the delinquency occurred, and may exercise any other remedy which may be available to it for the collection of such charges and expenses, including the right to proceed personally against any current or former Owner for the recovery of a personal judgment against said Owner to the extent the Owner is personally liable therefore under Article VI, Section 2(c).

Section 8. Subordination of Assessment Lien to Mortgages. The liens for the Assessments and all other lien rights provided for herein are declared to be subordinate to the lien of any first mortgage and, where approved in writing by Declarant, any second mortgage, held by a lender on any Lot. The sale or transfer of any property pursuant to mortgage foreclosure (or deed in lieu thereof) shall extinguish the lien of any assessment or claim which became due prior to the effective date of the sale or transfer, but shall not terminate the personal liability of any persons or entities liable therefor. The sale or transfer of any Lot, which is not pursuant to mortgage foreclosure or proceedings in lieu thereof shall not affect the assessment lien.

Section 9. Audit Rights. The Association shall, upon prior written request received by the Association within one (1) year after an Owner receives a statement of Assessments, but not more often than once every twelve (12) months for each Owner, permit such Owner to inspect invoices, receipts and other related records evidencing the existence and payment of the Common Area Expenses in the offices of the Association or its property manager. Any such inspection of records shall be scheduled during regular office business hours and shall not unduly burden the Association's operation or materially interfere with the normal course of business. Unless an Owner, within one (1) year after receiving a statement of Assessments, shall give notice to the Association that such Owner disputes said statement, specifying in detail the basis for such dispute, each such statement furnished to an Owner by the Association shall be

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

conclusively binding upon such Owner as to the particular costs and expenses set forth in such statement for the period represented thereby.

ARTICLE VII
EASEMENTS

Section 1. Easements in Favor of Owners. Every Owner of a Lot and any of Owner's tenants, licensees, guests, employees, and business invitees (collectively, the "**Authorized Parties**") shall have the benefit of the following perpetual easements with respect to the Project:

(a) Easement for Access. A non-exclusive easement across the Project Road Area and the Shared Access Area for pedestrian, bicycle and vehicular ingress and egress from the Owner's Lot to Central Carolinas Parkway, a public right of way, and from Central Carolinas Parkway to the Owner's Lot, provided, however, that at such time as the Project Road is publicly dedicated to the County or to any other governmental entity and such dedication is accepted by the County or such other governmental entity, the non-exclusive easement granted hereby over the Project Road Area shall automatically terminate, but the non-exclusive easement granted hereby over the Shared Access Area shall remain unaffected thereby. No barriers, fences or other obstructions shall be erected within the Project Road Area so as to interfere with the free flow of pedestrian and vehicular traffic between those portions of the Property from time to time devoted to vehicular roadways or pedestrian sidewalks; provided, however, that the foregoing provisions shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes, not the erection, maintenance and replacement of the Retaining Wall within the Shared Access Area;

(b) Easement for Pedestrian Sidewalk Use. A non-exclusive easement across all Lots by way of any sidewalks which may be constructed within the Project for pedestrian access;

(c) Easement for Utilities and Drainage. A blanket and non-exclusive easement, over across and upon the Project Road Area, the Shared Access Area, and the other Common Areas, to connect to the pipes, wires, conduits, ducts, cables, public or private utility lines or other common systems (each a "**Utility Line**" and collectively, the "**Utility Lines**") located, in whole or in part, in, upon, under, over or running through the Common Areas or any Lot and serving the Owner's buildings or Lot, for the installation and maintenance of Utility Lines for furnishing electric, natural gas, telephone service, water, surface water runoff and drainage into the Detention Basins (except as limited herein), sanitary sewage service, and other like services to any other Lot, together with a temporary general right of access as is necessary from time to time to do installation or maintenance work within such areas; provided, however, that any party using the foregoing easement (each such party a "**Grantee**") may do so only if the Grantee's rights thereunder are exercised in a manner which does not cause an Adverse Impact upon any Lot or to any Owner, and subject in all events to the terms of this subsection. Such Grantee shall indemnify the Owner of the affected Lot for any claims, losses, damages, liabilities, costs or expenses (the "**Claims**") resulting from such Grantee's use of the easement described in this provision, to the extent the Claims are not covered by the insurance the Association is required to maintain pursuant to Article III of this Declaration. Notwithstanding the foregoing, such rights, privileges and easements shall be subject to the following provisions:

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(i) The Owner of the benefitted Lot installing or connecting to one or more of the Utility Lines in the Common Areas or on any Lot shall (A) provide at least thirty (30) days' notice to Declarant, the Association, and the Owner of the affected Lot, as applicable, of its intention to do such work, (B) locate any such Utility Lines underground (excluding any junction boxes, transformers and electricity meters) and so as to minimize damage, interference, and disruption to the Common Areas and/or the affected Lot), (C) pay all costs and expenses with respect to such work, (D) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the other Owners' use of its Lot and/or the Common Areas, (E) comply in all respects with all applicable governmental laws, regulations, and requirements, (F) promptly, at its sole cost and expense, clean the area and restore the affected portion of the Lot and/or Common Areas to a condition equal to or better than the condition which existed prior to the commencement of such work, and (G) indemnify and hold Declarant and the other Owners harmless from and against any claims, actions, demands, damages, losses, injuries, or expenses, including, without limitation, reasonable attorneys' fees, that may result from such work.

(ii) After the installation of any Utility Lines, system, or equipment pursuant to the rights granted above, no permanent building, structure, tree, or other improvements inconsistent with the use and enjoyment of such Utility Lines, systems, or equipment shall be placed over or permitted to encroach upon such installations. Notwithstanding the foregoing, if the Owner of any Lot reasonably determines that it is necessary to relocate any Utility Line located on such Owner's Lot to accommodate expansion, development, or construction, such Owner, at its sole cost and expense, may relocate the Utility Line to a location mutually acceptable to the Owner and the party benefitted by such Utility Line.

(iii) With respect to easements and rights for Utility Lines that do not exist as of the date hereof, all such Utility Lines shall be located and designed in such a manner so as to minimize disruption to (x) existing improvements (other than sidewalks, paved areas, walkways, landscaping and other improvements not consisting of buildings) located within the Property, and (y) any future contemplated improvements located on the Property. No improvements existing on the date hereof (other than sidewalks, paved areas, walkways, landscaping and other improvements not consisting of buildings) shall have to be modified in any material way, relocated or razed as a result of any easement granted herein for a Utility Line benefiting another Owner unless the Owners encumbered by such easements consent in writing.

(iv) The exercise of the foregoing right, privilege and easement by any Owner shall be at such Owner's sole cost, expense and liability and shall not unreasonably interfere with or interrupt the use by the other Owners of the Common Areas or affected Lot, as applicable, and following any exercise of such right, privilege and easement, such Owner shall restore any portion of the Common Areas or Lot, as applicable, affected

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

thereby to substantially the same condition and appearance as existed prior to such exercise. Any improvements that are temporarily cut or removed during the installation process shall be reinstalled or repaired to a condition substantially the same as that existing prior to the installation work. Nothing set forth in this Section 1 shall prohibit the use of any portion of the Property located above Utility Lines for parking, landscaping and driveways.

(d) A non-exclusive easement in, over, through the Common Areas for access to or use of the Common Areas for their intended purposes.

Section 2. Easements in Favor of the Association. The Association and its Board of Directors, and their respective agents and employees, and any manager employed by the Association shall have a non-exclusive, irrevocable blanket easement, in, on, upon, under, over, across and through the unimproved portions of every Lot for the purpose of (i) performing their respective duties under this Declaration; (ii) constructing, installing, maintaining, inspecting, examining, repairing, replacing, reconstructing, cleaning, mowing, snowplowing, painting, and reconfiguring the Common Areas; and (iii) inspecting any Lot for the purpose of ensuring compliance with this Declaration, and remediating any violations of the provisions of this Declaration. Such right may be exercised by any member of the Board of Directors, the Association's officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. All rights reserved to the Association under this Section 2 shall be exercised during normal business hours except in cases of emergency in which event the rights of entry shall be immediate whether or not the Owner is present at the time. The Association shall (i) restore any damage caused to a Lot in connection with the exercise of the Association's rights hereunder, and (ii) exercise such rights in a manner which is intended to minimize interference with the Owner's use of the Lot, and does not disrupt access or utilities or other services being provided to the Lot. To the extent the Declarant, the Association or their respective agents and employees undertake such maintenance, the cost and expense thereof shall be considered a Common Area Expense unless such maintenance is necessitated by the negligent or willful acts or omissions of a particular Lot Owner, in which case such cost and expense thereof shall be assessed solely against the applicable Lot as a Specific Assessment and shall not be considered a Common Area Expense.

