

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No. 2021-000501
Case No. 2017-CP-10-5493

Shem Creek Development Group, LLC, ... Respondent,

v.

The Town of Mount Pleasant, South Carolina, ... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Shem Creek Development Group, LLC,

Plaintiff,

v.

Town of Mount Pleasant, South Carolina,

Defendant.

IN THE CIRCUIT COURT

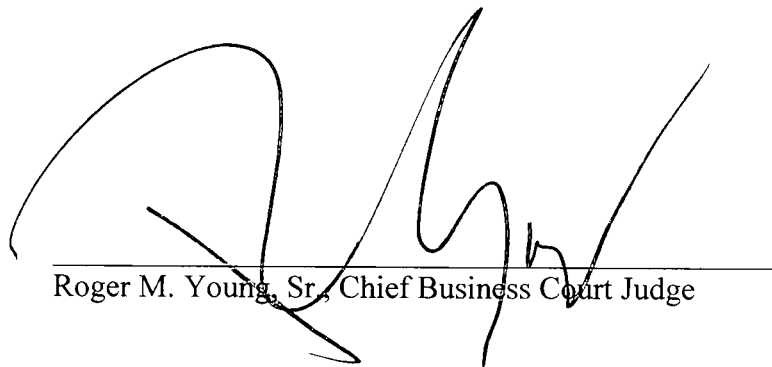
2017-CP-10-5493

**ORDER FOR CASE ASSIGNMENT TO
THE BUSINESS COURT PILOT
PROGRAM**

2018 MAR -7 AM 11:08
JULIE E. HARRIS
CLERK OF COURT
BY 

It is hereby ordered that assignment to the Business Court Pilot Program for Charleston County is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable Maite Murphy** to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED!



Roger M. Young, Sr., Chief Business Court Judge

March 7, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Shem Creek Development Group, LLC (“SCDG”) initiated this action against Defendant the Town of Mount Pleasant, South Carolina (“the Town”) on October 23, 2017. A nonjury trial was held before the undersigned on February 3, 2020 through February 6, 2020 wherein each party presented evidence. After careful consideration of the record, law, evidence presented at trial, arguments of counsel, and all matters submitted, this Court makes the following findings of fact and conclusions of law in favor of SCDG:

FINDINGS OF FACT

1. SCDG is a company that was formed around 2013 to build and operate a parking garage and office building on the corner of Mill Street and Coleman Boulevard in the Shem Creek area of Mount Pleasant, South Carolina. Plaintiff’s operations were primarily managed by two of its members, Tex Small and Tyler Flesch, both of whom testified at trial.

2. The parking garage site neighbors Shem Creek and several restaurants on the creek that serve as a destination for tourists and residents. Prior to being developed with an office building and parking garage, the site consisted of a gravel parking lot and two older buildings that housed a strip mall and car repair shop. (Pl.’s Exs. 59-60.)

3. In 2008, the Town adopted a plan to revitalize the Coleman Boulevard corridor in Mount Pleasant. In that plan, the Town identified the corner of Mill Street and Coleman Boulevard as a potential site for a parking garage. (Pl.'s Ex. 1.) At that time and in subsequent years, the Town was experiencing parking congestion from visitors to Shem Creek and its restaurants that was spilling into the nearby residential neighborhood. The Town recognized that additional on-site parking would help alleviate those parking issues, as well as revitalize the Coleman Boulevard corridor.

4. As part of the plan to revitalize the Coleman Boulevard corridor, the Town also created an urban corridor overlay district to implement certain zoning requirements intended to foster redevelopment. The corner of Mill Street and Coleman Boulevard was located in this urban corridor zoning district, and the development of the site was consistent with the Town's efforts to revitalize the Coleman Boulevard corridor. At trial, the Town's administrator, Eric DeMoura, testified that the development of the parking garage project was "necessary" for the revitalization.

5. Mr. Flesch, through another business in which he was involved, controlled the lease of the site, and Mr. Small had experience and relationships with the Town's elected officials and planning staff through his involvement with another commercial development in Mount Pleasant. Based on the Town's recognition of the site as potential location for a parking garage, Mr. Flesch and Mr. Small collaborated to develop a concept for a parking garage to be developed on the site to present to the Town.

6. In 2011, Mr. Small approached the Town about the concept, and they agreed to jointly fund a study of the economic feasibility of a parking garage on the site, which was conducted by Desman & Associates ("Desman"). The Desman feasibility study considered the projected parking demand and revenue for a 250-space stand-alone parking garage and concluded

that the parking garage would run deficits for its first seven years of operations for a total projected loss of over \$800,000. (Pl.'s Ex. 2.)

7. Based on the Desman study, neither the Town nor the principals of SCDG were interested in pursuing the project. However, Mr. Flesch and Mr. Small recognized that the projected lack of profitability was largely driven by the lack of weekday parking demand. They then developed a concept of a dual-purpose structure consisting of separate office and parking garage components. The office component was intended to produce revenue through commercial rents and increased weekday parking demand to help make the development economically feasible. The addition of the office component was consistent with the Town's plan to redevelop the Coleman Boulevard corridor to increase economic development in the area.

8. In 2012, Mr. Small and Mr. Flesch approached the Town about the modified parking garage concept which included an office component. After receiving positive feedback from the Town regarding its possible involvement in the project, Mr. Small engaged Ken Betsch, an architect, to prepare conceptual schemes for various designs of the project.

9. Mr. Small and Mr. Flesch settled on a conceptual design which included two stories of garage parking underneath two stories of office space. Mr. Betsch also prepared a proposed parking layout for this concept of the structure, which included 276 parking spaces. Mr. Betsch's plan and parking layout was conceptual in nature and did not necessarily reflect compliance with applicable zoning requirements, such as setback requirements. The trial testimony regarding the dimensions of the parking spaces in Mr. Betsch's conceptual layout was inconsistent. Mr. Betsch testified that the parking spaces he drew were 9' wide; however, Jeff Johnston, the architect who prepared the final design of the garage, testified that Mr. Betsch's parking layout contained spaces that were 8 ½' wide.

10. Mr. Small and Mr. Flesch presented Mr. Betsch's conceptual plans for the structure to the Town in 2013, and SCDG and the Town agreed to create a public-private partnership to develop the parking garage/office building concept. Under this public-private partnership, SCDG would construct, own, and operate the office building and parking garage, and the Town would rent spaces to be reserved for public parking. To establish this public-private partnership, the parties began negotiating a parking license agreement to establish the parties' respective rights and obligations. Mr. Small was primarily responsible for negotiating the terms of the agreement on behalf of SCDG, and Eric DeMoura, the Town's administrator, was responsible for negotiating on behalf of the Town. Grey Taylor, SCDG's attorney, and David Pagliarini, the Town's attorney, were responsible for drafting the agreement.

11. The principle terms of the parking license agreement included the following: (a) SCDG would construct the structure in a form substantially similar to Mr. Betsch's conceptual rendering, including 276 total spaces; (b) the Town would pay rent to reserve 132 of those 276 total spaces for public parking on weekdays from 6 AM to 5 PM; (c) the remaining 144 spaces would be reserved for office tenants on weekdays from 6 AM to 5 PM and reserved for public parking at all other times; (d) the license term was 30 years; (e) the Town would pay annual rent to SCDG in the amount of \$185,000 for a period of 15 years; (f) SCDG would be responsible for financing, constructing, operating, and maintaining the structure; and (g) the Town would have no obligations or risks with respect to the parking spaces beyond paying annual rent.

12. The Town concluded that the parking license agreement was in its best interest and provided the following benefits: (a) additional parking for visitors and businesses, to promote tourism and economic development; (b) solved short-term parking congestion on residential streets, to increase public safety; (c) supported revitalization and redevelopment of the Coleman

Boulevard corridor; (d) a private developer, instead of the Town, was incurring the risk of financing, constructing, and maintaining the garage, saving the Town millions of dollars by not having to pay to construct its own garage; (e) the possibility of rent reduction if the garage was profitable; and (f) the Town's rent would be funded through accommodation taxes paid by tourists. (Pl.'s Exs. 3, 35, 37, and 38.)

13. Just as the parties' public-private partnership presented the Town with benefits, it also presented SCDG with benefits. The primary benefit of the proposed license agreement to SCDG was having a stable revenue stream from the rent paid by a municipality with a AAA credit rating, with rent secured by the general obligation of the Town. Because parking revenue is variable and dependent on various factors such as weather and the desirability of neighboring businesses, having a highly-rated tenant in the Town, which would pay fixed rent for a period of 15 years, improved the likelihood that the development would be profitable and could obtain the necessary financing to make the project a reality.

14. According to trial testimony of Mr. Small, Mr. Flesch, and Mr. DeMoura, the negotiations of the license agreement were not contentious. The only terms that were subject of substantive negotiation were the financial terms relating to rent and the duration of the license.

15. Neither the total number of spaces included in the garage nor the number of spaces reserved for public use were a subject of negotiation. These numbers were proposed solely by SCDG based on Mr. Betsch's conceptual plan, and they were approved by the Town without objection. The undisputed testimony was that the Town conducted no analysis to determine the number of spaces needed to meet parking demand in the area, and the Town never insisted that 276 total spaces and 132 public spaces be a minimum requirement.

16. As the parties negotiated the agreement in the summer of 2013, SCDG also sought changes to the Town's zoning code to allow for the development of the office building and parking garage as depicted in Mr. Betsch's rendering. These changes consisted of (a) increasing the allowable height to 55' to permit two stories of parking and two stories of office space, and (b) eliminating flood proofing and retail requirements on the first floor to increase the area that could be used for parking. Mr. Small informed the Town that the changes were needed to ensure that the development would be economically feasible and maximize the number of spaces provided in the garage component of the project. (Pl.'s Ex. 58; Def.'s Ex. 2 and 20.)

17. In response to SCDG's request for zoning amendments, the Town's planning staff drafted a proposed ordinance to effectuate the requested changes. The Town's planning staff understood that the changes were needed to make the project economically feasible and that SCDG needed to maximize usable space in the structure to produce as many parking spaces as possible.

18. As the proposed amendments to the zoning code progressed through the legislative process, SCDG and the Town finalized the terms of the parking license agreement. Ultimately, the Town, by unanimous vote of Town Council, adopted the parking license agreement in October of 2013, and the parties executed the agreement that same month. (Pl.'s Exs. 6-7.)

19. The relevant provisions of the parking license agreement are:

- § 1.05: Project. The Project consists of a multi-level structured parking garage, comprised of 276 total parking spaces, and a proposed office complex. A conceptual rendering of the Project is attached hereto as Exhibit "A".
- § 1.06: Premises. That portion of the Property comprising 132 of the 276 total parking spaces planned for the Project (the "Public Spaces"; the remaining 144 spaces are referred to herein as the "Reserved Spaces", and the Public Spaces and Reserved Spaces are collectively herein the "Parking Spaces"). The Parking Spaces, along with the parking garage building in which they are located, and all ancillary and/or associated structures, shall comprise the "Parking Garage", as more particularly described and identified on Exhibit "A".

- § 1.07(a): Fixed Minimum Rent: During the first fifteen years of the License Term (the “Rent Period,”) Licensee covenants and agrees to pay Licensors, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, the Fixed Minimum Rent, subject only to the adjustments set forth herein. During each year of the Rent Period, Fixed Minimum Rent shall be One Hundred Eighty-five Thousand and no/100 (\$185,000.00) Dollars. Fixed Minimum Rent for each License Year of the Rent Period shall be paid on or before the commencement of each License Year during the Rent Period. Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by Licensors, with payment being released from escrow upon the Rent Commencement Date. Following the Rent Period and for all remaining years of the License Term, Licensee covenants and agrees to pay Licensors, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, Fixed Minimum Rent in the amount of One Dollar per year.
- § 1.10: License Term; Rental Commencement Date. The term of the License (the “License Term”) shall begin on the Rent Commencement Date, and shall end upon the earlier of (i) thirty (30) License Years thereafter or (ii) a Major Capital Event (as defined hereinafter), unless extended or sooner terminated in accordance with the terms and provisions of this License. The rental commencement date (“Rental Commencement Date”) shall be date of issuance of certificate of occupancy by the Town.
- § 2.01(b): The Premises shall include only the Public Spaces and necessary appurtenances specifically granted in this License, and shall not include any adjacent buildings, docks, or surface parking areas.
- § 2.02: Licensors’ Work. Licensors, at its sole cost and expense, shall construct the proposed Project, in a form substantially similar to the conception drawings attached hereto as Exhibit “B”.
- § 2.06: Excuse of Performance. Anything in this License to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of a party, that party shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this License if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulation or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Licensors; provided, however, that nothing herein shall delay or excuse payment of rent or any other sum due under this License.

20. The parking license agreement contains a default clause that liquidates damages and eliminates SCDG’s ability to seek consequential and punitive damages. That clause (§ 6.01)

provides that the “sole and exclusive remedy” for default is the rent payments due under the license and that “both parties waive any claims that either may have to consequential or punitive damages.” The parking license agreement also contains a survival clause (§ 8.17), which provides that “any obligation of [the Town] to pay any sum owing or to perform any act after expiration or other termination of this License shall survive the expiration or other termination of this License.” The survival clause does not provide for the survival of any rights of the Town, including the right to reduce rent.

21. Based on the Town’s commitment to pay rent for spaces in the parking garage, the landlord of the project site bought out the existing lease on the property and entered into a new lease with SCDG, with the landlord’s considerable cost of buying out the previous lease passed on to SCDG.