Section 3. Easements in Favor of the Declarant. The Declarant shall have a non-exclusive, irrevocable blanket easement, to the extent the same shall not cause an Adverse Impact in, on, upon, under, over, across and through every Lot and all Common Areas for the purposes of (i) completing any work required by any governmental authority in connection with the construction and/or maintenance obligations undertaken by Declarant as developer of the Project; (ii) monitoring, replacing, repairing, maintaining and operating all lakes, ponds, wetlands, and drainage systems, street lights and signage, and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and (iii) constructing and installing any of the foregoing on property which the Declarant owns or within easements designated for such purposes on recorded plats of the Property. Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable. In addition, there are hereby reserved

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

to the Declarant, so long as there has not been a Turnover of Control, and its designees (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of constructing any improvements on any of the Lots. Declarant also hereby reserves the non-exclusive right and power to grant such specific easements over any and all of the Property as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any portion of the Property, provided, however that the Declarant's exercise of the right reserved herein shall not have an Adverse Impact on the affected Lot.

Section 4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

Section 5 Additional Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; and (ii) an area across every Lot twenty (20') feet in width along the front boundary lines thereof, and ten (10') feet in width along the side boundary lines thereof, and ten (10') feet in width along the rear boundary lines thereof; for the purpose of installing, replacing, repairing and maintaining all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, cable, water and sewer lines. Such easements may be granted or accepted by the Declarant, its successors or assigns, or by the Board of Directors; provided, however, that until a Turnover of Control, the Board of Directors must obtain the written consent of Declarant prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Project and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Project so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

Section 7. Environmental Easement. There is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas and Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides This right and easement shall not impose any duty on the Declarant, the Association and their respective agents, employees, successors and assigns to exercise the same

Section 8. Right to Relocate and Supplement Easements and Common Areas and to Create New Ones. If at any time it becomes necessary for the Declarant or the Association to modify, expand, amend, relocate or reconfigure a Common Area or an easement created hereunder or any facilities related thereto, or to add a new Common Area or easement, the Declarant or the Association shall have the right to do so provided that no such modification, amendment, expansion, relocation or reconfiguration of a Common Area or easement or addition of a new one shall have an Adverse Impact, and further provided that any necessary approvals are obtained.

Section 9. Assignment. The Association shall have the right to assign any of the easements created for its benefit hereunder to a private or public utility or to a municipal utilities authority or a replacement Association. Notwithstanding any assignment permitted hereunder, the terms and conditions set forth in this Declaration shall continue in full force and effect unless otherwise mandated by the Association, provided, however, that the Association may not make any assignment of any easements created hereunder unless (i) the proposed assignee agrees in writing (which writing shall be recorded promptly after execution by the Association) to assume all of the obligations of the Association in connection with any easements to be assigned, and (ii) each Owner consents to such assignment, which consent shall not be unreasonably withheld or delayed, but each Owner agrees that its consent shall not be required if the easement is for utility purposes and the proposed assignee is a utility company regulated or licensed by the State, or such similar local, county, state or federal board, body, agency or authority.

Section 11. Responsibilities for Damage Due to Negligence, Omission or Misuse. If an Owner of a Lot, or any of the Owner's employees, tenants, occupants, visitors or business invitees damage any Common Area or cause or create any contamination of all or any portion of a Common Area with Hazardous Materials, the cost of effecting the necessary maintenance, Hazardous Material abatement or remediation work, repair and/or replacement, along with any costs, including reasonable attorneys' fees arising out of such incident, shall be assessed solely against the applicable Lot and shall not be considered a Common Area Expense but shall be considered a Specific Assessment.

ARTICLE VIII
USE RESTRICTIONS

Section 1. No Interference. No Owner or its employees, tenants, occupants, visitors or business invitees of such Owner shall obstruct and/or interfere with or alter the drainage and runoff patterns and systems on any Lot or within the Project as a whole, or with the rights granted by or reserved to the Association, Declarant or the Owners subject, however, to the rights granted to others herein.

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Section 2. No Violations. No Owner, its employees, tenants, occupants, visitors or business invitees shall violate any law, the site plan or subdivision approvals granted by this Declaration, or any rule or regulation promulgated by the Association.

Section 3. Additional Restrictions. The Project is subject to the following additional restrictions:

(a) The use of Lot 1 and Lot 2 shall be restricted exclusively to that of commercial warehouse, manufacturing, industrial, distribution, office, research and development and related purposes, or such other uses as may be permitted under applicable zoning ordinances or approvals.

(b) Lot 1 and Lot 2 shall be maintained in keeping with the standards of a first class industrial office park.

(c) No unlawful activities shall be carried on within the Project nor shall anything be done therein which either willfully or negligently becomes an annoyance or nuisance or which interferes with the peaceful possession and enjoyment of any of the Lots and/or the Common Areas. Each Owner shall comply, and shall cause its employees, tenants, occupants, visitors and business invitees to comply, with any rule or regulation promulgated by the Association.

Section 4. Prohibited Uses. No noxious or offensive activity will be carried on in any buildings on any Lot or Common Area, nor will anything be done therein which may be or may become an unreasonable annoyance or a nuisance to any Owner or may negatively affect the value or reputation of the Project. In furtherance of, and not in limitation of the foregoing, the business conducted on each Lot and in any improvements thereon shall be conducted in such a manner so as not to cause or produce any of the following effects: noise or sound which is objectionable due to volume, duration, frequency or shrillness; smoke; noxious, toxic or corrosive fumes, odors or gases; or dust or ash.

Section 5. Setbacks and Building Lines. Each building which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback codes of the County.

Section 6. Tree Removal. No trees or bushes of any kind shall be removed from any Lot except in accordance with the provisions of the Ordinances of York County, South Carolina. No Landscaping within the Common Areas shall be removed by an Owner without the express written authorization of the Declarant or the Board of Directors. The Declarant shall further have the authority to require any Owner removing a tree in violation of this clause to replace same at such Owner's cost.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Default of Owner. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owner

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

(the "**Defaulting Owner**"): (i) the failure to make any payment required to be made hereunder when due and such failure should continue for ten (10) business days after written notice to the Defaulting Owner; or (ii) the failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within thirty (30) days after the issuance of a notice by the Association or another Owner (each such party an "**Enforcing Party**") (the "**Enforcing Party**") specifying the nature of the default claimed (or in the case of a default which is curable but cannot be cured with the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, if the Defaulting Owner shall fail to commence to cure the same within said thirty (30) day period, or, having promptly so commenced to cure the same shall fail thereafter to prosecute the curing thereof in good faith and with all due diligence, it being intended that the time within which to cure such a default shall be extended for such period as may be necessary to complete the curing of same in good faith and with due diligence).

Section 2. Remedies of Enforcing Party. In addition to any other rights or remedies provided herein, but without in any way expanding any provision of this Declaration stated to be an exclusive remedy, an Enforcing Party shall have the right (but not the obligation) to perform any obligations or remedy any such violations of the Defaulting Owner, and the Defaulting Owner shall reimburse the Enforcing Party immediately upon demand by the Enforcing Party for the costs incurred by the Enforcing Party in such performance or remedy, plus an amount equal to ten percent (10%) of such costs and expenses as an administrative charge, plus interest on such costs and administrative charges at the Interest Rate, accruing from the date any such costs shall have been incurred until paid in full, together with reasonable attorneys' fees and costs of appeal. Without in any way expanding any provision of this Declaration stated to be an exclusive remedy, the remedies provided for herein are in addition to and not in lieu of any other rights and remedies available at law or in equity, and the Enforcing Party shall have the right to enforce the provisions of this Declaration by an appropriate action at law or in equity, including, without limitation, an action for specific performance. If an Enforcing Party prevails in any enforcement action against a Defaulting Owner, or if an Enforcing Party incurs any costs and expenses which it is entitled to recover from a Defaulting Owner pursuant to this Section and Section 1 above, then such Defaulting Owner shall pay, in addition to any damages (which shall not include a claim for consequential or punitive damages) owed to the Enforcing Party, the actual out-of-pocket enforcement costs (including reasonable attorneys' fees) incurred by the Enforcing Party (collectively, the "**Enforcement Costs**"). If the Defaulting Owner shall fail to pay any amounts owed to the Enforcing Party or the Enforcing Party's Enforcement Costs, the Enforcing Party may place a lien on the Lot of the Defaulting Owner in the amount of such unpaid damages and Enforcement Costs, such lien to accrue interest at the Interest Rate specified herein. The lien shall be subordinate to (a) the lien of any first mortgage of record made in good faith and for value held by a lender who has lent funds with a Lot as security therefor, or held by the lender's successors and assigns, (b) liens for taxes and other public charges which, by applicable law, are expressly made superior, and (c) any lease of an entire Lot or an entire building located on a Lot. Except as set forth in the preceding sentence, the lien shall be superior to any and all charges, liens, or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. The sale or transfer of any Lot shall not affect the lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a first mortgage to which the lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure sale, or any

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

grantee taking by deed in lieu of foreclosure, shall take title to the Lot free and clear of the lien for all amounts that have accrued up to the date of issuance of a master's deed or a deed in lieu of foreclosure; but upon the date of issuance of a master's deed or a deed in lieu of foreclosure, the lien for all amounts that have accrued subsequent to the date of issuance of a master's deed or a deed in lieu of foreclosure shall immediately become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which, by applicable law, are expressly made superior), and such mortgage foreclosure sale purchaser or grantee shall take title subject to all amounts, and the lien thereof, accruing hereunder subsequent to the date of issuance of the master's deed or the deed in lieu of foreclosure.

Section 3. Amendment. The covenants and easements of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated. Prior to a Turnover of Control, this Declaration may be amended, modified, or supplemented by (1) Declarant without the approval of the Association or any Owner, provided that (a) no such amendment, modification or supplement has an Adverse Impact on any Lot unless any such amendment is accompanied by the consent of the Owner which is adversely impacted and (b) the Declarant thereafter provides notice and a copy of the amendment to any and all Owners or (2) the vote of not less than sixty-five percent (65%) of the aggregate votes of the Directors serving on the Association's Board of Directors provided that such amendment (x) may not cause an Adverse Impact, unless any such amendment is accompanied by the consent of the Owner which is adversely impacted, and (y) shall not contravene any site plan or subdivision approval granted by the County. Notwithstanding anything herein to the contrary, any amendment to this Declaration by the Directors prior to a Turnover of Control shall require the Declarant's consent, which consent may not be unreasonably withheld. Any amendment made pursuant to this Section shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance document to a Lot, agrees to be bound by such amendments as are permitted by this Section. Following a Turnover of Control, this Declaration may only be amended, modified, or supplemented upon the vote of not less than sixty-five percent (65%) of the aggregate votes of the Directors serving on the Association's Board of Directors provided (x) no such amendment may cause an Adverse Impact, unless any such amendment is accompanied by the consent of the Owner which is adversely impacted, and (y) such amendment, modification or supplement does not contravene any site plan or subdivision approval granted by the County. The sixty-five (65%) voting requirement as set forth herein can only be amended upon the unanimous consent of all Directors with a vote. No such amendment, modification or supplement shall be effective unless and until it is embodied in an instrument executed by the (a) Declarant, if prior to a Turnover of Control, or (b) by all Owners if subsequent to a Turnover of Control, which instrument shall be recorded in York County Register of Deeds in the same manner as this Declaration.

Section 4. Rule Against Perpetuities. Notwithstanding anything contained herein to the contrary, if any of the terms, provisions, covenants or rights created by this Declaration would otherwise be unlawful, void or voidable for violation of (a) the rule against perpetuities or some analogous statutory or common law provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then this

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Declaration and any such provision(s) shall continue only until the date which is the later of (i) ninety (90) years following the date of this Agreement, or (ii) twenty-one (21) years after the death of the last survivor of the now living descendants of Barack Obama, the former President of the United States, it being the intent of the Declarant that this Declaration comply with the provisions of the Uniform Statutory Rule Against Perpetuities as adopted in the State.

Section 5. Notices. All notices required or permitted to be given pursuant to the terms and conditions of this Declaration shall be sent to the record Owner of any Lot, to all first mortgagees of Lots who have given written notice of their interest and their address for notices to the Association or to the Association at 1271 Avenue of Americas, 24th Fl., New York, NY 10020, Attention: Secretary, and may be sent by any of the following methods: (a) by personal service; (b) [Intentionally Omitted]; (c) by one of the recognized overnight services; or (d) by United States Certified or Registered Mail, return receipt requested, postage prepaid. Notices made in accordance herewith shall be deemed as given and effective: upon the date of actual receipt as to (a) and (b); one (1) business day after mailing as to (c); and three (3) business days after mailing as to (d) or actual receipt, whichever is sooner.

Section 6. Controlling Law. This Declaration and the rights of the parties hereto under the terms and conditions hereof shall be governed by and construed and interpreted in accordance with the laws of the State, without regard to its conflicts of laws or choice of laws provisions.

Section 7. Severability. If any term or provision of this Declaration or the application thereof to any person, party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of said term or provision to persons, parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the extent permitted by law.

Section 8. Binding Effect. The terms and conditions set forth herein shall be binding upon the Declarant, the Owners, the Association, and their respective successors and assigns.

Section 9. Declarant's Rights. Declarant's rights and role herein, including, but not limited to, those rights reserved to Declarant in Articles IV, V, VII and VIII, as such, shall cease and terminate once there has been a Turnover of Control.

Section 10. Estoppels. The Association shall, within ten (10) business days after receipt of a written request of any Owner, issue to such Owner or to any prospective purchaser or prospective mortgage lender or prospective assignee specified by such Owner, an estoppel certificate stating: (i) whether to its knowledge there exists any default under this Declaration and, if there are known defaults, specifying the nature thereof and the amount, if any, payable by the defaulting party; (ii) whether to its knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof); and (iii) that to its knowledge this Declaration as of that date is in full force and effect.

Section 11. Transfer of Interests. An Owner transferring all or any portion of its fee interest in a Lot shall give notice to all other Owners and the Association simultaneously with or

ELECTRONICALLY FILED - 2025 Dec 17 3:50 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

promptly after such transfer and shall include in such notice at least the following information: (a) the name and address of the new Owner; and (b) a copy of the legal description of the portion of the Lot transferred by such Owner. Each Owner shall be liable for the performance of all covenants, obligations and undertakings applicable to the Lot or portion thereof owned or leased by it that accrue during the period of such ownership or leasing. The transferring Owner shall be released from all obligations pertaining to the portion of the Lot transferred arising subsequent to the notice of transfer and the transferee shall be deemed to have assumed all obligations pertaining to such portion of the Lot from and after the date of such transfer.

Section 12. Termination. This Declaration cannot be terminated (a) if access from a Lot to a public road will be eliminated, or (b) if any utility services to or the drainage rights of any Lot will be eliminated or materially diminished, unless, in the case of either (a) or (b) above, (i) all of the Directors serving on the Board of Directors shall agree to such action, (ii) the Association has transferred ownership of the Project Road to an appropriate public utility or municipal agency or authority, and such applicable agencies, authorities or public utilities have agreed in writing to accept such transfer and continue to provide service to the applicable Lot or Lots, and (iii) the easement rights set forth in this Declaration in favor of the Owners of the Lots and their respective Authorized Parties are preserved and memorialized in a writing which survives termination of this Declaration.

Section 13. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as the Declarant owns any of the Property, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Project. Such amendment shall not require the consent of any person other than the Owner of the portion of the Property to be withdrawn, if not the Declarant. If the portion of the Property to be withdrawn is Common Area that has been deeded and conveyed to the Association, the Association shall consent to such withdrawal, and such property shall be conveyed back to the Declarant.

[the remainder of this page intentionally left blank]

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed on the date written above.

WITNESSES:

RG BAXTER LANE LLC, a Delaware limited liability company

By:
Name: Antonio C. Zang
Title: Vice President

STATE OF Georgia :
SS:
COUNTY OF Fulton :

I CERTIFY that on September 29, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Antonio C. Zang, known to me on the basis of satisfactory evidence to be the Vice President of RG Baxter Lane LLC, a Delaware limited liability company, the Declarant named in the within instrument, and thereupon, he/she acknowledged that he/she signed, sealed and delivered same as his/her act and deed and as the act and deed of the limited liability company, for the purposes herein expressed.

Notary Public for Georgia
Print Name: Isoken Nina Obaseki
My Commission Expires: 09/08/2024

AFFIX SEAL

ISOKEN NINA OBASEKI
Notary Public, Georgia
Gwinnett County
My Commission Expires
September 08, 2024

WBD (US) 55699408v7

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LIST OF EXHIBITS

EXHIBIT A	Description of the Property
EXHIBIT B	Shared Access Area
EXHIBIT C	Common Areas