22. Around the time that the parties executed the parking license agreement, SCDG retained the architectural firm of Stubbs Muldrow & Herrin Architects (“SMHa”) to serve as the architect on the project. Mr. Johnston served as the primary architect, and the firm began working on the design after it was engaged.

23. As the design was in progress, Town Council overwhelmingly approved the amendment to the zoning ordinance requested by SCDG in December of 2013. (Pl.’s Ex. 8.) During the same council meeting where the Town approved the zoning amendment for SCDG’s project, the Town also approved a review of the zoning regulations governing the Coleman-Ben Sawyer Boulevards urban corridor zoning district that applied to the site. (Def.’s Ex. 8.) This review was a response to resident complaints primarily about a residential development called Earl’s Court, which was not far from SCDG’s project site.

24. Around this time in December of 2013 and into the winter and spring of 2014, public opposition to the development of the office building and parking garage arose. This opposition was led by a group called Save Shem Creek, which was organized to stop the garage from being constructed. Save Shem Creek spearheaded oppositional activities that included lobbying Town Council members and planning staff to prevent the completion of the project and to stop the Town's financial participation in it. Later, after the Town's planning staff approved the design of the project as required under the zoning code, Save Shem Creek unsuccessfully sued to stop the project from being constructed. Although Mount Pleasant has seen several controversial real estate developments in recent years, Mr. DeMoura testified that SCDG's garage project was the most controversial during his tenure.

25. As public opposition to the garage project intensified, the Town's review of the urban corridor zoning district continued. At the behest of Town Council, the Town's planning staff drafted a proposed ordinance that amended many of the zoning requirements applicable to that zoning district. Among those amendments drafted were changes to the applicable setbacks, which is the minimum distance between a structure on a particular parcel and the adjacent parcel or right-of-way. (Pl.'s Ex. 20 & 27.)

26. Under the Town's zoning ordinance, parcels in the urban corridor zoning district are subdivided into groupings of parcels and each group is given an area designation. For example, the group of parcels where the project site is located was designated as "C1" during the relevant time period. The Town's zoning ordinance includes a chart that establishes the applicable height limitation and minimum setbacks for each area. Following the Town's adoption of the zoning amendment in December of 2013, discussed above, and prior to a subsequent amendment adopted

in April of 2014, discussed further below, area C1 had the following height and setback requirements:

UC-CBS- DEVELOPMENT GUIDELINES CHART					
Area	Maximum Building Height Allowed (1)	Front Setback or Build-to on Coleman or Ben Sawyer (2)	Front or Side Setback or Build-to on Other Streets	Rear Building Setback (3)	Internal Side and Rear (Non-street) Buffers (4)
C1	55'	20'- 30' BT	20' SB (5)	5'	5'

1 In all cases, the maximum height for buildings in the UC-CBS that are located within 50 feet of an abutting residential property line, or an abutting street right-of-way adjoining residential property; provided such residential property is located outside of the UC-CBS, shall be 40 feet, measured from grade to roof ridge, and further provided that no such building shall exceed a maximum of three stories.

2 Build-to lines are measured from back of curb to face of building; if no curb is present, measure from edge of pavement. Awnings and canopies are not included. Setbacks are measured from the right-of-way line.

3 **In all cases** where rear or side property lines abut residential properties lying outside of the UC-CBS, a minimum 15-foot setback, with a minimum 10-foot type "C" bufferyard with an F3 fence, is required.

4 Common wall construction to adjacent properties spanning property lines may be utilized in accordance with applicable building and fire code requirements. Buffers are not required where interconnectivity between parcels is provided or shown on the plan for future connection, or when common wall construction to adjacent properties spanning property lines is utilized. Where interconnectivity or common wall construction is not provided, a minimum type "A" bufferyard plant unit material is required.

5 Setbacks may be reduced to less than five feet only when:

- a) A minimum five-foot sidewalk is provided; and
- b) Street plantings are in accordance with §156.318(P)(5)(e)1.b. and c.ii. ; and
- c) The required line of sight is provided.

Significantly, footnote 5, cited above, allowed for a reduction of the setback to 5' if certain conditions were met.

27. While the Town was reviewing potential changes to the urban corridor zoning district, SMHa was designing the project in accordance with the above-referenced setback requirements. Specifically, SMHa designed the project with a 5' setback on the side fronting Mill

Street by utilizing the ability to reduce the setback under footnote 5 and with a 5' rear setback on the rear of the building that backed up to Church Street.

28. In addition, SMHa was designing the parking garage with parking spaces with 8 ½' wide stalls to maximize the number of parking spaces that the structure could yield. Mr. Johnston testified that he shared this information with an official in the Town's planning department in January of 2014. (Pl.'s Ex. 48.) According to Mr. Johnston, 8 ½' wide parking spaces were not unusual under ordinances of other municipalities in South Carolina, including the neighboring City of Charleston. Mr. Johnston also testified that the Town did not have a separate zoning ordinance that applied to parking structures like other municipalities did.

29. Unbeknownst to SCDG and SMHa, the zoning amendments to the urban corridor zoning district being considered by the Town included deleting the footnote that allowed for the reduction in the side street setback to 5' for the project site. In addition, the zoning amendment included replacing the language in footnote 5 with new language that required a build-to line, which created an activity zone on Mill Street.¹ Christiane Farrell, the Town's Planning Director, testified that the footnote was changed specifically because of SCDG's planned parking garage. The effect of this change—eliminating the possibility of the side setback reduction to 5' and creating a build-to line on the Mill Street side of the project—reduced the buildable area on the project site.

30. The Town did not notify SCDG that Town Council was considering an amendment drafted by its planning staff that was specifically intended to apply to the garage project. During trial, the Town presented testimony and evidence showing that the Town followed the lawful

¹ As the Town's Planning Director, Christiane Farrell, testified, an "activity zone" is a parcel with a build-to line that is intended to create pedestrian activity in the area between the building and street.

process for providing notice of zoning amendments; however, the Town's witnesses admitted that they did not directly provide SCDG notice or seek SCDG's input about the proposed zoning amendment specifically intended to apply to the project. Although the Town understood from its prior cooperation in enacting SCDG's requested zoning amendment that SCDG needed to maximize the usable area of the project site to maximize the number of parking spaces, the Town drafted and pursued an amendment to the zoning code that intentionally reduced the usable area of the project site, without providing any direct notice to SCDG.

31. At Town Council's meeting on April 8, 2014, the Town adopted the zoning amendments to the urban corridor zoning district, including those that specifically changed the applicable setbacks for the project site. (Pl.'s Ex. 20.) As a result of the zoning amendment, the chart governing setbacks for area C1 and the project site was amended to read as following:

UC-CBS - DEVELOPMENT GUIDELINES CHART					
Area	Maximum Building Height Allowed ¹	Front Setback or Build-to on Coleman or Ben Sawyer ²	Front or Side Setback or Build-to on Other Streets	Rear Building Setback ³	Internal Side and Rear (Non-street) Buffers ⁴
C1	55'	20-30' BT	20' SB ⁵	5'	5'

¹	In all cases, the maximum height for buildings in the UC-CBS that are located within 50 feet of an abutting residential property line, or an abutting street right-of-way adjoining residential property; provided such residential property is located outside of the UC-CBS, shall be 40 feet, measured from grade to roof ridge, and further provided that no such building shall exceed a maximum of three stories.
²	Build-to lines are measured from back of curb to face of building; if no curb is present, measure from edge of pavement. Awnings and canopies are not included. Setbacks are measured from the right-of-way line.
³	In all cases where rear or side property lines abut residential properties lying outside of the UC-CBS, a minimum 15-foot setback is required, within which a minimum 10-foot type "C" bufferyard with an F3 fence, is also required.
⁴	Common wall construction to adjacent properties spanning property lines may be utilized in accordance with applicable building and fire code requirements. Buffers are not required where interconnectivity between parcels is provided or shown on the plan for future connection, or when common wall construction to adjacent properties spanning property lines is utilized. Where interconnectivity or common wall construction is not provided, a minimum type "A" bufferyard plant unit material is required.
⁵	The 20' setback applies to all side streets except Mill Street, where a 20-30' build-to is required.
⁶	The 20' setback applies to all side streets except Simmons Street, where a 20-30' build-to is required.

32. At that same meeting, Town Council was presented with a petition signed by over 1,100 individuals opposing SCDG's development of the parking garage and office building. (Def.'s Ex. 11.) Mr. Small attended that meeting and addressed the opposition to the development. (*Id.*) However, he did not speak about the zoning amendments that applied to the project because he did not know that the setbacks were being changed.

33. During the same week that the Town adopted the zoning amendment to the urban corridor zoning district, SMHa scheduled a pre-submittal meeting with the Town's planning staff to present the preliminary design of the project. That meeting was held on April 11, 2014, and SMHa presented the preliminary design that included 266 total parking spaces. SMHa's design utilized 5' setbacks on the side of the building on Mill Street and on the rear of the building on Church Street and 8 ½' wide parking spaces. During the meeting, the Town's planning staff in attendance informed SMHa that its proposed design did not comply with the Town's newly enacted zoning amendments which required 20' setbacks on Mill Street and Church Street. Also, the Town informed SMHa that the design did not comply with the Town's requirements of 9' wide parking spaces. Based on the information provided by the Town's planning staff, SMHa concluded that compliance with the new zoning amendments relating to setbacks as interpreted by

the Town and incorporation of 9' wide parking spaces would result in the loss of a significant number of parking spaces in the parking garage. (Pl.'s Ex. 47.)

34. Upon learning this information, over the next few months SCDG sought from the Town various accommodations and applications of the zoning code that would enable SCDG to maximize the total number of spaces. As explained below, those attempts were uniformly rejected by the Town. SCDG presented testimony and argument that the Town's resistance to SCDG's attempts to provide additional parking were intended to kill the project, and that this was in response to the public opposition which arose after the Town entered into the parking license agreement.

35. Initially, Mr. Johnston inquired with the Town's zoning administrator, Kent Prause, whether a 5' rear setback could apply to the back of the building on Church Street, but Mr. Prause rejected that interpretation. Instead, Mr. Prause stated that a side-street setback must apply to the rear of the building, which meant that SMHa would have to use a 20' setback on Church Street. This application of a 20' setback on Church Street resulted in the elimination of a row of 16 parking spaces on the second floor of the parking garage.

36. Later, SCDG's attorney requested that the parking garage be deemed a "civic use" under the Town's zoning code. (Pl.'s Ex. 44.) This request was made because the Town's zoning code contained an exemption for civic uses, which provided that "build-to lines, setbacks, and other design elements for civic uses" shall be determined in the Town's design review process. (Town Zoning Ordinance § 156.329(N)(5).)² At the time, the Town's zoning ordinance defined "civic use" to mean:

Utility, educational, recreational, cultural, medical, protective, governmental, and other uses that provide public or quasi-public

² This citation refers to the zoning ordinance section in effect at the time of the request.

services and are strongly vested with social importance. Examples may include, but are not limited to the following: city halls; post offices; police and fire stations; schools; museums; universities; public parks; meeting halls; libraries; transit centers; and parking structures.

(Town Zoning Ordinance § 156.007) (emphasis added). If the parking garage would have been considered a “civic use,” the Town’s planning staff could have approved reduced setbacks on Mill Street and Church Street and 8 ½’ wide stalls, which would have increased the number of spaces in the parking garage.

37. The Town rejected SCDG’s request for the parking garage to be considered a civic use. Although “civic use” was defined in the Town’s zoning code to expressly include “parking structures” as an example, the Town’s attorney wrote to SCDG’s attorney that “civic use” was not defined by the zoning code. (Pl.’s Ex. 32.) He further opined that the parking garage “does not appear to meet any reasonable definition of the term.” (*Id.*)

38. Also, SCDG, through its attorney, requested that Church Street not be considered a street because the Town had failed to maintain the right-of-way after it was removed from the state highway system. (Pl.’s Ex. 24 & 44.) This interpretation would have allowed a 5’ setback to be applied to the rear of the building on Church Street, thereby preventing the elimination of a row of parking from SMHa’s preliminary design. Again, the Town rejected this request. (Pl.’s Ex. 32.)

39. Later, SCDG presented the Town with a modified design that included ten on-street parking spaces on Mill Street which could be used to increase the number of spaces available for public use in the parking garage. (Pl.’s Ex. 45.) The Town rejected this design element.

40. In addition to reducing the number of parking spaces the site could yield, the zoning amendment adopted by the Town in April of 2014 also threatened the viability of the entire project.

As Mr. Flesch explained during trial, the creation of an activity zone on Mill Street forced the footprint of the building to shift from its designed location. However, the boundary of SCDG's leased parcel could not accommodate the shift, and SCDG had to lease more land from the landlord at a considerable expense to make the project work.

41. Despite the obstacles and lack of cooperation from the Town, SCDG persisted in its efforts to develop the project. SMHa designed the garage under the new zoning requirements as interpreted by the Town's staff, which resulted in 234 total parking spaces and 117 public spaces. The design presented by SMHa also included a surface parking lot on the adjacent property that included additional parking spaces. The Town approved the modified design in September of 2014.