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EXHIBIT A

DESCRIPTION OF THE PROPERTY

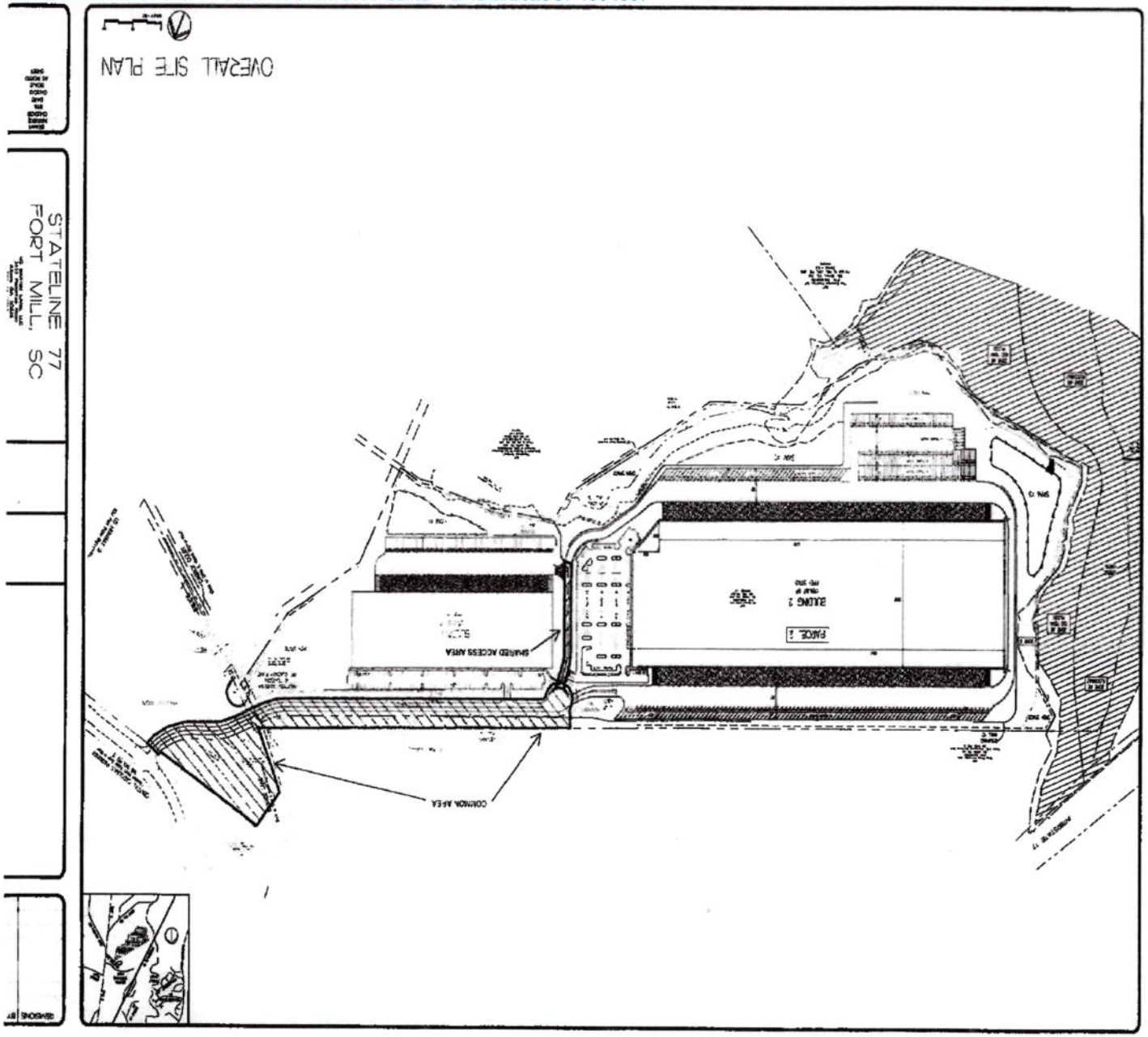
ALL those certain pieces, parcels or tracts of land, situate, lying and being in York County, South Carolina, shown and designated as **"Lot 1"**, **"Lot 2"**, **"Lot 3"**, and **"New 60' Right-of-Way"**, on that certain plat by Nicholas L. Mansfield with Survey Matters, dated November 22, 2019, last revised August 22, 2022, entitled "Stateline 77 Subdivision Prepared For: RG Baxter Lane, LLC Property of: RG Baxter Lane, LLC Highway 21 Bypass North York County, South Carolina" and recorded on September 22, 2022, in the York County Clerk of Court's Office at Plat Book 170, Page 29-30. Said parcels having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

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EXHIBIT B

SHARED ACCESS AREA

[See Attached]


OVERALL SITE PLAN
STATELINE 77
FORT MILL, SC
SHARED ACCESS AREA
COMMON AREA

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EXHIBIT C

COMMON AREAS

COMMON AREA	OWNERSHIP	MAINTENANCE RESPONSIBILITY
Project Sign (entrance and directional signage and associated landscaping), including cleaning, repainting, repairing or replacing, as necessary, and any landscaping.	Association	Association
Shared Access Area	Owner of the Lot on which such area is located (a portion being located on Lot 1 and the remainder being located on Lot 2)	Association
Landscaping along Project Road (but only to and including the cul-de-sac thereon)	Owner of the Lot on which such landscaping is installed and maintained by the Association	Association
Retaining Wall	Owner of the Lot on which such Retaining Wall is installed (Lot 2)	Association
Detention Basin on Lot 3, including maintenance, landscaping and compliance with all applicable laws. (Any other Detention Basins outside of Lot 3 are not Common Areas, and shall be owned and maintained by the Owner thereof.)	Association	Association

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IN THE SUPREME COURT
STATE OF SOUTH CAROLINA

PETITION IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT
York County

Citizens Alliance for Government Integrity, Petitioner,

v.

York County by and through its manager Joshua Edwards; Josh Reinhardt, manager of York County Development Services department; and Jonathan Buono, Director of York County Planning and Development, Respondents.

AFFIDAVIT OF M. ALLISON LOVE

TO: JUSTICES OF THE SUPREME COURT:

My name is Allison Love. I am making this affidavit in support of Writ of Mandamus and Writ of Prohibition as requested by petitioner Citizens Alliance for Government Integrity. I am over the age of eighteen, and I make this affidavit as former Vice Chair of the York County Council. I have never been convicted of a crime of dishonestly or moral turpitude, and the affidavit is based on my personal knowledge as county council Vice Chair regarding Silfab Solar Inc., except those things stated on information and belief, the same which I regard as truthful and accurate in making this affidavit.

During my term on council from 2017 through 2024, the county council discussed and approved a Fee In Lieu of Taxes agreement (hereafter "FILOT") for Silfab Solar's proposed facility at 7149 Logistics Lane in the Fort Mill. The FILOT was presented, discussed in depth, and was voted on merely as a tax incentive for the Candadian corporation to expand their operations

in York County. I do not recall an address or parcel number being on any of the FILOT documentation; Nor did the county council receive a petition for variance or change of use at any time from Silfab Solar.

As Vice Chair I and the other members of council relied upon York County zoning staff to ensure the corporation was placed in a properly zoned location. I have personal knowledge that the site at 7149 Logistics Lane is zoned Light Industrial by code. The FILOT was a tax incentive only. It was not in any way a change to the existing zoning classification. The existing industrial warehouse on the site was never zoned for anything other than distribution. I am aware that the Board of Zoning Appeals in York County reversed the zoning administrator and Silfab interpretations of use for the site by unanimous 5–0 decision of the Board of Zoning Appeals.

It is my understanding Silfab has since acted under construction permits approved by the county to transform the existing industrial warehouse into a chemical operations plant, which has sparked outrage in the Fort Mill community because the plant is adjacent to schools and neighboring residential homes. A chemical manufacturing use did not exist at the site before Silfab began construction. If the chemical manufacturing use did not exist prior to the FILOT, it is my belief the corporation holds no vested right to change the zoning laws by virtue of the FILOT and that the Light Industrial character of the district remains unchanged. The code permits only distribution, not chemical manufacturing.

Further, affiant sayeth naught.

M. Allison Love
Allison Love

SWORN to and subscribed before me this
12th day of ~~November~~ December, 2025.
Robin M. Wagner
Notary Public for South Carolina

My Commission Expires: Robin M. Wagner
Notary Public State of South Carolina
My Commission Expires August 13, 2034

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP4604007

Dennis Floyd Bivens
PLAINTIFF(S)

York County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

See page 2 below.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

SCRCP Form 4CE (08/31/2017)

ELECTRONICALLY FILED - 2026 Jan 06 4:48 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

Court Reporter:

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

This matter is before the Court on Defendants' Motion to Dismiss. Based on a review of the file, pleadings, submissions of the parties, and oral argument, the motion is respectfully granted in part and denied in part.

The Court finds no jurisdiction pursuant to Rule 12(b)(1), SCRCP for lack of justiciability. A claim under S.C. Code Ann. § 6-29-950 requires the property in question be proposed for a use in violation of an ordinance and that the adjacent or neighboring property owner be specially damaged by the violation. The damages asserted by Plaintiff are merely conjectural, with no concrete injury in fact alleged. Further, to have constitutional standing, (1) the plaintiff must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)). The Plaintiff has failed to allege facts showing an injury in fact, causation or redressability.

Further, the Court finds that Plaintiff has failed to state facts sufficient to constitute a cause of action for Declaratory Judgment, Injunction, and Writs of Mandamus and Prohibition. A motion to dismiss under 12(b)(6), SCRCP, should be granted if the facts alleged and inferences reasonably deducible therefrom would not entitle plaintiff any theory on the case. See Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). As to the action for Declaratory Judgment, Plaintiff has not alleged an exhaustion of all remedies and has not alleged facts to support that actions were taken without approval or consent of the Zoning Administrator. The Court finds no justiciable controversy. As to Injunction, Plaintiff has not alleged facts sufficient to show he will suffer irreparable harm, is likely to succeed on the merits, and that there is no adequate remedy at law. Additionally, Plaintiff has not alleged that the County acted in an arbitrary, capricious, or oppressive manner. As to the action for Writ of Mandamus, Plaintiff has not alleged any facts to support a legal right to a stop work directive. Finally, as to Writ of Prohibition, Defendant York County does not exercise judicial or quasi-judicial powers and is therefore not the proper subject for a writ of prohibition.

As to the motions under 12(b)(7) and 12(b)(8), SCRCP, the motions are respectfully denied. Counsel for defendants to prepare a formal order within 10 days.

It Is So Ordered.

ELECTRONICALLY FILED - 2026 Jan 06 4:48 PM - YORK - COMMON PLEAS - CASE#2025CP4604007

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York Common Pleas

Case Caption:	Dennis Floyd Bivens VS York County , defendant, et al
Case Number:	2025CP4604007
Type:	Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2025-12-30 16:15:41 page 3 of 3

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

STATE OF SOUTH CAROLINA COUNTY OF YORK Dennis Floyd Bivins, Plaintiff, vs. York County by and through Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director, Defendants.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C/A NO.: 2025-CP-46-04007 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

THIS MATTER COMES before the Court on the November 17, 2025 motion of Defendants York County, Joshua Edwards, Josh Reinhardt, and Jonathan Buono (collectively, the County), pursuant to Rule 12(b), of the South Carolina Rules of Civil Procedure (SCRCP), to dismiss the Complaint of Plaintiff Dennis Floyd Bivins. The Court heard argument on the County's motion on December 16, 2025. Present at the hearing were Cameron J. Halford, Esquire, of the Halford Law Firm, representing Plaintiff, and Chad N. Johnston, Esquire, and Samantha J. Dorward, Esquire, both of Burr & Forman, LLP, and Austin T. Reed, Esquire, of Smith Robinson LLC, representing the County. In reaching this decision, the Court has fully considered the arguments of the parties at the hearing, the respective filings of the parties, including the submitted memoranda of law and exhibits,[1] the relevant case law, and the applicable rules and standard of

[1] *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding that a Court may consider documents incorporated by reference in the complaint to prevent plaintiffs "from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based" without converting the motion into one for summary judgment); *see also Ballard v. Admiral Ins. Co.*, 442 S.C. 22, 33, 897 S.E.2d 183, 188 (Ct. App. 2023) (same).

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

review. For the reasons set forth herein, and in accordance with Rule 12(b), SCRCP, the Court GRANTS IN PART and DENIES IN PART the County's motion and dismisses the complaint with prejudice.

STATEMENT OF THE FACTS[2]

I. Zoning Compliance Verification

In late 2022, Silfab Solar, Inc. (Silfab) sought zoning compliance approval under subchapter E, part 13 of the York County Zoning Code (§§ 155.1120 *et seq.*) for proposed solar panel manufacturing operations on a parcel located at 7149 Logistics Lane, Fort Mill, South Carolina (Parcel). The Parcel is located in a multi-county industrial park developed by York and Chester Counties under South Carolina Code section 4-1-170 and is zoned Light Industrial. On December 27, 2022, the County's zoning office, a division of the County's Planning and Development Services Department, issued a letter to Silfab verifying that Silfab's proposed operations were compatible and compliant with the Parcel's Light Industrial zoning district (Zoning Compliance Verification).[3] No challenge or appeal of the Zoning Compliance Verification was instituted.

II. Fee in Lieu of Tax and Incentive Agreement

During that same period, Silfab and the County began negotiating a fee in lieu of tax

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[2] The Court has considered the factual allegations set forth in the complaint, and has accepted all well-pled allegations as true. *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). In ruling on this motion to dismiss, the Court finds the following facts.

[3] The County's Zoning Division staff is tasked with assisting the public with requests or information associated with the use and development of property within the County. Among the staff's responsibilities is to "[r]eview and approve subdivision plats and non-residential site plans for compliance with York County development regulations." https://www.yorkcountygov.com/377/Zoning; *see also* Zoning Code § 155.957 (Table 155.957-1).

(FILOT) and incentive agreement to induce Silfab to locate its operations in the County. A proposed inducement and incentive ordinance (Inducement Ordinance) that would authorize the execution of the FILOT agreement was introduced and given first reading by County Council on March 6, 2023. Second reading, along with a public hearing, occurred on August 21, 2023. On September 18, 2023, County Council held a third reading of the Inducement Ordinance and enacted the same. The Inducement Ordinance authorized and directed County representatives to execute the FILOT agreement. It further provided that "[a]ll ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed."

In accordance with the Inducement Ordinance, also on September 18, 2023, the County and Silfab executed the FILOT agreement, thereby creating a binding agreement between the County and Silfab to pursue development of the Silfab project at the Parcel. Among other terms, the FILOT agreement specifically identifies the Parcel for development of the Silfab project. FILOT agreement at 5 (defining "land" as "the land upon which the Project will be located, as described in Exhibit A"); at A-1, FILOT agreement Exhibit A (providing the legal description for the Parcel). Recital 5 of the FILOT agreement further provides that:

> The County has determined that it is in the best interests of the County to enter into this Agreement with [Silfab], subject to the terms and conditions set forth herein, and, by Ordinance No. [6623] enacted by the Council on September 18, 2023 ... approved the form, terms and conditions of this Agreement *and ratified all prior actions taken with respect to the Project.*

(Emphasis added). Thus, the County, through formal legislative action of its County Council, approved and specifically induced Silfab to locate in the County at the Parcel. Further, based on the FILOT agreement's finding that "all prior actions taken with respect to the Project" were ratified, as authorized by official action taken by the County Council in the Inducement Ordinance, the Zoning Compliance Verification issued by the County's zoning office specific to both Silfab and the Parcel was legislatively approved.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

Thereafter, Silfab began undertaking steps to develop the identified Parcel, including seeking relevant permits and authorizations from the County and other relevant regulatory entities, site work, and construction on the site.

III. Related Actions and Litigation

A. Zoning Interpretation and Subsequent Appeal

On February 1, 2024, a Fort Mill resident requested a zoning interpretation (Zoning Interpretation Request) from the County Planning and Development Services Department under Subchapter E, Part 11 of the York County Zoning Code (§§ 155.1090 *et seq.*). The Zoning Interpretation Request submitted seven questions directed specifically at the approval of Silfab's development of the Parcel, despite Zoning Code section 155.1090's stated purpose of a zoning interpretation: "to clarify ambiguities in the Zoning Code and to resolve any ambiguities in future amendments."

On February 16, 2024, the County Zoning and Development Standards Administrator provided a response to the Zoning Interpretation Request (Zoning Interpretation). Therein, the County declined to address the requests, consistent with its authority under Zoning Code section 155.1093(B), but did provide certain "clarifications" as to other tangentially-related issues. Thereafter, on March 14, 2024, certain of the submitted zoning interpretation requests were appealed to the County Board of Zoning Appeals (BZA), (BZA Appeal).

On May 9, 2024, the BZA held a hearing on the BZA Appeal, following which it voted 5-0 to reverse the Zoning Interpretation and thereafter issued a final decision setting forth a written record of its decision and findings (BZA Order).[4] The BZA Order contained the following

[4] Although neither question proposed by the BZA Order were presented in the Zoning Interpretation Request, the BZA Order characterized the questions presented in the appeal as: (1)

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

conclusions:

i. The Zoning Administrator erred in determining that Solar Panel Manufacturing is a Use under Computer and Electronic Products Manufacturing permitted in Light Industrial; and
ii. Solar Panel Manufacturing is not listed as a Use applicable for the Light Industrial Zoning District and is therefore prohibited pursuant to section 155.270(G), York County Code of Ordinances.

The BZA Order did not mention Silfab, its specific project, or the Parcel, nor does section 155.1090 of the Zoning Code authorize zoning interpretations to evaluate specific, ongoing developments.

Thereafter, Silfab and its landlord, Exeter 7149 Logistics, L.P. (Landlord), appealed the BZA Order to the York County circuit court. *See Silfab Solar, Inc., et al. v. York County Board of Zoning Appeals*, 2024-CP-46-02641. As a result of the appeal, the BZA Order is stayed.[5] Consistent with South Carolina Code section 6-29-820(B)(2), Silfab requested pre-litigation mediation of the BZA Appeal, and on April 21, 2025, the parties unsuccessfully mediated the case. The matter is ongoing.

B. Stayed Circuit Court Action

On September 5, 2024, Citizens Alliance for Government Integrity, Inc. (CAGI), a South Carolina non-profit, filed a complaint in the York County circuit court against Silfab, Landlord, and the County. *See Citizens Alliance for Government Integrity, Inc., a South Carolina Non-Profit v. Silfab Solar, Inc., Exeter 7149 Logistics, L.P., and York County by and through its Planning and Development Services and Zoning Administrator, a body politic and political subdivision of York County and the State of South Carolina*, 2024-CP-46-03532 (CAGI Action). In that lawsuit,

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whether "Solar Panel Manufacturing is a Permitted Use within the Light Industrial Zoning District"; and (2) whether "Solar Panel Manufacturing [is] considered a Heavy Industrial use."

[5] *See* York County Zoning Code § 155.982(C) ("**Effect on Other Proceedings.** An appeal [of an administrative decision] stays all legal proceedings by the County relating to the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals, after the appeal application has been filed, that a stay would cause an imminent peril to life and property." (emphasis in original)).