42. After the Town approved the design of the project, SCDG requested that the Town confirm that construction of the garage in conformance with the approved design would satisfy SCDG's obligations under the parking license agreement. In a letter from SCDG's attorney in October of 2014, SCDG requested the Town deliver an estoppel certificate that the approved design complied with the parking license agreement as required by Section 7.04 of the parking license agreement. (Pl.'s Ex. 43.) Mr. Small and Mr. Flesch testified that the estoppel certificate was important to potential lenders who desired assurances that the Town, backed by its highly rated credit, would pay rent as required by the parking license agreement. They also testified that the Town's failure to provide an estoppel certificate had an adverse impact on SCDG's ability to obtain more favorable borrowing terms.

43. The Town did not provide an estoppel certificate as requested by SCDG. Instead, Mr. DeMoura responded to SCDG's request in a November 2014 letter, stating that the design did not include sufficient parking spaces to comply with the parking license agreement. (Pl.'s Ex. 13.)

Mr. DeMoura's analysis did not focus solely on the number of parking spaces included in the garage but also analyzed whether neighboring restaurants had sufficient parking. The parking license agreement contains no provisions that required SCDG to provide parking for these restaurants.

44. After SCDG received Mr. DeMoura's letter, Mr. Small approached the Town about resolving the dispute regarding whether SCDG's approved design satisfied the requirements of the parking license agreement. The parties then negotiated a proposed amendment under which the parking garage would consist of 234 total spaces and 117 public spaces and annual rent would be reduced from \$185,000 to \$163,800. (Pl.'s Ex. 14.)

45. The proposed amendment to the parking license agreement was considered by Town Council at its meeting in February of 2015. Prior to considering the proposed amendment, Mr. DeMoura gave a presentation of the history of the parking garage project and the Town's involvement. He also presented his analysis of whether SCDG's approved design satisfied the requirements of the parking license agreement consistent with his November 2014 letter. (Pl.'s Exs. 15 & 18.)

46. After Mr. DeMoura gave his presentation, Town Council unanimously voted to "endorse" Mr. DeMoura's letter, thereby adopting his conclusion that the approved design did not comply with the parking license agreement. (*Id.*) After adopting Mr. DeMoura's letter, council unanimously decided to deny any new proposal that may be put forward or submitted by the SCDG pertaining to the parking license agreement. (*Id.*) In discussing this action, Town council members explained that the purpose of the motion was to make it clear that no government money should be spent on this project regardless of the number of spaces. (*Id.*)

47. At no time prior to Town Council's action in February of 2015 or since has the Town conducted any analysis to determine if 234 total spaces and 117 public spaces would be inadequate to help address the parking issues around Shem Creek.

48. Despite the Town's actions, SCDG remained committed to building the parking deck and providing publicly available spaces. To complete the project without the Town's guaranteed rental payments, SCDG partnered with an equity investor to create a joint venture to own, build, and operate the office building and parking garage. Under the terms of the joint venture, SCDG relinquished its sole ownership of the project and retained only a 15% membership interest in the new venture.

49. As SCDG and its successor joint venture worked to complete the project, it continued to face resistance from the Town and the project's opponents. In the spring and summer of 2015, the Town's zoning administrator, Mr. Prause, attempted to condition the issuance of a foundation building permit on SCDG agreeing to provide free parking to patrons of the neighboring restaurants. At trial, Mr. Prause admitted that there was nothing in the Town's zoning code that expressly required SCDG to provide free parking. Instead, Mr. Prause stated that his interpretation reflected the "obvious implication" of the Town's zoning code. (Pl.'s Ex. 23.) Ultimately, the Town withdrew this condition to issuing the permit after SCDG's attorney challenged the legal basis of the Town's position. (Pl.'s Ex. 40.)

50. Save Shem Creek sued the Town and SCDG to stop the project, alleging that the Town erred in allowing the project to intrude into the neighboring maritime zoning district. The Town argued at trial in this case that its interpretation of the zoning code in this instance was favorable to SCDG and evidenced its cooperation with SCDG in the project despite public

opposition. However, Mr. Prause admitted during his testimony that the Town's challenged interpretation was not discretionary and was mandated by law.

51. In June of 2016, SCDG's attorney provided notice to the Town that it was in breach of the parking license agreement by anticipatorily refusing to pay rent, refusing to provide an estoppel certificate, and violating the covenant of good faith and fair dealing by taking actions to interfere with SCDG's performance under the parking license agreement. (Pl.'s Ex. 42.) As a result, SCDG terminated the parking license agreement pursuant to that same letter. (*Id.*)

52. The successor to SCDG's interest the parking garage project completed the project and received a certificate of occupancy for the garage in July of 2017. The date of the issuance of certificate of occupancy served as the Rental Commencement Date under the parking license agreement, which is when the first annual rental payment from the Town should have been released from escrow pursuant to Sections 1.07 and 1.10 of the parking license agreement.

53. Mr. Flesch and Mr. Small testified that the parking garage and office building has provided the benefits that the Town sought when the parties entered into the parking license agreement. It has helped revitalize the Coleman Boulevard corridor by replacing old, dilapidated buildings on a lot with first-class office space and parking. Businesses have relocated their operations to Mount Pleasant, thereby bringing jobs to Mount Pleasant, creating increased tax and business license revenue for the Town, and increasing commercial activity in the area. Also, new restaurants, whose patrons and employees utilize the parking garage, have opened since the garage was completed. In addition, the parking deck has helped alleviate the parking congestion in the Shem Creek area. Although the parking garage was completed with fewer spaces than originally contemplated, there is no evidence that 234 total and 117 public spaces have proved inadequate in

meeting the parking demands of the area. In fact, Mr. Flesch testified that the parking garage routinely has excess capacity and that it has only been fully occupied on a few occasions.

54. As a result of the Town's repudiation of the agreement and failure to pay rent, SCDG filed this action against the Town in October of 2017, asserting a claim for breach of contract based on the Town's failure to provide an estoppel certificate, accept the garage, and pay rent as required under the parking license agreement.³

55. Because the parking license agreement limits SCDG's remedies for a breach of the parking license agreement to rent, SCDG has only sought damages for (1) unpaid past rent from the Rental Commencement Date through the approximate date of trial, plus statutory prejudgment interest, and (2) future rent through the remainder of the rental term discounted to net present value as of the approximate date of trial. Mr. Flesch, who has performed similar present value calculations during his career in the real estate development business, performed the damages analysis and calculation and testified about his calculation at trial. Mr. Flesch utilized a discount rate of 2.03% to conduct the present value calculation. This rate reflects the average interest rate paid during the relevant time period on the Town's most recent bond issuance in 2019. Mr. Flesch testified that he believed that this was an appropriate discount rate based the American Institute of Certified Public Accountants' guidance that an appropriate discount rate is a risk-free rate of return and that the interest rate on Town's most recent bond issuance most accurately reflected the low risk of the Town defaulting on its payments obligations under the parking license agreement. Based on this methodology, Mr. Flesch calculated that SCDG's damages resulting from the Town's breach of the parking license agreement are \$2,604,316. (Pl.'s Ex. 53.)

³ SCDG's complaint also included a claim for unjust enrichment; however, SCDG did not pursue that claim at trial.

56. At trial, the Town did not contest Mr. Flesch's method of calculating damages; nor did the Town dispute the appropriateness of the discount rate that he used. Instead, the Town challenged whether those damages were recoverable under the parking license agreement based on its interpretation that is discussed below in Paragraphs 102-103 of this order. As a result, the Court finds that \$2,604,316 is a reasonably certain calculation of the present value of unpaid rent due under the parking license agreement.

CONCLUSIONS OF LAW

A. Burden of Proof

57. SCDG, as the plaintiff in this action, bears the burden of proof by a preponderance of the evidence standard. *Menne v. Keowee Key Prop. Owners' Ass'n*, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006).

58. The Town has asserted several affirmative defenses to SCDG's claim for breach of contract. "When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defenses by the preponderance of the evidence." *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003)(quoting *Lorick & Lowrance, Inc. v. Julius H. Walker & Co.*, 153 S.C. 309, 318, 150 S.E. 789, 792 (1929)). Similarly, South Carolina law holds that a defendant who asserts that its non-performance under a contract is excusable or justified bears the burden of proving its excuse for the breach. *Cox v. First Provident Corp.*, 240 S.C. 130, 135, 125 S.E.2d 1, 3 (1962).

B. SCDG's Breach of Contract Claim

59. SCDG asserts a cause of action against the Town for breach of contract under the parking license agreement. “The elements for breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019). “The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and proximate result of such breach.” *Id.* “Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance.” *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002).

60. In this case, SCDG claims that the Town breached the parking license agreement by refusing to provide an estoppel certificate, anticipatorily breaching the contract by repudiating the agreement, and failing to pay rent as required thereunder. Based on the facts set forth herein, and the Town's admission that it has not performed its obligations under the parking license agreement, including by failing to provide an estoppel certificate as requested by SCDG and failing to pay rent, the Court concludes the parking license agreement is a contract, and SCDG has proved that the Town breached the agreement by a preponderance of the evidence.

61. Section 7.04 of the parking license agreement provides that within ten days after request of a party, “the other party agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to the other party, certifying that the License is unmodified and in full force and effect . . . , that there are no defenses or offsets thereto (or stating those claimed, and the dates to which Fixed Minimum Rent and Additional Rent have been paid.” On October 20, 2014, SCDG's attorney sent the Town a formal request for an estoppel certificate under Section 7.04. It is undisputed that the Town failed to provide an estoppel certificate.

62. Also, SCDG asserts that the Town committed an anticipatory breach by repudiating the parking license agreement. “In general, an anticipatory breach of contract is one committed before the time has come when there is a present duty of performance, and is the outcome of words or acts evincing an intention to refuse the performance in the future.” 30 S.C. Jur. *Contracts* § 66 (1999). In November of 2014, Mr. DeMoura issued a letter to SCDG’s attorney, stating that SCDG’s approved design did not satisfy SCDG’s obligations under the parking license agreement. Town Council subsequently endorsed Mr. DeMoura’s letter in its meeting in February of 2015, and then it unanimously approved a subsequent motion that “Town government should not be involved with assisting this project with government money and this Parking License Agreement should be ended and put to bed.” (Pl.’s Exs. 15 & 18.) The Town’s actions “ending” the parking license agreement and prohibiting any government funds being paid under the agreement constitutes a repudiation of the agreement. [See *Ackerman v. McMillian*, 314 S.C. 268, 271, 442 S.E.2d 618, 620 (Ct. App. 1994) (“[T]o warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract.”)(citing *Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 427 S.E.2d 701 (Ct.App.1993))].

63. Last, SCDG contends that the Town breached the parking license agreement by failing to pay rent as required by Section 1.07(a). This section provides that Fixed Minimum Rent of \$185,000 shall be paid annually. It is undisputed that the Town has not made any rental payments under the parking license agreement.

64. SCDG’s breach of contract claim also asserts that the Town breached the implied covenant of good faith and fair dealing in the parking license agreement. “[U]nder South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing.” *Boddie-Noell Props. v. 42 Magnolia P’ship*, 344 S.C. 474, 484, 544 S.E.2d 279, 284 (Ct. App. 2000). The

implied covenant of good faith and fair dealing requires “the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made.” *Id.* at 485, 544 S.E.2d at 284 (quoting 17A C.J.S. *Contracts* § 328, pp. 282-284). Similarly, the covenant of good faith and fair dealing requires that “neither party will do anything to impair the other’s rights to receive benefits under the contract.” *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996).

65. Here, SCDG alleges that the covenant of good faith and fair dealing required the Town to avoid doing anything to impair SCDG’s rights to receive benefits under the parking license agreement. The Court concludes that the SCDG has proved by a preponderance of the evidence that Town breached the implied covenant of good faith and fair dealing by taking actions that prevented SCDG from developing the parking garage as envisioned under the parking license agreement and receiving rent thereunder, including (a) adopting zoning amendments that forced SCDG to redesign the parking deck and provide fewer spaces than originally planned; and (b) adopting unfavorable interpretations of zoning ordinances that hindered SCDG’s ability to develop the project with as many spaces as possible.

66. As interpreted by the Town’s planning staff, the zoning amendments to the urban corridor zoning district approved by the Town in April of 2014 effectively increased the setbacks on the property by eliminating the provision allowing the setbacks to be reduced to 5’ on side streets. This change reduced the buildable area on the project site, which resulted in the elimination of an entire row of parking spaces. If that row of spaces had not been eliminated, then SCDG could have produced all 132 public spaces, which constituted the Premises rented by the Town under the parking license agreement. The Town could have avoided the elimination of these spaces from the design by not adopting the zoning change or rescinding the zoning changes as they related

to SCDG's property. Thus, the adoption of the zoning amendments was a discretionary act of the Town that interfered with SCDG's performance under the parking license agreement.