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

CAGI seeks declaratory and injunctive relief, arguing that the subsequently-issued BZA Order controls over the prior, specific Zoning Compliance Verification issued to Silfab for the Parcel. The defendants there, including the County, moved to dismiss the action on a number of grounds. While the motions to dismiss were pending, CAGI sought a preliminary injunction to stay or revoke all permits issued by the County to Silfab. On December 18, 2024, The Honorable Martha M. Rivers held a hearing on the pending motions and, on January 29, 2025, issued a Form-4 Order declining to rule on CAGI's motion to stay or revoke all permits and instead stayed the entire lawsuit pending final resolution of the BZA Appeal.

C. Related Appellate Litigation

On July 2, 2025, a Fort Mill resident, petitioned the Supreme Court to invoke its original jurisdiction to issue writs of mandamus and prohibition, requesting that the court require the County to revoke permits issued to Silfab and ultimately halt its project. *See* Appellate Case No. 2025-001325. On July 21, 2025, the Supreme Court declined to entertain the matter in its original jurisdiction.

Then, on October 28, 2025, CAGI similarly petitioned the Supreme Court in its original jurisdiction, pursuing writs of mandamus and prohibition on the same bases as those in the initial petition and in this case. *See* Appellate Case No. 2025-002174. On December 16, 2025, the Supreme Court declined to entertain the matter in its original jurisdiction.

DISCUSSION

In this action, Plaintiff seeks relief against both the County and non-party Silfab, pursuing claims for temporary and permanent injunctive relief, declaratory relief, and writs of mandamus and prohibition, including issuance of stop work orders and revocation of permits, to prevent Silfab from continuing its development. For the reasons set forth herein, that relief is DENIED.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

I. Justiciability

The County first asserts that the Court is without jurisdiction, pursuant to Rule 12(b)(1), SCRCP, for lack of standing, depriving the Court of a justiciable controversy. *See Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) ("A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction."); *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) ("A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy."); *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997) (stating the concept of justiciability encompasses the doctrines of ripeness, mootness, and standing). The Court agrees. In South Carolina, standing can be established in three ways: (1) by statute, (2) by constitutional standing, and (3) under the public importance exception. *Bodman v. State*, 403 S.C. 60, 66–67, 742 S.E.2d 363, 366 (2013). The complaint appears to seek to establish standing alternatively by statute or under the traditional three-part test for constitutional standing.[6] The Court finds that the complaint fails to meet its burden under either method, and accordingly, the Court lacks jurisdiction.

A. Statutory Standing

Plaintiff contends that section 6-29-950 of the South Carolina Code provides him statutory standing to maintain this lawsuit. While section 6-29-950 provides an avenue for a neighboring or adjacent property owner to challenge a zoning action, the Court finds the complaint fails to plead the necessary and required facts to maintain such an action.

The Supreme Court has stated that "[s]tatutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an

[6] Plaintiff does not plead or argue the public importance exception to standing.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

exercise in statutory interpretation." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (citing *Freemantle v. Preston*, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012)). Relevant here, South Carolina Code section 6-29-950(A) provides,

> In case a building, structure, *or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter*, . . . an adjacent or neighboring property owner who would be *specially damaged by the violation* may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

(Emphasis added). Thus, there are two mandatory requirements for an adjacent or neighboring property owner, such as Plaintiff, to meet in order to advance a claim under section 6-29-950(A): (1) first, the adjacent or neighboring property owner must be "specially damaged"; and (2) such special damage must flow from the use—or proposed use—of the property in question in violation of an ordinance.

The County asserts that Plaintiff fails to meet either criterion. As to the first, the complaint fails to plead facts that would support a claim that Plaintiff has been specially damaged by the development. The Supreme Court has equated the special damages requirement under section 6-29-950(A) to the particularized injury-in-fact requirement of traditional constitutional standing analysis. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014) (equating the "special damage" requirement specified in section 6-29-950(A) to the particularized-injury requirement under constitutional standing). Pertinent here, an "injury in fact" has been defined as "an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *Commander Health Care Facilities, Inc. v. S.C. Dep't of Health & Env't Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Moreover, "[p]rospective concern falls far short of the standard of 'concrete and particularized and

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

. . . actual or imminent' harm . . . ." *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). For the injury to be particularized, it must affect the plaintiff in a personal and individual way and must be different than the general impact to the public. *Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

As to harm or injury, Plaintiff offers only a conjectural and generalized grievance concerning future public health and welfare concerns. Plaintiff does not allege any individualized harm that he has suffered as an adjacent property owner or neighbor that is distinct from what he contends the public might suffer at large. *See Commander*, 370 S.C. at 301, 634 S.E.2d at 666 ("The injury must be of a personal nature to the party bringing the action, *not merely of a general nature that is common to all members of the public.*" (emphasis added) (citing *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 34, 530 S.E.2d 369, 371 (2000))); *see also Carnival Corp.*, 407 S.C. at 75, 753 S.E.2d at 850 ("'[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not' possess standing." (quoting *Lujan*, 504 U.S. at 573–74)). Moreover, even if Plaintiff had alleged or could claim some personal stake distinct from that of the public at large, the alleged injury here is merely speculative rather than actual or imminent, as Silfab is not yet fully operating on the Parcel, and none of the injuries Plaintiff alleges as certain to befall him and the community have occurred. As a result, these allegations are not concrete or particularized, but rather conjectural and hypothetical.

Beyond those future speculative health concerns resulting from presumed conduct and conjectural injuries, Plaintiff alleges injuries resulting from "spot zoning" or "site specific zoning."

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

However, the issue is not that the Parcel has been rezoned; it has not. Rather, Plaintiff disagrees with the County's determination that Silfab's proposed use of the site is consistent with the Parcel's Light Industrial zoning designation. While Plaintiff disagrees with that determination, made by the County in the Zoning Compliance Verification, that determination was not appealed and was later ratified by the action of County Council through the Inducement Ordinance and FILOT agreement adopted specific to Silfab and the Parcel. Further, the complaint pleads no facts that would support an allegation that he has been—or would be—specially damaged by spot or site specific zoning.

Because the complaint fails to meet the pleading standard as to special damages under section 6-29-950(A), Plaintiff has not satisfied that condition precedent to assert standing under the statute.[7]

B. Constitutional Standing

The Court also finds Plaintiff has failed to establish standing by pleading the "irreducible constitutional minimum of standing," which consists of three elements: (1) an injury in fact; (2) that the injury and the conduct complained of must be causally connected; and (3) that it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (citing *Lujan*, 504 U.S. 555); *see id.* ("The party seeking to establish standing carries the burden of demonstrating each of the three elements.").

1. Injury in Fact

As set forth above, the complaint fails to plead facts that could satisfy Plaintiff's burden of

[7] In light of the disposition of the special damages criterion, the Court need not address the second criterion of whether Silfab's use—or proposed use—is in violation of an ordinance. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("In light of our disposition of the case, it is not necessary to address [the movant's] remaining issues.").

showing a concrete and particularized injury that is neither contingent nor hypothetical, and that is different than would be suffered by the public generally. *See Carnival Corp.*

2. *Causation*

Having failed to identify a viable injury in fact, attempting to trace or evaluate the cause of such a hypothetical injury is futile. Nevertheless, Plaintiff's allegations of future public health and welfare concerns also fail the second element of constitutional standing, as those harms, should they ever come to pass one day, would be attributable to Silfab's operations on the parcel, rather than any action—or inaction—by the County. Where the causal link between the complained-of activity and the alleged injuries is superseded by a third party, the alleged injuries are not traceable to the government action. Courts, including the United States Supreme Court, have found the causal link between a challenged governmental action and alleged injuries to be broken where the action itself does not cause the alleged injuries, but rather independent actions of third parties who are not before the Court do. *See Town of Arcadia Lakes v. South Carolina Department of Health and Environmental Control and Roper Pond, LLC*, 404 S.C. 515, 532, 745 S.E.2d 385, 394 (Ct. App. 2013) (noting an inability to establish a causal link where alleged injuries would result from potential future violation of permits, rather than the issuance of the permits themselves); *Beaufort Realty Co.*, 346 S.C. at 301, 551 S.E.2d at 589 (finding that the acceptance of filed plats was not causally connected to allegations of future injury); *see also Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Allen v. Wright*, 468 U.S. 737 (1984).

The import of those and similar cases is clear: government's role, including local governments like the County, is to set policy and provide infrastructure and related service to be used by its citizens in a lawful way. The collateral effects of companies who locate in the County are not attributable to the County for confirming a use as appropriate for a given site and issuing

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

permits for its operations.