67. The Town also breached the covenant of good faith and fair dealing by failing to apply reasonable interpretations of the zoning code that would have increased the number of spaces in the garage.⁴ Mr. Prause rejected SCDG's request for the setback on the rear of the building on Church Street to be considered a rear setback. Under the Town's zoning code in effect at the time of the request, a rear setback had a minimum 5' requirement. Mr. Prause explained that he rejected that request because a rear setback would have only applied if there was a lot between the project site and Church Street. (Pl.'s Ex. 21.) According to Mr. Prause, his interpretation of "rear setback," which is not defined in the Town's zoning code, was based on what the zoning code "ostensibly contemplated." (*Id.*) He further testified at trial that his interpretation was supported by the zoning code's definition of a "rear yard." However, the definition a "rear yard" does not preclude a determination that a rear setback can adjoin a right-of-way. In fact, "rear yard" is defined as a "yard situated between the rear building line and the rear lot line and extending the

⁴ The Town objected to the admissibility of evidence relating to its zoning interpretations discussed below on the ground that it was irrelevant because SCDG failed to exhaust its administrative remedies by appealing such interpretations to the Town's Board of Zoning Appeals (the "BZA") or seeking variances from the BZA. The Court overrules that objection because the defense of exhaustion of administrative remedies does not apply to SCDG's breach of contract claim. The facts surrounding these interpretations are direct evidence of whether the Town breached the implied covenant of fair dealing, whether SCDG is excused for any alleged breach of the parking license agreement, and whether SCDG's alleged breach was material enough to excuse the Town's breach. Put simply, there are no administrative remedies for SCDG's breach of contract claim. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 102-03, 674 S.E.2d 524, 530 (Ct. App. 2009)(holding a breach of contract is "not based on a statute for which the legislature mandates the pursuit of an administrative remedy" and is "not [a] wrong[] for which the administrative scheme was designed to redress.") Furthermore, the Town waived the defense by failing to plead exhaustion of administrative remedies as an affirmative defense. See *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002)("The failure to plead an affirmative defense is deemed a waiver of the right to assert it.").

full width of the lot” with no prohibition on the lot adjoining a right-of-way or street. (Town Zoning Ordinance § 156.007.) As such, it would have been entirely reasonable for Mr. Prause to exercise his discretion as the zoning administrator to apply a rear setback of 5’ on Church Street. This interpretation alone would have increased the total number of parking spaces in the garage by 16, thereby allowing SCDG to deliver more than 132 public spaces. This fact is especially significant because the parking license agreement defined “Premises” to only include the public spaces. However, the Town refused to exercise its discretion in this reasonable manner, thereby reducing the amount of spaces SCDG could provide.

68. The Town refused to reasonably exercise its discretion and deem the parking garage a “civic use” as the term is used in the Town’s zoning ordinance. This change would have allowed the Town’s staff to determine the setbacks and approve smaller parking spaces in the garage. The Town’s zoning ordinance requires parking spaces to be 9’ wide, and the Town’s planning staff interpreted the zoning ordinance to require a 20’ setback on the rear of the building. Furthermore, the Town interpreted the activity zone requirements on Mill Street to preclude the use of on-street parking. However, the Town’s zoning ordinance provides an exemption which states “build-to lines, setbacks, and other design elements for civic uses” shall be determined in the Town’s design review process. “Civic use” is defined in the Town’s zoning ordinance as:

Utility, educational, recreational, cultural, medical, protective, governmental, and other uses that provide public or quasi-public services and are strongly vested with social importance. Examples may include, but are not limited to the following: city halls; post offices; police and fire stations; schools; museums; universities; public parks; meeting halls; libraries; transit centers; and parking structures.

(Town Zoning Ordinance § 156.007)(emphasis added). SCDG requested the Town deem the garage a “civic use” and the Town admits that it had discretion to make such a determination; however, the Town refused to do so.

69. The Court concludes that it would have been a reasonable exercise of the Town’s discretion to deem the parking garage a civic use and that the implied covenant of good faith and fair dealing required it to do so. The definition of “civic use” expressly states that parking structures may be designated as civic uses, and SCDG’s proposed parking garage was specifically contemplated as a public-private-partnership which would provide quasi-public services in the form of publicly available parking reserved through the Town’s payment of public funds. Had the Town deemed the parking garage a “civic use” and utilized its discretion to reduce the setback on Church Street to 5’ feet, allow for on-street parking, and allow for 8 ½’ wide parking spaces, SCDG definitely could have provided more than 132 public spaces and quite possibly could have provided 276 total spaces. By failing to do so, the Town breached the implied covenant of good faith and fair dealing and interfered with SCDG’s performance and benefits under the parking license agreement.

70. The Town does not contest that it took these actions or that such actions negatively affected the number of spaces which could have been provided in the parking garage. Instead, the Town argues that, as a governmental entity, it had the inherent authority to adopt legislation and to interpret the zoning code without regard to its effect on SCDG’s project. While this is true in the sense that the Town’s actions were lawful, the exercise of legitimate governmental authority does not immunize the Town from liability for a breach of contract, including for breach of the implied duty of good faith and fair dealing, if it exercises that authority to interfere with the purpose

and performance of a contract. To hold otherwise would empower governmental entities to engage in bad faith to destroy or interfere with agreements to which they are parties at their convenience.

71. As courts in other jurisdictions have ruled, the implied duty of good faith and fair dealing applies equally to discretionary acts of government as it does to the acts of private parties. *See, e.g., Guidiville Rancheria of Cal. v. United States*, 704 Fed. Appx. 655 (9th Cir. 2017) (stating that developer alleged a plausible claim for breach of implied covenant of good faith and fair dealing against a city for actions taken to interfere with gaming approval); *Reserve at Woodstock, LLC v. City of Woodstock*, 958 N.E.2d 1100 (Ill. Ct. App. 2011) (affirming trial court's ruling that city violated duty of good faith and fair dealing under an annexation agreement by denying plat and rezoning property); *City of Golden v. Parker*, 138 P.3d 285, 292-93 (Colo. 2006) (recognizing that implied duty of good faith and fair dealing applied to city council's discretionary budget decisions). "In the case of a discretionary power, it has been suggested that the covenant requires the party holding such power to exercise it for any purpose within the reasonable contemplation of the parties at the time of formation – to capture opportunities that were preserved upon entering the contract, interpreted objectively." *Guidiville Rancheria of Cal.*, 704 Fed. Appx. at 657.

72. These principles apply to this case. When the parties entered into the parking license agreement, it was understood by both SCDG and the Town that the Town would have to comply with the implied duty of good faith and fair dealing by making changes to certain zoning requirements in order to make the project feasible. For example, the parties understood that the Town would have to increase the allowable height and eliminate certain requirements for the first floor of the building. Just as the duty of good faith and fair dealing required the Town to take certain discretionary actions to fulfill the purpose of the parking license agreement, that same duty required the Town to avoid taking other discretionary actions to interfere with the purpose of the

parking license agreement. By failing to utilize its discretion to fulfill the purpose of the parking license agreement and maximize the number of parking spaces in the garage, the Town breached its implied duty of good faith and fair dealing.

C. The Town's Affirmative Defenses

73. To avoid liability for breaching the parking license agreement, the Town asserts numerous affirmative defenses intended to justify its breach. These defenses are considered in turn below, and the Court finds the Town has failed to establish any of these defenses by a preponderance of the evidence.

74. First, the Town contends it was justified in not performing its obligations under the parking license agreement because SCDG breached the parking license agreement by failing to design the parking garage with 276 total and 132 public spaces, as required by the agreement. According to the Town, the requirement to produce the minimum number of spaces was a clear and unambiguous obligation under the plain terms of the agreement. Contrary to the Town's assertions, the express provisions of the parking license agreement did not require that SCDG design the parking garage with a specific number of spaces. In response to the Town's assertions, SCDG, citing various sections of the agreement, argued that it was only required to design and construct a structure which contained a substantially similar number of spaces. To further support this argument, SCDG presented evidence to demonstrate the parties understood that the number of spaces included in the agreement were only an approximation based on the conceptual plans prepared by Mr. Betsch. The Town objected to this evidence on the basis that it was parol evidence

which should not be considered because the relevant terms of the agreement were clear and unambiguous.⁵

75. Even if the parking license agreement required SCDG to provide 276 total and 132 public spaces, the language of the agreement did not make strict compliance with those terms essential to the Town's performance of its obligations under the agreement. "The doctrine of substantial performance was conceived for the case where a plaintiff's partial performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned." *Clardy v. Bodolosky*, 383 S.C. 418, 427, 679 S.E.2d 527, 531 (Ct. App. 2009)(quoting *Coastal Seafood Co., Inc. v. Alcoa S.C., Inc.*, 298 S.C. 466, 467–68, 381 S.E.2d 502, 503 (Ct.App.1989)). Only where a contract, by its express provisions, makes strict compliance essential, will substantial performance be insufficient. *Id.* At 427, 679 S.E.2d at 531-32. SCDG has substantially performed its obligations under the agreement by designing the parking garage with 89% and 85% of the respective public and total spaces contemplated thereunder. Although SCDG's final design of the parking garage created fewer spaces than initially contemplated, the approved parking garage design gave the Town all it had bargained for, satisfying the need for additional parking in the Shem Creek area and providing other benefits discussed below.

76. The Court concludes that it is unnecessary to determine whether the parking license agreement required SCDG to design the parking garage with no less than 276 total and 132 public

⁵ Because the case was tried non-jury, the Court permitted SCDG to present this evidence subject to the objections of the Town. See *Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001)("A trial judge's role in a bench trial is to admit all evidence and then evaluate in a non-jury setting.") As explained below, it is not necessary for the Court to determine whether the parking license agreement required SCDG to design the parking garage with no less than 276 total and 132 public spaces; therefore, the Court did not rely on such evidence in its findings of fact and conclusions of law stated herein.

spaces or whether SCDG breached the parking license agreement by designing the parking garage with only 234 total and 117 public spaces. Regardless of whether SCDG breached the parking license agreement in such manner, any purported breach was not sufficiently material to excuse the Town's complete failure to perform its obligations thereunder.

77. For the Town to be relieved of its contractual obligations under the parking license agreement by virtue of SCDG's alleged breach, that breach must constitute a material breach of the agreement. *See Palmetto Mortuary Transp., Inc. v. Knight Sys.*, 424 S.C. 444, 463, 818 S.E.2d 724, 735 (2018) (stating that "only a material breach" by plaintiff would relieve defendant from its contractual obligations) (citing *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275-76, 440 S.E.2d 364, 366-67 (1994)).

78. In *Kiriakides*, the South Carolina Supreme Court held that a forfeiture of a commercial lease should not be based on a trivial or immaterial breach. *Id.* at 276, 440 S.E.2d at 366. The court then adopted an analysis for deciding whether a breach is material based on the following factors:

(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated by damages for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all of the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Id.

79. The court's materiality analysis in *Kiriakides* directly applies to this case because it is derived from general principles of contract law, recognized in the *Restatement (Second) of*

Contracts, and there is no reason to limit its analysis exclusively to commercial leases. In fact, the South Carolina Supreme Court has expressly approved the application of the *Kiriakides* analysis to contractual matters not involving commercial leases. See *Palmetto Mortuary Transp.*, 424 S.C. at 462-63, 818 S.E.2d at 734-35, fn. 5; see also, *Restatement (Second) of Contracts* § 241 (stating that the “standard of materiality applies to contracts of all types”).

80. The *Kiriakides* factors applied to this case demonstrate that any breach resulting from SCDG’s failure to provide all spaces required under the parking license agreement was not material enough to totally relieve the Town of its contractual duty to pay rent and perform other obligations.

81. Under the first factor, the Town would not have been deprived the benefits of the parking license agreement based on SCDG’s design of 234 total and 117 public spaces. The Town identified a need for additional parking in the Shem Creek area and entered into the parking license agreement to obtain the benefit of additional parking which would address that need. SCDG originally proposed the number of spaces to be included in the parking garage, and the Town has never conducted an analysis demonstrating all of the 276 total and 132 public spaces were necessary to satisfy parking demand, as confirmed by Mr. DeMoura. Although the final design ultimately created fewer spaces than the parties originally contemplated, there is no evidence indicating 234 total spaces and 117 public spaces are inadequate to address the parking demands of the Shem Creek area. In fact, the only testimony presented at trial on this point demonstrated the parking garage is more than adequate to meet parking demands in the Shem Creek area. Thus, the Town has not been deprived the benefit it expected under the parking license agreement.

82. Nevertheless, the Town argues that it has been deprived of the benefits of the parking license agreement based on the mere numerical deficiency between what was

contemplated in the parking license agreement and what was actually designed. Notwithstanding the fact that deficiency amounts to only around 11% of the public spaces and 15% of the total spaces, the Town's narrow view disregards the fact that the parking license agreement offered many benefits to the Town beyond the number of parking spaces. As testified by Mr. DeMoura, the development of the parking garage and office building was "necessary" to the Town's efforts to revitalize the Coleman Boulevard corridor and encourage economic development in that area of Mount Pleasant. Furthermore, Mr. Flesch and Mr. Small testified that the office building and parking garage resulted in several new businesses relocating and bringing new jobs to Mount Pleasant, which helped service new restaurants around Shem Creek and contributed to increased tax and business license revenues for the Town. Beyond providing additional parking which alleviated parking congestion near Shem Creek, the manner in which it was provided under the parking license agreement created benefits for the Town as well. Specifically, the parking license agreement provided the Town with additional benefits of public parking without having the financial obligations of constructing, managing, and maintaining that parking. The Town also enjoyed the potential benefit of rent reduction if the parking operations were profitable, without obligating the general fund of the Town, because rent was to be funded through accommodation taxes paid by tourists. SCDG's inability to provide all 276 total and 132 public spaces in no way deprived the Town of these benefits of the parking license agreement.

83. Moreover, the Town's argument that it has been deprived of the benefits of the parking license agreement based on the numerical deficiency alone is belied by its own actions. If the benefits of the additional 16 public and 42 total spaces were as significant as the Town posits, one could certainly have expected the Town to have worked with SCDG to explore additional options concerting how to achieve those additional spaces. However, the Town presented no

evidence that it undertook these effort, and Mr. DeMoura could not identify to any action the Town took to cooperate with SCDG beyond December of 2013.