3. *Redressability*

Finally, even if this Court were to presume a viable injury and causation, Plaintiff has not alleged sufficient facts to demonstrate that his purported injuries could or would be redressed by a favorable decision of the Court. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (providing that it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision); *see also Vt. Agency of Natural Res.*, 529 U.S. at 771 (stating that there must be "a '*substantial likelihood*' that the requested relief will remedy the alleged injury in fact" (emphasis added) (internal citations omitted)). Redressability is necessarily tied to the relief sought by the Plaintiff. Here, Plaintiff seeks declaratory relief and stop work orders or permit revocations through writs of mandamus and prohibition. As discussed below, the requested relief is alternatively inappropriate or non-cognizable under the presented circumstances. Accordingly, Plaintiff's alleged injuries are not redressable by this Court either.[8]

II. Failure to State Claims

In addition to its jurisdictional arguments, the County also moves to dismiss the complaint under Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute causes of action for Declaratory Judgment, Injunction, and Writs of Mandamus and Prohibition. The Court agrees that dismissal under Rule 12(b)(6) is also appropriate. *See Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003) (explaining a motion to dismiss under Rule 12(b)(6) should be granted if facts alleged and inferences reasonably deducible therefrom would not entitle the plaintiff to relief on any theory of the case).

[8] The County also moved to dismiss the case for lack of justiciability based on its contention that the claims are not ripe. In light of the determination that Plaintiff lacks standing, the Court respectfully denies the County's alternative ripeness ground for dismissal.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

To survive a motion to dismiss for failure to state a claim, a complaint must contain facts sufficient "to raise a right to relief above the speculative level" and to satisfy the court that the claim is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555, 570 (2007); *see also Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) (citing *Twombly* with approval). A claim is plausible only "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"—a standard that requires more than facts "that are 'merely consistent with' a defendant's liability." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556–57); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995) (affirming a motion to dismiss where the reasonable inferences derived from the pleaded facts did not support the cause of action).

A. Declaratory Judgment

The County first contends that Plaintiff has failed to sufficiently plead a claim for declaratory relief. First, the Court finds no justiciable controversy. *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996) ("Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination."); *see also Rhodes*, 405 S.C. at 595, 748 S.E.2d at 787 ("[T]he Act does not require the courts to give purely advisory opinions as to the issues sought to be raised."); *id.* ("[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review." (quoting *Colleton Cnty. Taxpayers Ass'n*, 371 S.C. at 242, 638 S.E.2d at 694)); *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) ("A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

contingent, hypothetical or abstract character.").

Here, the premise of Plaintiff's declaratory judgment cause of action is that the permits issued to Silfab were without the consent or "written" approval of the Zoning Administrator. However, Plaintiff has failed to plead any facts that would support or give rise to that conclusion regarding consent or approval, generally, and the plain language of section 6-29-950 and Zoning Code section 155.1121, both cited as the authority for Plaintiff's claims and requested declarations, bely the assertion of a "written" approval or signature requirement. The complaint seeks only a general declaration that "[a]ny permit lacking the zoning administrator's approval violates law and zoning code"; however, such a request does not establish a justiciable controversy that is both supported by well-pled facts or that rises above an assertion that is contingent, hypothetical or abstract in nature. *See Waters*, 321 S.C. at 228 n.7, 467 S.E.2d at 918 n.7; *Rhodes*, 405 S.C. at 595, 748 S.E.2d at 787.

Moreover, Plaintiff has not pled facts to support his claims that actions were taken without County approval, the premise underlying his claim for declaratory relief. Nevertheless, the authority cited by Plaintiff actually dispels Plaintiff's claim that every County determination or permit must bear specifically the Zoning Administrator's written approval or signature. Table 155.957-1 in the Zoning Code, consisting of the "Summary of Procedures" for general approvals and permits, specifies that "Staff" is "Decision-Making Body" for zoning compliance verifications, further undercutting Plaintiff's assertion that the Zoning Compliance Verification is invalid because it was not signed by the Zoning Administrator but by a member of the Zoning Administrator's staff. Plaintiff's assertions to the contrary cannot be sustained as a matter of law. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (explaining that on a Rule 12 motion, "the court is required to presume well pled *facts*, not

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

propositions of law, to be true" (emphasis in original)).

Finally, a collateral action in the courts seeking a declaration as to the invalidity or revocation of permits is inappropriate where a valid administrative remedy is available and has not been sought. In particular, Part 3 of Subchapter E of the Zoning Code sets forth the exclusive appeal procedures available for any "person aggrieved by an order, requirement, decision, or determination made by the Zoning Administrator or any other administrative official in the enforcement of this Chapter or by any officer, department, board, or bureau of the County." Zoning Code § 155.982(A). The Zoning Compliance Verification, as well as all other permits and approvals issued subsequently by the County to Silfab, are decisions or determinations which fall under the appeals procedures of Part 3. An appeal must be initiated "within 30 days of the written decision or other action that is the subject of the appeal." Zoning Code § 155.982(B).

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available remedies *before* seeking such relief from the courts. *See Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding a plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating a party is "clearly [] required to exhaust its administrative remedies prior to bringing suit" challenging denial of a permit); *id.* ("The doctrine of exhaustion of administrative remedies *only* comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the [governing body] has provided an administrative remedy." (quoting *Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander & Assocs.*, 92 Md.App. 551, 609 A.2d 353 (1992))). Exhaustion is

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

required so that the administrative agency "may function efficiently and so that it may have the opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

Neither Plaintiff nor any other party initiated an appeal of the Zoning Compliance Verification issued to Silfab, timely or otherwise. Nor has any permit or approval issued to Silfab been challenged or appealed. Because there is a specific procedure to challenge an administrative agency decision, compliance with such procedure is a condition precedent for judicial review. *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) ("Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief."); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) ("It was incumbent upon [the challenging party]... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she]... considered his decision erroneous.... Not having done so, she cannot now attack the validity of his decision."). As such, Plaintiff has failed to exhaust his administrative remedies.

B. Injunctive Relief

The County next contends that Plaintiff has failed to allege facts sufficient to establish any of the required elements to secure an injunction against the County. The Court agrees. To obtain an injunction here, Plaintiff must allege facts sufficient to demonstrate that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). In addition, because the County is a governmental body, Plaintiff must also allege facts sufficient to demonstrate that the County acted in an arbitrary,

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

capricious, or oppressive manner. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018).

The Court first finds that Plaintiff has failed to advance sufficient facts supporting an assertion of harm, much less irreparable harm, that he would suffer absent an injunction. The Court has already determined that the alleged harm or injury is insufficient to meet the pleading standard for a justiciable controversy. Moreover, as described above, Plaintiff's allegations regarding harm in the complaint directly tie its allegation of "imminent" and "irreparable" harm to "spot zoning" or "site specific zoning." However, Plaintiff pleads no facts that would support an assertion that the Parcel has been rezoned, either through "spot zoning" or "site specific zoning," and the Parcel remains zoned as Light Industrial.[9] Further, the complaint's assertions of future harm and injury are impermissibly speculative, conjectural, and hypothetical, *cf. Proctor v. Dep't of Health & Env't Control*, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006) ("It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation."), in addition to being generalized concerns regarding future public health and welfare. Finally, the complaint does not detail how Plaintiff will be *irreparably* harmed absent an injunction, offering only a conclusory legal assertion that "the harm will be irreparable," which is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593–94 (Ct. App. 2005) (finding an argument advanced through

[9] Plaintiff's assertion of spot or site specific zoning necessarily presumes other facts which are alternatively incorrect or that this Court is precluded from reaching in light of the Related Litigation: (1) the invalidity of the Zoning Compliance Verification, which was never challenged and was later ratified by the County; (2) the applicability of the Zoning Interpretation and BZA Order to Silfab's development; and (3) the supremacy of the Zoning Interpretation and BZA Order over the prior Zoning Compliance Verification, both of which are (a) stayed, not final, and the subject of an ongoing appeal (BZA Appeal), and (b) the subject of the pending—and also stayed—other action in the circuit court (CAGI Action).

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

conclusory statements with no argument or supporting authority abandoned).

2. Likelihood of Success on the Merits

The Court similarly finds that Plaintiff has not shown a likelihood of success on the merits. Instead, the complaint merely states, "Plaintiff can further demonstrate likelihood of success on the merits pursuant to state statutory law and local zoning law where defendants have issued numerous construction permits without approval of the zoning administrator for York County, specifically." However, as discussed, the law does not require a signature of the Zoning Administrator, and Plaintiff has pled no facts supporting his assertions that the Zoning Compliance Verification or subsequent permits issued to Silfab were done without the Zoning Administrator's approval.[10] Further, in light of this order's disposition of the complaint's allegations and causes of action, likelihood of success on the merits has not been demonstrated.

3. Adequate Remedy at Law

The Court also finds that Plaintiff has failed to allege sufficient facts demonstrating he lacks an adequate remedy at law. In fact, the complaint merely recites the applicable injunctive relief element in a conclusory assertion that "Plaintiff is without adequate remedy at law." This is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell*, 362 S.C. at 600, 608 S.E.2d at 593–94. What is more, notwithstanding disposition by this order, the complaint sought declaratory relief, which undermines Plaintiff's claim that an adequate remedy at law did not exist.

4. Arbitrary, Capricious, and Oppressive

Finally, the Court finds the complaint fails to plead, as required, any facts supporting a

[10] To the contrary, the Zoning Interpretation issued by the Zoning Administrator confirmed its interpretation and agreement that solar panel manufacturing could appropriately locate on a parcel zoned Light Industrial, and permits issued to Silfab in the intervening period are evidence contradicting Plaintiff's assertions.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

contention that the County's actions were arbitrary, capricious or oppressive. Thus, for this additional reason, Plaintiff's claim for injunctive relief fails and is dismissed.

C. Writ of Mandamus

The County next contends that Plaintiff is incapable of stating a claim for mandamus against the County because the County has no duty to act under the governing statute and ordinance generally, or specifically in the manner desired by Plaintiff, rendering the request non-ministerial in nature. *See Redmond v. Lexington Cnty. Sch. Dist. No. 4*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994) (explaining that to obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy (citing *Willimon*, 243 S.C. at 86–87, 132 S.E.2d at 170–71)).

Plaintiff pursues mandamus, asking the Court to require the County to issue a stop work order to Silfab, or alternatively revoke its existing permits, because it believes Silfab is operating without a valid permit and is exceeding the scope of the approved use of the property. Even assuming Plaintiff's allegations are true for purposes of this motion, issuing a stop work order is an inherently governmental—not judicial—function that is discretionary. *See* S.C. Code Ann. § 6-29-950(A) ("The governing authorities of municipalities or counties *may* provide for the enforcement of any ordinance … by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both." (emphasis added)); Zoning Code § 155.1237(B)(5) ("Stop Work. With or without revoking permits, *the County may issue a stop work order* on any development, building, or structure on any land on which there is an uncorrected violation of a provision of this Chapter or a violation of a condition or qualification of a permit, certificate,

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

approval, or other authorization previously granted by the County." (emphasis added)). The use of the word "may" indicates that the action is within the County's discretion. *See Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001) ("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute."). Where there is discretion, no duty exists.[11]

Further, where no duty exists, an action is not ministerial. *See Edwards v. State*, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009) ("A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as *to leave nothing to the exercise of discretion.*" (emphasis added)); *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 495 n.4, 685 S.E.2d 600, 606 n.4 (2009) ("Discretionary authority, however, is insufficient for mandamus." (citing *Redmond*, 314 S.C. at 438, 445 S.E.2d at 445 (stating a writ of mandamus is inappropriate for a discretionary authority))).

Third, Plaintiff has pleaded no facts to support a contention that he has a specific legal right to a stop work directive aimed at Silfab. For one thing, by definition, one cannot claim entitlement to a discretionary act. For another, Plaintiff has not cited any case law demonstrating it has a clearly established right to the desired act. *See Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 184, 519 S.E.2d 567, 573 (1999) (finding the school district failed to cite any statute or case demonstrating an established right to force the county election commission to distribute a supplemental ballot handout).

Finally, other remedies were available to Plaintiff in his pursuit of stopping the County-

[11] Nor does the County have an obligation to stop Silfab's project based on the BZA Order, as its applicability is questionable, and it is otherwise stayed, not final, and its appeal pending in the circuit court.

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

approved development, including the appeal procedures of the Zoning Code, but he did not avail himself of those administrative remedies.

D. Writ of Prohibition

Lastly, the County moves to dismiss the claim for writ of prohibition based on case law holding that a writ of prohibition cannot lie against the County. The Court agrees. ("A writ of prohibition may issue in a proper case to restrain a judicial act; and, on the other hand it will, according to the weight of authority, ordinarily issue only to restrain the exercise or performance of judicial functions or acts, or acts which are quasi-judicial in their character." *Holladay v. Hodge*, 84 S.C. 91, 95, 65 S.E. 952 (1909); *see also State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938) (stating the writ is primarily used to "prevent the assumption and exercise of jurisdiction by a lower tribunal in cases where wrong, damage, and injustice are liable to follow such action"). The County neither acts as a court, court official, or officer, nor does it exercise any manner of judicial or quasi-judicial powers; therefore, it is not subject to a writ of prohibition.

Moreover, the subject matter of the acts complained of by Plaintiff, namely, approving zoning classifications, issuing zoning compliance verifications, issuing permits, issuing stop work orders, and revoking permits, are inherently legislative functions that reside exclusively within the jurisdiction of the County and its officials. 72A C.J.S. Prohibition § 7 ("In the absence of a statute providing otherwise, prohibition will not lie to prevent legislative acts, or those of a ministerial nature, nor to prevent those of an administrative, prosecutorial, political, governmental, or executive character."). Therefore, any error in the exercise of the County's legislative functions is one for which a writ of prohibition cannot lie. *See Berry v. Lindsay*, 256 S.C. 282, 292, 182 S.E.2d 78, 83 (1971) (holding that actions challenged were a quasi-legislative function for which "it is clear that the Writ [of Prohibition] sought here will not lie."); *see also State v. Price*, 441

S.C. 423, 456, 895 S.E.2d 633, 650 (2023) ("A writ of prohibition will not lie to correct the procedural irregularities in this case, nor will such a writ lie to prevent an erroneous result . . . .").

III. The County's Remaining Arguments

Because the foregoing issues are dispositive, the Court respectfully denies County's motion alternatively seeking dismissal pursuant to Rules 12(b)(7) and (8), SCRCP.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Plaintiff's complaint is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

[*JUDICIAL E-SIGNATURE ON FOLLOWING PAGE*]

ELECTRONICALLY FILED - 2026 Jan 21 9:45 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

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York Common Pleas

Case Caption: Dennis Floyd Bivens VS York County , defendant, et al

Case Number: 2025CP4604007

Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.

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ELECTRONICALLY FILED - 2026 Jan 23 8:57 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas Court

Hon. G.D. Morgan, Jr.
Circuit Court Judge

Case No. 2025-CP-46-04007

Dennis Floyd Bivens, APPELLANT

v.

York County by and through Joshua Edwards, York County Manager; Josh Reinhardt, York County Development Services Manager; and Jonathan Buono, York County Planning and Development Services Director, RESPONDENTS

NOTICE OF APPEAL

Dennis Floyd Bivens hereby gives Notice of Appeal of the January 16, 2026 order of the Hon. G.D. Morgan, Jr. dismissing Biven's case Under Rule 12 SCRCP. Appellant would respectfully show this court the trial court erred in construing "zoning compliance verification" as lawful zoning change, and erroneously viewed facts and law most favorably to the movant. Bivens is seeking reversal of the trial court's order granting dismissal under Rule 12(b)(1) – Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

HALFORD LAW FIRM, LLC
/s/. J. Cameron Halford
J. Cameron Halford
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ATTORNEY FOR APPELLANT

January 22, 2026

ELECTRONICALLY FILED - 2026 Jan 23 8:57 AM - YORK - COMMON PLEAS - CASE#2025CP4604007

HALFORD LAW FIRM
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Phone- 803-524-8659

January 22, 2026

VIA E-MAIL AND U.S. MAIL

Chad N. Johnson, Esq.
Burr & Foreman Law Firm
1221 Main Street,
Columbia, South Carolina 29201

Re: Notice of Appeal - Case No. 2025-CP-46-04007
Dennis Floyd Bivens v. York County, et al.

Dear Chad:

Please find attached and here served upon you the Notice of Appeal along with my certificate of filing and service. Given recent media release on December 21 by York County, I am also writing to advise that you should notify your clients that any impending permits or Certificate of Occupancy would be based upon legally invalid underlying permits where there are deed restrictions not considered per S.C. Code Ann. §6-29-1145 in passing the FILOT and the ordinance.

My clients have asked that I put you and the York County Attorneys Office on notice that all construction permits issued for the Silfab development to date are contested as not legally valid as they have been issued based on failure of zoning approval. Also, as you gentlemen know the air permits are challenged and currently under judicial review in the Court of Appeals Case No. 2025-000288 *Walter Buchanan v. South Carolina Department of Environmental Services and Silfab Solar, Inc.* Any Certificate of Occupancy relies on the modified exhaust stack designs as now constructed, and the challenged department (SCDES) approvals are pending in the appellate court. You are aware the BZA of May 30, 2024 contradicts Silfab's developments on the site. Please see footnote 5, page 5 of Judge Morgan's order of January 21, 2026. I realize it goes without saying the Zoning Administrator position is (or was) vacant, and we differ on the legal effect of this as it pertains to zoning approvals. This letter is sent as demand that your client mitigate damages pending resolution the appeal.

With regards, I remain

Respectfully,
/s./ J. Cameron Halford
Attorney for Dennis Floyd Bivens

JCH:jal
cc: Michael Kendree, Esq (email)
cc: Court File 2025-CP-46-04007

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Oct 08 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable G. D. Morgan, Jr.
Circuit Court Judge

Appellate Case No. 2026-000199

Dennis Floyd Bivens, ... Appellant,

v.

York County by and through Joshua Edwards, York County Manager; Josh Reinhardt, York County Development Services Manager; and Jonathan Buono, York County Planning and Development Services Director..... Respondents.

SCACR 210(g) CERTIFICATION
RECORD ON APPEAL

Counsel for Appellant here certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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