84. The second *Kiriakides* factor also favors SCDG because the Town could have been compensated for any injury caused by the design of the parking garage with less than 276 total and 132 public spaces. To the extent that any injury has occurred, the Town could have sought and obtained a reduction in rent or damages based on overpayment of rent. In fact, SCDG presented the Town with an amendment to the parking license agreement that reduced rent; however, the Town rejected the amendment and took the extreme position that it had no obligation to pay any rent or perform any obligations under the agreement. Although the Town argued that the parking license agreement precludes it from seeking rent reduction based on the deficiency in the number of spaces designed, that interpretation has no contractual support because the default clause contains no such limitation. In fact, the Town could have sought an offset of SCDG's damages in this case based on the purported deficiency of spaces, but it failed to do so.

85. The third *Kiriakides* factor favors SCDG because it has suffered a complete forfeiture of the parking license agreement as a result of the Town's repudiation of its obligations, which the Town admits. Despite incurring significant expenses in pursuing the project, SCDG has received no rent from the Town, which was the primary benefit SCDG expected to receive under the parking license agreement. Moreover, the Town's repudiation of the agreement and failure to pay rent caused SCDG to surrender its sole ownership in the development.

86. The fourth *Kiriakides* factor favors SCDG because it could have cured any contractual deficiency in the number of spaces designed but the Town refused those attempts. As explained above, SCDG presented the Town with numerous options which would have increased the number of spaces in the garage, such as reducing the setback on Church Street to 5', utilizing

8 ½' wide parking spaces, and creating on-street parking. Either of those first two options alone would have ensured the delivery of at least 132 public spaces, which comprised the Premises for which the Town agreed to pay rent. All of the proposed options combined could have allowed SCDG to create all or nearly all of the 276 total spaces. When those efforts failed, SCDG then agreed to reduce rent to cure any alleged deficiency in the number of spaces.

87. Although the Town argued that SCDG refused to cure the purported deficiency by creating another level of parking and reducing the amount of office space in the building, the Town failed to establish that this option was feasible. Mr. Betsch's drawings indicated creating a third story of parking would have created clearance issues, and Mr. Small testified those clearance issues were exacerbated by the Town's increase of the setbacks. Moreover, Mr. Johnston testified it was not feasible to design a third story of parking due to engineering limitations. Regardless of whether such an option was technically feasible, SCDG was not contractually obligated to design a third story of parking, and doing so would have likely rendered the project economically unfeasible by replacing rent-generating office space with unneeded excess parking which would have produced little revenue. Put simply, the Town did not establish that a third story of parking was a feasible or reasonable option to cure any alleged contractual deficiency in the number of parking spaces.

88. The fifth *Kiriakides* factor favors SCDG because it engaged in good faith efforts to perform under the parking license agreement. The Town's witnesses admitted that they found Mr. Small to be forthright, honest, and a gentleman, and Mr. DeMoura agreed that he was a good partner. Moreover, it was undisputed that SCDG and its architect at all times endeavored to maximize the number of spaces in the garage. Further, despite being under no obligation to do so, SCDG agreed to reduce the rent to be paid by the Town when the dispute about the number of spaces arose.

89. Because each of the *Kiriakides* factors favor SCDG, the Town cannot establish that SCDG's design of the parking garage with 89% and 85% of the respective public and total spaces contemplated under the parking license agreement was a material breach which would allow the Town to escape its duty to pay rent and perform other contractual obligations.

90. Even if SCDG materially breached the parking license agreement by failing to design all 276 and 132 total and public spaces, the Court would find such breach is excused by the Town's actions that prevented SCDG from designing all such spaces.

91. "[A] party who prevents a condition of a contract cannot seek relief by relying on the other party's resulting nonperformance." *Dixon v. Dixon*, 362 S.C. 388, 397, 608 S.E.2d 849, 853 (2005)(citing *Champion v. Whaley*, 280 S.C. 116, 311 S.E.2d 404 (1984)); *see also*, 17B C.J.S. *Contracts* § 528 ("A party to a contract cannot force a breach of contract by withholding the means of performance or take advantage of his or her own act or omission to escape liability thereon."). "There is no breach of a contract on the part of one whose performance is prevented, or rendered impossible, by the conduct of the other party, and the party prevented from performing may be treated, or considered, as though he or she had performed." 17B C.J.S. *Contracts* § 528.

92. In addition to this well-established principle of contract law, the parties agreed that a party's failure to perform would be excused if such failure was the result of government regulation or controls. Specifically, Section 2.06, which governs excuse of performance, expressly provides that a "party shall not be deemed in default with respect to the performance of any terms, covenants, and conditions of this License if same shall be due to . . . governmental regulation or controls . . ."

93. SCDG was willing and attempted to design and construct the parking garage with 276 total and 132 public spaces. However, the Town's adoption of zoning amendments changed

the setbacks on the property and application of unfavorable zoning interpretations directly limited SCDG's ability to maximize the number of spaces. Because the Town's own actions caused any purported breach related to the number of spaces in the garage, the Town cannot rely on such breach to excuse its non-performance.

94. As an additional affirmative defense, the Town claims it is excused from performing its obligations under the parking license agreement because SCDG failed to satisfy a condition precedent to the contract. According to the Town, SCDG's provision of 276 total and 132 public spaces was a condition precedent to the performance of Town's obligations under the parking license agreement. Thus, the Town argues it had no duty to perform its obligations because SCDG failed to satisfy this condition precedent. This defense fails because the provision of 276 total and 132 public spaces was not a condition precedent to the parking license agreement.

95. A condition precedent to a contract is "any fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate performance arises." *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct. App. 1994)(citing *Ballenger Corp. v. City of Columbia*, 286 S.C. 1, 331 S.E.2d 365 (Ct.App.1985)). "The question of whether a provision in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ." *Id.* "Where the parties' intentions are in doubt regarding whether a stipulation in a contract is a condition or a promise, the courts resolve any doubt in favor of finding a promise rather than a condition. . . . [C]onditions are not lightly to be presumed, and the rule of strict construction is applicable in determining whether a clause is a condition." 17A C.J.S. *Contracts* § 355. "Words and phrases such as 'if,' 'provided that,' 'when,' 'after,' 'as soon as,' and 'subject to' frequently are used to indicate that performance expressly has been made conditional." *Springs & Davenport, Inc. v. AAG, Inc.*, 385 S.C. 320, 326,

683 S.E.2d 814, 817 (Ct. App. 2009)(quoting *Cobb v. Gross*, 291 S.C. 550, 552, 354 S.E.2d 573, 574 (Ct.App.1987)). “[A] condition precedent may not be implied when it might have been provided for by express agreement.” *Worley*, 317 S.C. at 210, 452 S.E.2d at 625 (quoting 17A C.J.S. *Contracts* § 338 (1963); 17A Am.Jur.2d *Contracts* § 471 (1991)).

96. In this case, the parties used no language in the parking license agreement indicating SCDG’s provision of 276 total and 132 public spaces was a condition precedent to the Town’s contractual obligation to pay rent and perform other duties. The only language relating to the number of spaces is found in Sections 1.05 and 1.06, which provides:

- **Section 1.05:** “Project. The Project consists of a multi-level structured parking garage, comprised of 276 total parking spaces, and a proposed office complex.”
- **Section 1.06:** “Premises. That portion of the Property comprising 132 of the 276 total parking spaces planned for the Project (the “Public Spaces”; the remaining 144 spaces are referred to herein as the “Reserved Spaces”, and the Public Spaces and Reserved Spaces are collectively herein the “Parking Spaces”).

Significantly, neither of these provisions contain any words, such as “if,” “provided that,” “when,” “after,” “as soon as,” and “subject to,” and the lack of such words indicates that providing 276 total and 132 public spaces was not a condition precedent to the Town’s contractual obligations. Furthermore, there is nothing in the agreement that expressly disclaims the Town’s obligations to perform under the contract if SCDG failed to deliver 276 total and 132 public spaces.

97. The Town does not contend that those provisions constitute a condition precedent. Instead, it asserts that the condition precedent to the performance of its obligations is contained in Section 2.03, which provides:

Section 2.03: Licensor’s Contingency. Licensor’s obligations under this License Agreement, including but not limited to the obligation to construct the Project, are contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity. Licensor, in its sole and absolute discretion, may elect to terminate

this License Agreement at any time prior to the earlier of (i) twenty-four (24) months from the Effective Date, or (ii) Licensor's commencement of construction of the Parking Garage.

While the Town is correct that this section establishes a condition precedent, it applies only to the performance of SCDG's contractual obligations – not to the Town's. The clear import of this section is that SCDG's performance under the parking license agreement is conditioned upon obtaining the necessary approvals from the Town to complete construction. By its clear and unambiguous terms, it does not condition the Town's obligations on the occurrence of any event. In any case, the section does not apply because the Town issued the necessary approvals to complete construction, thus, the condition precedent to SCDG's performance was satisfied.

98. If the Town wanted to ensure it only had to pay rent to SCDG if a minimum number of spaces was provided, it could have used express language providing no payment was due unless all spaces were provided. It did not do so; therefore, there is no condition precedent. *See Springs & Davenport*, 385 S.C. at 328, 683 S.E.2d at 817-18 (ruling that parties did not create a condition precedent where the contract did not expressly provide for such condition); *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 208, 687 S.E.2d 714, 719 (Ct. App. 2009) (ruling conditions could not be implied where the contract did not expressly state them).

99. Moreover, there is no evidence outside of the contract indicating the Town considered 276 total and 132 public spaces to be a condition precedent. In fact, SCDG – not the Town – proposed the number of spaces to be included in the garage, and the Town never conducted an analysis to determine the number of spaces it desired to achieve the goal of alleviating parking issues around the Shem Creek area and helping revitalize the Coleman Boulevard corridor. Because the Town did not propose or insist on language conditioning its obligations on SCDG's provision of all 276 total and 132 public spaces in the parking license agreement, it cannot credibly

argue that such provision was a condition precedent to the performance of its contractual obligations under the parking license agreement.

100. Lastly, the Town asserts an alternative affirmative defense that the parking license agreement is void for vagueness in the event that Court determines the agreement does not require SCDG to deliver 276 total and 132 public spaces. As the South Carolina Court of Appeals ruled in *Aperm of South Carolina v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App. 1986), “absolute certainty” of material terms of the contract is not required; instead, only “reasonable certainty” is required. Because the parking license agreement defines the number of spaces to be provided with reasonable certainty, this defense has no merit and is rejected.

D. Damages

101. Having found SCDG proved that the Town breached the parking license agreement by a preponderance of the evidence and the Town failed to prove its affirmative defenses excusing its breach by a preponderance of the evidence, the Court now concludes SCDG has proven damages in the amount of \$2,604,316. As stated above, the default provision in the parking license agreement provides SCDG’s sole remedy in the event of the Town’s default is rent due thereunder. Because the Town has paid no rent and not contested SCDG’s methodology of calculating past rent, prejudgment interest, and the present value of future rent, the Court finds \$2,604,316 reflects the present value of unpaid rent with reasonable certainty.

102. Instead of contesting SCDG’s methodology of calculating rent, the Town argues SCDG is not entitled to rent after the date SCDG terminated the parking license agreement. This argument misconstrues the default and survival clauses in the parking license agreement. Section 6.01 provides in the event of default by the Town, SCDG “shall be entitled to bring an action for .

. . breach of contract against [the Town], but agrees that its sole and exclusive remedy shall be the Rent Payments due under this Agreement.” And Section 8.17 provides “any obligation of [the Town] to pay any sum owing or to perform any act after expiration or other termination of this License shall survive the expiration or termination of this License.” When considered together, as they must, these two provisions evidence the parties’ clear intention that the Town’s obligation to pay rent for the entirety of the rental term survives the termination of the parking license agreement. *See Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 570, 772 S.E.2d 882, 891 (Ct. App. 2014) (ruling when reading the lease as a whole it was clear the parties intended, upon tenant’s default, that tenant would be liable to landlord for the rents due during the full term of the lease).

103. Moreover, SCDG’s method of calculating rent accords with South Carolina law. “In a breach of contract action, the ‘measure of damages is the loss actually suffered by the contractee as the result of the breach. And profits that have been prevented or lost as the natural consequence of a breach of contract are recoverable as an item of damages in an action for such breach.’” *Collins Holding Corp. v. Landrum*, 360 S.C. 346, 350, 601 S.E.2d 332, 333–34 (2004)(citing *South Carolina Finance Corp. of Anderson v. West Side Finance Co.*, 236 S.C. 109, 114, 113 S.E.2d 329, 335–36 (1960)). “The law does not require absolute certainty of data upon which lost profits are to be estimated, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation or conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy.” *Id.*

104. Finally, Section 6.01 of the parking license agreement provides “the prevailing party in any dispute shall be entitled to an award of costs and attorney’s fees, including the cost of

trial and any appeals.” Because SCDG is the prevailing party in this action, it is entitled to an award of all costs and attorney’s fees associated with this dispute, including the cost of trial.

ORDER

THEREFORE, it is ordered that judgment be entered in the favor of Plaintiff Shem Creek Development Group, LLC on its cause of action for breach of contract in the amount of \$2,604,316.

And it is further ordered that Plaintiff Shem Creek Development Group, LLC submit an affidavit of all costs and attorneys’ fees it seeks to be awarded in this action in accordance with Paragraph 102, above, within fifteen days of this Order and Defendant shall have an opportunity to object to any such costs and fees by submitting an objection thereto within fifteen days of Plaintiff’s submittal of said affidavit.

AND IT IS SO ORDERED.

The Honorable Maite Murphy

Charleston, South Carolina

_____, 2020

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017- CP-10-05493

SHEM CREEK DEVELOPMENT GROUP, LLC

THE TOWN OF MOUNT PLEASANT, SOUTH
CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: THE HONORABLE MAITE MURPHY

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- X **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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: X See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order X ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
SHEM CREEK DEVELOPMENT GROUP, LLC	THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA	\$2,604,316
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

--

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

[illegible]



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South
Carolina Town of

Case Number: 2017CP1005493

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2020-07-13 14:14:42 page 46 of 46

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CIVIL ACTION NO.: 2017-CP-10-5493
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CONSENT
	)	POST-TRIAL
	)	SCHEDULING ORDER
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	
	)	

The parties consent to the following scheduling order:

1. Plaintiff shall file a response to Defendant's Motion for New Trial and to Reconsider, Alter or Amend Order no later than August 3, 2020.
2. Plaintiff shall submit an affidavit of all costs and attorneys' fees it seeks to be awarded pursuant to the Order signed by the Honorable Maité Murphy and filed on July 13, 2020 no later than seven (7) days after the filing of Plaintiff's response to Defendant's Motion for New Trial and to Reconsider, Alter or Amend Order shall be filed no later seven (7) days after.
3. Defendant's objections to Plaintiff's affidavit of costs and attorneys' fees shall be filed no later than fifteen (15) days after the filing of Plaintiff's affidavit of costs and attorneys' fees.
4. The deadlines set forth herein supersede the previous deadlines established under the Order.

IT IS SO ORDERED.

The Honorable Maité Murphy

July __, 2020

_____, South Carolina

WE CONSENT:

s/E. Brandon Gaskins
E. Brandon Gaskins (State Bar No. 73274)
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*Attorneys for Plaintiff Shem Creek
Development Group, LLP*

July 21, 2020
Date

s/Julia P. Copeland
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*Attorneys for Defendant Town of Mount
Pleasant, South Carolina*

July 21, 2020
Date



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South Carolina Town of The

Case Number: 2017CP1005493

Type: Order/Scheduling Order

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2020-07-22 11:59:35 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	MOTIONS FOR NEW TRIAL AND TO
v.	)	RECONSIDER, ALTER OR AMEND
	)	ORDER
The Town of Mount Pleasant, South Carolina,	)	
	)	
Defendant.	)	

On July 13, 2020, the Court filed the Order for judgment in favor of Plaintiff Shem Creek Development Group, LLC (“SCDG”) in the above-captioned matter. On July 20, 2020, Defendant The Town of Mount Pleasant, South Carolina (the “Town”) filed Motions for New Trial and to Reconsider, Alter or Amend Order. On August 4, 2020, SCDG filed its Response in Opposition to Defendant’s Motions for New Trial and to Reconsider, Alter or Amend Order. After considering the law, the briefs filed by the parties, and all matters submitted, the Town’s Motion for New Trial and to Reconsider, Alter or Amend Order is **DENIED**.

STANDARD

The decision to grant or deny a motion under Rule 59(e), SCRCP, lies within the sound discretion of the trial court. *Pollard v. Cty. Of Florence*, 314 S.C. 397, 402, 444, S.E.2d 534, 536 (Ct. App. 1994). “An abuse of discretion arises where the judge issuing the order was controlled by error of law or where the order is based on factual conclusions that are without evidentiary support.” *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E. 2d 501, 502-03 (2006).

CONCLUSIONS OF LAW

1. The Town objects to Paragraph 7 of the Order¹ on the basis of irrelevance; however, this paragraph correctly reflects the analysis of the Desman study and the testimony of Mr. Flesch and Mr. Small. (See Tr. 339:8-15; 352:21-353:2.) The information in Paragraph 7 establishes the factual background regarding the evolution of the project and demonstrates why the office component of the project was necessary to make the project economically feasible. It has nothing to do with the damages analysis included in the Order. Thus, the information is relevant and supported by the evidence.

2. The Town objects to Paragraphs 8-9 of the Order because it inaccurately characterizes the design of the Project. The Town's objection is invalid because it ignores the obvious fact that a "conceptual design" is conceptual by its very nature and is not intended to depict absolute compliance with applicable zoning requirements. The information in Paragraphs 8-9 correctly states the relevant foundational facts that led to the dispute and is appropriately included in the Order.

3. The Town objects to Paragraph 10 on the basis that it is not supported by the evidence or testimony at trial. Contrary to the Town's argument, Paragraph 10 correctly states the facts about who received the parking layout concept, and it is supported by the exhibits and trial testimony. (See Pl.'s Ex. 7, § 3.04; Tr. 343:1-346:12, 371:24-372:12; 435:14-438:13.) Furthermore, the fact that Mr. Pagliarini was involved in the drafting and revisions to the Agreement are confirmed by § 8.12 of the Agreement, Plaintiff's Exhibit 39, and the trial testimony (Tr. 119:17-21, 123:1-9, 214:20-24, 238:5-239:7, 348:1-8).

¹ Unless otherwise indicated, all references to "Paragraphs" in this order refer to the paragraphs in the Court's Order, dated July 13, 2020.

4. The Town also objects to Paragraph 10 because it characterizes the parking license agreement as creating a public-private partnership, but this characterization is confirmed by multiple trial exhibits and the testimony of multiple witnesses, including Mr. Eric DeMoura, who testified that the garage project was a public-private partnership. (See Pl.'s Ex. 37-38; Tr. 104:10-15, 400:3-11, 401:20-405:7, 621:6-10.)

5. According to the Town, Paragraph 11 incorrectly characterizes the parking license agreement as a construction agreement. The Town's argument is incorrect because Paragraph 11 does not characterize the agreement as a construction agreement. Rather, it merely states that SCDG – as opposed to the Town – was responsible for constructing the project.

6. In response to Paragraph 12 of the Order, the Town complains that the Court has rewritten the parking license agreement. However, Paragraph 12 correctly states that the parking license agreement made rent reduction a possibility. Because the rent was only to be reduced if the garage was profitable and there was no guarantee of profitability, rent reduction was only a possibility.

7. The Town objects to Paragraph 15 of the Order as irrelevant and erroneous. Contrary to the Town's objection, the Court did not rewrite the parking license agreement. The fact that the Town neither conducted any analysis to determine the number of spaces needed to meet the parking demand in the area nor insisted that 276 total spaces and 132 public spaces be a minimum requirement is directly relevant to the materiality analysis in the Order. Therefore, Paragraph 15 is accurate and relevant.

8. The Town objects to Paragraph 16 as irrelevant and misleading. This objection has no merit because Paragraph 16 accurately reflects Mr. Small and Ms. Farrell's testimony and the relevant trial exhibits. (See Tr. 353:22-354:18, 621:11-624:5.)

9. The Town's objection to Paragraph 17 mischaracterizes the finding and attempts to put words in the Court's mouth that do not exist. Nowhere in that paragraph does the Court state that the ordinance in question was "solely" meant for the economic benefit of Mr. Small. Thus, this objection has no merit.

10. In response to Paragraph 20, the Town complains that the Court has misstated the significance of the survival clause and rewrites its provisions. The Town mischaracterizes the Court's finding in Paragraph 20, which merely states verbatim what § 8.17 provides. Moreover, the Town cites no language that would support an interpretation that any of the Town's rights survive the termination of the parking license agreement. Instead, the Town, in conclusory fashion, states that the Court is "inappropriately rewrite[ing]" the contract, and then argues that the damages provision is an unenforceable penalty, which is an argument that has been repeatedly raised by the Town and rejected by the Court.

11. The Town argues that Paragraph 22 omits important facts. However, the facts allegedly omitted lack evidentiary support. Notably, the Town does not cite to the transcript or any exhibit to support its characterization of the evidence. In fact, no testimony or evidence supports its assertion. Jeff Johnston, the project architect, discussed during his testimony the phases of the design process, and based on his explanation of when he started working, it would have been impossible for SCDG to know prior to December of 2013 that the site could not yield 276 total and 132 public spaces, especially when the Town did not enact the required height and first floor zoning amendments until December of 2013. (Tr. 720:10-724:7.) Furthermore, the initial plan was not finalized for presentation to the Town until April of 2014, and that plan contained more than 132 public spaces and only ten short of 276 total spaces. (Pl.'s Ex. 50; Tr. 735:19-736:24.) Mr. Johnston testified that the site could have yielded approximately 270 total

spaces (and possibly 276 total spaces) if the Town had approved reasonable measures to increase spaces. (Tr. 758:2-15.) Thus, the evidence does not support a finding that SCDG knew from the beginning that the project could not produce all spaces planned for the garage and had withheld information from the Town. Instead, all relevant evidence demonstrates that SCDG consistently worked in good faith to produce as many spaces as possible.

12. The Town's objection to Paragraph 27 is confusing because Paragraph 27 neither infers a previously submitted plan nor discusses vested rights. Therefore, there is no basis for the Town's objections to this paragraph.

13. The Town objects to Paragraph 28 by incorrectly characterizing what the Court stated about the width of the parking spaces. Contrary to the Town's claim, Paragraph 28 does not state that the "appropriate width of garage parking spaces was 8 ½'." Instead, it provides factual background of why Mr. Johnson's initial design included 8 ½' wide spaces. This information is relevant because it shows that the use of 8 ½' wide spaces is customary and that it would have been reasonable for the Town to accept 8 ½' wide spaces if maximizing the number of spaces in the garage was as important as it would have the Court believe.

14. The Town's characterization of Paragraph 29 is incorrect. Paragraph 29 does not incorrectly presume that the Town "failed in its State-mandated notice requirements." In fact, in Paragraph 30, the Court expressly states that "the Town followed the lawful process for providing notice of zoning amendments." Rather, Paragraph 29 merely states that SCDG and SMHa were not aware of the zoning amendments. Also, by focusing solely on the Mill Street setback change's impact on parking spaces, the Town ignores the more substantial impact on parking spaces caused by the Church Street setback changes and the significant monetary injury resulting from the Mill Street setback change. Furthermore, the Court did not "manufacture" its finding in Paragraph 29,

as the Town contends, because that paragraph is directly supported by Ms. Farrell's testimony. (See Tr. 638:9-643:20.)

15. The Town complains that Paragraphs 30 and 32 are erroneous, but those paragraphs are supported by Ms. Farrell's testimony. (See Tr. 638:9-643:20, 647:15-649:20.)

16. The Town objects to Paragraph 33 as being incorrect. Yet the Town's objection is confusing because Paragraph 33 neither expressly nor implicitly states that a previous plan had been submitted to the Town as it claims. Moreover, there is no discussion of vested rights in Paragraph 33. Nor does Paragraph 33 rewrite the parking license agreement as the Town claims. Paragraph 33 is nothing more than an accurate finding of facts about what was presented to the Town by SMHa in the April 11, 2014 meeting.

17. The Town claims that Paragraphs 34, 40, and 50 mischaracterize or omit facts related to the Town's ruling on the marine zoning district issue, but as explained in Paragraph 50 of the Order and supported by Mr. Prause's testimony, the Town's ruling on the marine zoning district was mandated by law and was not discretionary. (See Tr. 449:18-453:25, 614:1-17.)

18. The Town objects to Paragraphs 35, 37, and 38 of the Order based on arguments related to the exhaustion of administrative remedies defense. The Town's objections to Paragraphs 35, 37, and 38 have no merit because the Court properly rejected the Town's exhaustion of administrative remedies defense in footnote 4 of the Order.

19. The Town complains that Paragraph 39 mischaracterizes the parking license agreement's requirements regarding surface parking. However, the Town's claim that the parking license agreement did not specifically permit the inclusion of surface parking in the number of spaces is belied by the parking license agreement and the testimony at trial. Sections 1.06 and 2.01(b) define the "Premises" as "only the [132] Public Spaces." Although Section 2.01(b) states

that the Premises does not include surface parking areas, the parking license agreement does not prohibit on-street surface parking to be included in the reserved spaces. (See Pl.'s Ex. 7 §§ 1.06 and 2.01(b); Tr. 309:23-310:19, 324:20-327:24, 528:4-529:19.) Also, the Town's argument that DOT approval was required ignores the fact that DOT approval could not have been sought because the Town rejected SCDG's plan for on-street parking.

20. The Town objects to Paragraph 43, claiming that it incorrectly states the facts. However, Paragraph 43 includes no incorrect statements of fact. In fact, the Town's objection to Paragraph 43 confirms that restaurant parking was not relevant to whether SCDG's approved design complied with the requirements of the parking license agreement. The fact that the Town sought to address this issue in its determination of purported non-compliance by SCDG further demonstrates its bad faith under the parking license agreement.

21. In response to Paragraph 46, the Town asserts that the Court improperly relied on the videos of the relevant Town Council meetings. The Court has previously rejected the basis of the Town's objections to Paragraph 46, and the Town has failed to proffer any persuasive reason for the Court to reverse itself now. In fact, in direct contradiction to the Town's argument here, Mr. DeMoura testified that that he had no reason to contest the accuracy of the YouTube videos. (See Tr. 461:2-5.) And it is disingenuous for the Town to question the authenticity of the videos when it referred SCDG to the Town's YouTube channel in response to SCDG's discovery requests for videos of the relevant council meetings. (See Tr. 460:22-461:1.)

22. The Town alleges that the findings regarding the Town's lack of analysis regarding the adequacy of parking spaces as set forth Paragraph 47 are irrelevant. The fact that the Town conducted no analysis to determine the number of spaces needed to meet the parking demand in

the area is directly relevant to the materiality analysis in Paragraphs 81-83 of the Order. Therefore, Paragraph 47 is relevant.

23. The Town objects to Paragraph 53 as being irrelevant. Contrary to the Town's claim, Paragraph 53 is directly relevant to the Court's materiality analysis in Paragraphs 81-83 because it establishes facts necessary to determine whether and to what extent the Town has been deprived of any benefits under the parking license agreement.

24. In response to Paragraph 62, the Town accuses the Court of being inappropriately influenced by the videos of Town Council meetings. However, the Court's decision was based on the totality of all evidence presented at trial over the course of four days, and the Court would have reached the same result regardless of whether the videos were presented during trial.

25. The Town argues that the Court committed an error of law in Paragraph 65 by holding that the Town cannot exercise its legislative authority to amend its own zoning ordinance. The Town, however, mischaracterizes the conclusions in Paragraph 65. Furthermore, the Town cites no legal support for its argument. Instead, it relies on a red herring about SCDG's lack of vested rights in the project. Paragraph 65, however, does not address vested rights in any manner. Rather, it deals with the implied covenant of good faith and fair dealing, which exists in every contract. See *Parker v. Byrd*, 309 S.C. 189, 194, 420 S.E.2d 850, 853 (1992) ("There exists in every contract an implied covenant of good faith and fair dealing."). The Town has a duty to comply with the duty of good faith and fair dealing in every contract to which it is a party, regardless of the other contracting party's vested rights. In making its novel argument, the Town attempts to limit the duty of good faith and fair dealing in a way that has no precedential or logical support. As a result, the Town's argument is rejected.

26. In Paragraph 35 of its Motion, the Town contends that the Court reached a “bizarrely inconsistent legal assertion” in its ruling on SCDG’s breach of covenant of good faith and fair dealing claim. What the Town characterizes as a “bizarrely inconsistent legal assertion” is nothing more than a fundamental principle of contract law, which is that it is not illegal to breach a contract. *See Taylor Steel, Inc. v. Keeton*, 417 F.3d 598, 608 (6th Cir. 2005) (“Breach of contract might give rise to a civil suit, but it is not illegal.”); *United States v. Blankenship*, 382 F.3d 1110, 1133 (11th Cir. 2004) (“It is not illegal for a party to breach a contract; a contract gives a party two equally viable options (perform or pay compensation), between which it is generally at liberty to choose.”); *Windsor Secur., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 664 (3rd Cir. 1993) (“Breach of contract is not ‘illegal’ either under common usage . . .”); *Benderson Dev. Co. v. United States Postal Serv.*, 998 F.2d 959, 962 (Fed. Cir. 1993) (“To breach a contract is not unlawful; the breach only begets a remedy in law or in equity.”). The implied covenant of good faith and fair dealing is “merely another term of the contract.” *Rotec Servs. v. Encompass Servs.* 359 S.C. 467, 472, 597 S.E.2d 881, 884 (Ct. App. 2004). In violating the implied covenant of good faith and fair dealing, the Town did not act unlawfully. Similarly, the Town did not have to commit an unlawful act to breach the implied covenant of good faith and fair dealing. Thus, Paragraph 35 is not inconsistent, and the Town’s argument does not warrant reconsideration of the Court’s conclusion that the Town breached its duty of good faith and fair dealing in this case.

27. In its objection to Paragraph 67, the Town argues that the Court has committed an error of law by inappropriately acting in an appellate capacity but offers no legal support for its position. The Court clearly was not acting in an appellate capacity in ruling that the Town violated its duty of good faith and fair dealing by failing to apply reasonable interpretations of the zoning code that would have fulfilled the purposes of the parking license agreement.

28. According to the Town, the Court made improper determinations about Town Council's intent in Paragraph 70. The Town's objection to Paragraph 70 has no merit. Contrary to the Town's argument, the Court did not make any determinations about the individual intent and motivation of each Council member. Instead, the Court makes clear that its conclusions apply to the Town as a whole based on the collective actions of the Town's staff and Council.

29. The Town objects to the citations of decisions from other jurisdictions in Paragraph 71. Yet there is nothing improper with the citation of judicial decisions from other jurisdictions. The Court's order does not indicate that it finds the decisions cited in Paragraph 71 as controlling. Instead, it is clear that these decisions are cited as persuasive authority supporting the proposition that the implied duty of good faith and fair dealing applies to discretionary acts of government. As such, it is entirely appropriate to cite cases from jurisdictions outside of South Carolina. See *State Farm Mut. Auto. Ins. Co. v. Goyeneche*, 837 S.E.2d 910, 917, 837 S.E.2d 910, 917 (Ct. App. 2019) ("When there is no South Carolina case directly on point, our courts may look to persuasive authority from other jurisdictions.").

30. According to the Town, Paragraph 72 incorrectly holds that the Town was required to exercise its legislative authority only in a way to favor a party to a contract. The Town's objection to Paragraph 72 is misguided and overstated. First, Paragraph 72 does not hold that "the Town was required to exercise its legislative authority only in a way to favor a party to a contract." Instead, it states the uncontroversial proposition that the Town had a duty of good faith and fair dealing to take reasonable steps to fulfill the purpose of the parking license agreement and to avoid taking actions that interfered with the purpose of the parking license agreement. Second, Paragraph 72 is not based on any legal principle that interferes or hinders a governmental entity's legislative authority. To be sure, the Court's order in no way invalidates any of the actions

challenged in this lawsuit. The Court's ruling is simple: If a local government enters into a contract, it can either perform under the contract or not. But if it refuses to perform or takes other actions to interfere with that contract, it is subject to civil liability, just like any private party. This is not an error of law but rather the application of general principles of contract law to a governmental entity.

31. The Town objects to Paragraph 74 as an error of law that disregards material terms of the parking license agreement. The Town's objection to Paragraph 74 has no merit because the Court made clear in Paragraph 76 that it need not determine whether the parking license agreement required SCDG to design the garage with no less than 276 total spaces.

32. In Paragraph 41 of its Motion, the Town contends that the Court committed an error of law by admitting evidence in the record. However, there was no error in the Court's admission of evidence during trial. The Supreme Court's ruling in *Brown v. Allstate Ins. Co.* is clear: "A trial judge's role in a bench trial is to admit all evidence and then evaluate in a non-jury setting." *Id.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001). This is exactly what the Court did in this case. Furthermore, the Town's objection is based on a mischaracterization of the Court's ruling. The Court did not conclude "that 276 parking spaces was never a material term of the Agreement" as the Town claims. Instead, the Court ruled that SCDG's design with 234 total spaces and 117 public spaces was not a material breach of the agreement. The distinction between "material term" and "material breach" is important and ultimately dooms the Town's argument.

33. The Town argues that Paragraph 75 incorrectly holds that 276 parking spaces was not a material term of the parking license agreement. But the Court did not rule that 276 parking spaces was not a material term as the Town claims. The Town obviously confuses the concept of "material term" with "material breach." A breach of a "material term" of a contract can be so

insubstantial that it does not constitute a “material breach.” As concluded in Paragraph 75, SCDG’s approved design gave the Town substantially all that it bargained for in the parking license agreement.

34. The Town makes numerous objections to the Court’s materiality analysis in Paragraphs 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89. The Town’s objections to the Court’s materiality analysis is unpersuasive. First, the Town incorrectly suggests that the materiality analysis under *Kiriakides* does not apply to this case because *Kiriakides* involved a commercial lease agreement. But, as stated in Paragraph 79 of the order, the materiality factors set forth in *Kiriakides* apply to contracts beyond commercial leases as confirmed by *Palmetto Mortuary Transp., Inc. v. Knight Sys.*, 424 S.C. 444, 462-63, 818 S.E.2d 724, 734-35, fn. 5 (2018). Second, the conclusory arguments presented by the Town to counter the Court’s materiality analysis ignores nearly all evidence on which the Court relies. Materiality was the most important issue at trial, and the Court devotes fourteen paragraphs and over five pages to addressing that issue in the Order. Yet the Town has not addressed the specific findings regarding materiality and, instead, summarily dismisses the ruling on this issue in one paragraph by repeating the same conclusory findings that it submitted in its proposed order. This is simply insufficient to warrant reconsideration of the Court’s conclusions regarding materiality.

35. According to the Town, Paragraph 81 incorrectly identifies the concept of “adequacy” to inappropriately alter the written, material terms in the Agreement and, inexplicably, attributes more significance to this judicially manufactured term than to an unambiguously stated material term. The Town complains that “adequacy” of spaces is a “judicially manufactured term,” but it is actually a common-sense approach to determining whether SCDG’s approved design deprived the Town of the benefits it bargained for in the parking license agreement. The Town

sought additional parking to serve the parking demand for the Shem Creek area, and determining whether the proposed parking spaces would have provided that benefit necessarily involves analyzing the demand for parking that existed and whether SCDG's proposal could adequately satisfy that demand. Because that analysis does not favor the Town, it seeks to limit the analysis of the alleged deprivation of benefits to the percentage of reduction in total spaces. The Town's sole focus on the percentage deficiency in the number of total spaces does not accord with the analysis required under *Kiriakides*. As stated in the *Restatement (2d) of Contracts* § 241, which was adopted under *Kiriakides*, the first factor requires that "all relevant circumstances must be considered" in determining whether the injured party has been deprived of the benefit to which it reasonably expected. *See also, U.S. ex rel. Virginia Beach Merch. Srvs., Inc. v. Samco Constr. Co.*, 39 F. Supp. 2d 661, 671 (E.D. Va. 1999) (declaring that "principles of contract law do not rely on 'percentages alone' to discern between a material and minor breach") (citing *Restatement (2d) of Contracts* § 275). By focusing solely on the total space reduction percentage, the Town disregards the many benefits that the Town expected to receive from the parking license agreement. Thus, the Court appropriately conducted the materiality analysis by reviewing, among other factors, the adequacy of the spaces that SCDG designed.

36. The Town alleges that Paragraph 87 incorrectly states facts regarding the feasibility of a third level of parking in the garage. Contrary to the Town's argument, Paragraph 87 correctly states the facts about the feasibility of another level of parking and its impact on the project, and it is supported by the exhibits and trial testimony. (See Def.'s Ex. 22; Tr. 396:8-397:16, 343:5-16, 755:9-756:2.)

37. The Town claims that Paragraphs 90-93 incorrectly state facts regarding the Town's action that prevented SCDG from performing under the parking license agreement. The Town's

objections have no merit. SCDG's concept plan was based on reasonable assumptions regarding its ability to reduce applicable setbacks and the permitted width of parking spaces. Although those assumptions were upended by the Town's zoning amendments and refusal to accommodate reasonable alternatives proposed by SCDG, SCDG, nevertheless, delivered an approved design with 89% of the initially anticipated number of public spaces. If the Town had cooperated with SCDG and approved reasonable measures to increase space, SCDG could have delivered approximately 270 total spaces (and possibly 276 total spaces), as Mr. Johnston testified. (Tr. 758:2-15.)

38. In response to Paragraphs 94-104, the Town objects to the Court's interpretation of the parking license agreement based on the same arguments that it raised numerous times both prior to and after trial. The Court has carefully considered these arguments on numerous occasions, and the Town has failed to provide any good reason for the Court to reconsider its prior rulings.

For the foregoing reasons, the Town's Motions for New Trial and to Reconsider, Alter or Amend Order is denied.

IT IS SO ORDERED.

_____, 2020

Charleston, South Carolina

The Honorable Maite Murphy



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South
Carolina Town of The

Case Number: 2017CP1005493

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2020-09-16 17:02:16 page 15 of 15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	ORDER AWARDING PLAINTIFF
	)	ATTORNEY FEES AND COSTS
vs.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

This matter comes before the Court upon the submission of affidavits of counsel in support of Plaintiff Shem Creek Development Group, LLC's ("SCDG") requests for an award of attorneys' fees and costs in this action. After careful consideration of the law and evidence presented in the above-mentioned affidavits, this Court hereby GRANTS SCDG's request for attorneys' fees and costs based on the following findings:

1. SCDG and the Town of Mount Pleasant were parties to the parking license agreement, which was the subject of this litigation. Section 6.01 of the parking license agreement provides that "the prevailing party in any dispute shall be entitled to an award of costs and attorney's fees, including the costs of trial and any appeals."

2. On July 13, 2020, this Court issued an order awarding judgment in favor of SCDG on its claim of breach of contract arising under the parking license agreement. In Paragraph 104 of the order, the Court ruled that SCDG, as the prevailing party in this action, was entitled to an award of all costs and attorneys' fees associated with this dispute, including the cost of trial. Thus, SCDG was instructed to submit an affidavit of costs and attorneys' fees it sought to be awarded in this action.

3. On August 11, 2020, SCDG's counsel, Brandon Gaskins, submitted an affidavit of attorneys' fees and costs, which was supplemented on September 17, 2020 by a supplemental affidavit of Mr. Gaskins and an affidavit of Hamlin O'Kelley of the law firm of Buist Byars & Taylor. Based on these affidavits, the total amount of fees and costs sought by SCDG equals Two Hundred Ninety-Eight Thousand Nine Hundred Sixty-Five and 22/100 Dollars (\$298,965.22).

4. Under *Baron Data Systems, Inc. v. Loter*, 297 SC 382, 377 S.E.2d 296 (1989), and *Blumberg v. Nealco*, 310 SC 482, 427 S.E.2d 659 (Ct. App. 1993), there are six factors to be considered in determining the reasonableness of a fee: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) the fee customarily charged in the location for similar services; and (6) the beneficial results obtained.

5. Upon the analysis of the fees and costs sought by SCDG in this case under the above factors and based on upon my knowledge of and experience with the case, the Court concludes that SCDG's requested costs and fees are reasonable for the following reasons: (1) the matter was highly disputed and involved complex issues of contract and municipal law, a significant amount in controversy, a large volume of documents produced during discovery, and multiple discovery disputes; (2) the matter was litigated through trial and post-trial motions for nearly three years; (3) SCDG's counsel are lawyers in good standing with the South Carolina Bar, have never been involved any disciplinary proceedings, and have good reputations among other lawyers in the area who practice commercial litigation and transactions; (4) the matter was not based on a contingency arrangement, but the amount billed is less than what would be payable under a typical contingency fee arrangement of 33.3% or 40% of the award; (5) the hourly rates of the relevant lawyers were within the range of hourly rates customarily charged by attorneys of

similar experience who practice in the Charleston area; and (6) SCDG obtained the beneficial result of a recovery in the full amount sought at trial.

IS THEREFORE ORDERED that SCDG is awarded attorneys' fees and costs in the amount of Two Hundred Ninety-Eight Thousand Nine Hundred Sixty-Five and 22/100 Dollars (\$298,965.22).

AND IT IS SO ORDERED.

The Honorable Maite Murphy

January _____, 2021

_____, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-05493

Shem Creek Development Group, LLC

The Town of Mount Pleasant, South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: E. Brandon Gaskins

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Shem Creek Development Group, LLC	The Town of Mount Pleasant, South Carolina	\$298,965.22
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

It is ordered that Plaintiff Shem Creek Development Group, LLC is awarded actual damages in the amount of \$2,604,316.00 and attorneys' fees and costs in the amount of \$298,965.22. Total judgment amount is \$2,903,281.22.

This judgment is effective as of July 13, 2020.

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

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

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

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

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



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South Carolina Town of The

Case Number: 2017CP1005493

Type: Order/Judgment and Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2021-01-07 17:42:49 page 9 of 9

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1005493

Shem Creek Development Group LLC
PLAINTIFF(S)

Mount Pleasant South Carolina Town of The 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure, this Court defers ruling on the Defendant's Motion to Vacate or Otherwise Alter or Amend the Court's January 11, 2021, Order Awarding Plaintiff Attorney's Fees, until the appeal of this case is complete.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/12/2021 .

Mount Pleasant Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South Carolina Town of The

Case Number: 2017CP1005493

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

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2017-CP-10-5493

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT

)

CIVIL ACTION NO.: 2017-CP-10-

Shem Creek Development Group, LLC,

)

Plaintiff,

)

)

v.

)

)

Town of Mount Pleasant, South Carolina,

)

)

Defendant.

)

)

)

)

)

COMPLAINT

FILED
2017 OCT 23 PM 4:11
CLERK OF COURT

Plaintiff Shem Creek Development Group, LLC, complaining of Defendant Town of Mount Pleasant, South Carolina, alleges as follows:

INTRODUCTION

1. This lawsuit arises from the Town of Mount Pleasant's refusal to honor its contractual obligations. In 2013, the Town of Mount Pleasant entered into an agreement to rent public spaces in a parking deck to be developed by Shem Creek Development Group. Soon after the Town committed to support the development of the parking deck, a vocal group of opponents engaged in a deliberate campaign to kill the project through political pressure exerted on Town Council and other means. Rather than staying true to its commitment, the Town buckled to the pressure from the opponents of the parking deck by intentionally attempting to prevent the parking deck from being completed. Despite the efforts of the Town and its Council to kill the project, Shem Creek Development Group completed the parking deck in accordance with its agreement with the Town. However, the Town has refused to honor its contractual commitments and pay rent as it promised.

THE PARTIES

2. Plaintiff Shem Creek Development Group, LLC (“Plaintiff”) is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

3. Defendant Town of Mount Pleasant (the “Town”) is a municipal corporation organized and existing under the laws of the State of South Carolina with corporate limits within Charleston County, South Carolina.

VENUE AND JURISDICTION

4. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30.

5. This Court has subject matter jurisdiction concerning such matters pursuant to Article 5 of the South Carolina Constitution.

6. This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803.

FACTS

7. In the Town’s Comprehensive Plan, the Town recognizes Shem Creek as an important asset to the Town, home to both industrial and commercial activities. Although Shem Creek has been the home to the shrimping industry in Mount Pleasant, it also serves as “a destination for tourists and locals, who enjoy a series of restaurants fronting the creek.” To promote Shem Creek as a destination and to increase public access to Shem Creek, the Town developed a public park, which includes approximately 1,000 feet of pier along Shem Creek and is accessible off of Coleman Boulevard, which passes over Shem Creek.

8. To facilitate increased public access to Shem Creek’s restaurants and public park, the Town actively promoted improvements along Shem Creek, including additional parking. For

example, the Town's Coleman and Ben Sawyer Boulevards Revitalization Master Plan identifies a site located near Shem Creek on the corner of Coleman Boulevard and Mill Street as a "Parking Deck Opportunity." In the Coleman and Ben Sawyer Boulevards Revitalization Master Plan, the Town declared, "It is highly recommended that developers consider the viability of providing structured parking within their sites or shared between sites. It is further recommended that the Town pursue opportunities to provide parking decks either as sole owner/operator or as some type of private/public partnership."

9. In response to the growing need for parking, Plaintiff pursued the development of a parking deck near Shem Creek on the corner of Coleman Boulevard and Mill Street (the "Site"), which was the same site that had been identified by the Town as a "Parking Deck Opportunity" in the Town's Coleman and Ben Sawyer Boulevards Revitalization Master Plan. Plaintiff's pursuit of the development of the parking deck was supported by the Town because it was consistent with the Town's goal of increasing public access to Shem Creek, improving and increasing parking opportunities, and redeveloping the Coleman and Ben Sawyer Boulevards corridor in accordance with the Coleman and Ben Sawyer Boulevards Revitalization Master Plan.

10. As a result of the Town's and Plaintiff's common interest in developing the Site as a parking deck, Plaintiff and the Town began negotiations in 2013 to enter into a public-private partnership for the development.

11. On October 8, 2013, the Town's Council adopted a resolution approving the Town's entry into a license agreement with Plaintiff to reserve parking spaces in Plaintiff's proposed parking deck.

12. On October 17, 2013, the Town and Plaintiff executed and entered into a parking license agreement (the "Parking License Agreement"), which described the parking deck project

as consisting of “a multi-level structured parking garage, comprised of 276 total parking spaces and a proposed office complex.” Under the Parking License Agreement, 132 spaces were designated for public use (the “Public Spaces”), and 144 spaces were reserved for private use (the “Reserved Spaces”). The Public Spaces were intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek waterfront and to provide parking for existing local businesses.

13. In consideration for Plaintiff’s provision of the Public Spaces, the Town agreed, pursuant to Section 1.07 of the Parking License Agreement, to pay Plaintiff annual rent in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000) for fifteen (15) years, for a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000).

14. Soon after the Town entered into the Parking License Agreement, opposition to Plaintiff’s proposed parking deck began to mount from Save Shem Creek, an anti-development political organization, and certain residents of the Old Village in Mount Pleasant. The opponents of the parking garage initiated a campaign to prevent the construction of the parking deck and to stop the Town from providing any funds to Plaintiff under the Parking License Agreement.

15. As a result of growing opposition to Plaintiff’s plans for the parking deck, the Town began exploring ways to escape its contractual obligations under the Parking License Agreement. However, because the Town feared a potential lawsuit that would follow if it terminated the Parking License Agreement unilaterally, it sought to undermine the economic and practical feasibility of the development rather than terminate the Parking License Agreement directly.

16. During the Town’s Council meeting on April 8, 2014, Town Council adopted a zoning ordinance designed to interfere with the development of the parking deck and hinder Plaintiff’s ability to design the parking deck in a manner which would allow it to provide all 276

spaces envisioned under the Parking License Agreement. Specifically, the Town adopted Ordinance No. 14022, which changed the setbacks specifically for Mill Street, where the parking deck was to be located, and eliminated language allowing setbacks to be reduced to no less than five feet if certain conditions were met.

17. Although the Parking License Agreement attached and incorporated Plaintiff's plan for the parking deck, the Town took the position that the changes adopted pursuant to Ordinance No. 14022 after the parties had entered into the Parking License Agreement applied to the development of the parking deck. The Town adopted this interpretation knowing that such interpretation would have a negative impact on Plaintiff's project and ability to provide all 276 spaces envisioned under the Parking License Agreement.

18. In an attempt to accommodate the changes in the design necessitated by the Town's adoption of the zoning changes in Ordinance No. 14022, Plaintiff requested that the Town apply a five foot rear setback for the project based on the fact that it abutted an abandoned street which was being used for a parking lot rather than a public street. Although the Town had not performed maintenance on the street, it claimed that the abandoned street was nevertheless a "street" as defined by the Town's Code of Ordinances because the Town was responsible for maintaining it.

19. As a result of the Town's adoption of Ordinance No. 14022 and its interpretation regarding the application of the zoning changes to the development, Plaintiff was forced, at considerable expense, to redesign the parking deck to comply with the requirements imposed by the Town under its interpretation and application of Ordinance No. 14022. Based on the requirements imposed by the Town, Plaintiff's redesigned parking deck consisted of 234 total parking spaces.

20. On September 24, 2014, Plaintiff's redesigned proposed office building and parking deck received approval from the Town's Design Review Board based on the redesigned plan.

21. On November 11, 2014, Town Administrator Eric DeMoura sent a letter to Plaintiff's legal counsel of his opinion that Plaintiff's plan for the parking deck did not satisfy the obligations under the Parking License Agreement because the plan did not include 276 Public Spaces available during non-business hours and did not include 132 Public Spaces during business hours. In his letter, DeMoura explained that his letter and the positions stated therein "should not be considered binding or final as Town Council has the sole authority to decide policy matters."

22. After receiving Mr. DeMoura's letter, Plaintiff proposed an amendment to the Parking License Agreement to provide for fewer total parking spaces and fewer Public Spaces in the parking deck than initially envisioned under the Parking License Agreement and reduced rent to be paid by the Town. However, the Town refused to consider Plaintiff's proposed amendment to the Parking License Agreement.

23. On February 10, 2015, Town Council voted to approve the opinions stated in Mr. DeMoura's letter to Plaintiff's legal counsel of November 11, 2014 and to refuse to honor the Town's obligations to pay rent to Plaintiff as required under the Parking License Agreement. Although the purported basis for refusing to pay rent in accordance with the Parking License Agreement was that Plaintiff could not provide the number of Public Spaces required under the Parking License Agreement, the Town admitted that Plaintiff's proposed project included 334 total spaces, with 234 spaces in the parking deck and 100 surface parking spaces. Nevertheless, the Town claimed that Plaintiff's plan did not provide sufficient Public Spaces because those spaces were required to be used by the neighboring restaurants located on the Shem Creek waterfront.

This position was contrary to the Town's prior position that the Public Spaces envisioned under Plaintiff's proposed project would be available for use by those same restaurants and would count towards the amount of Public Spaces required by the Parking License Agreement.

24. The Town's decision to refuse to honor its contractual obligation to pay rent to Plaintiff in accordance with the Parking License Agreement was based on pretextual grounds. The Town's actual reason for refusing to pay rent to Plaintiff was to deny a revenue source to Plaintiff's proposed project, thereby rendering it economically unfeasible and placating the vocal opposition to the project.

25. Despite the Town's denial of an anticipated revenue source to support the project, Plaintiff was able to obtain necessary financing to develop the project by entering into a joint venture with a capital partner.

26. On or around October 10, 2014, Plaintiff requested that the Town provide an estoppel certificate as required by Section 7.04 of the Parking License Agreement. The Town, however, refused to honor the requested estoppel certificate.

27. Plaintiff commenced construction on the office building and parking deck on or about November 5, 2015. Although Section 1.07(a) of the Parking License Agreement required the Town to pay rent for the first year upon the commencement of construction, the Town did not make the required rental payment in violation of the Parking License Agreement.

28. During construction of the project, Town Council explored the possibility of condemning the site of the parking deck project through the Town's exercise of eminent domain in an effort to prevent the completion of the project. However, those efforts ultimately failed, and Plaintiff, through its joint venture, completed construction on the office building and parking deck and received its final certificate of occupancy in 2017.

29. The parking deck opened for business on February 8, 2017. Since that date, Plaintiff's project has provided 234 total parking spaces, including 117 Public Spaces in substantial performance of its obligations under the Parking License Agreement. However, the Town has failed to pay any rent to Plaintiff in breach of its obligations under the Parking License Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

30. Plaintiff realleges and incorporates the allegations contained in the aforementioned paragraphs as if fully and completely set forth herein verbatim.

31. The Parking License Agreement is a valid contract between Plaintiff and the Town.

32. Section 1.07 of the Parking License Agreement requires the Town to pay to Plaintiff annual rent in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000) for fifteen (15) years, for a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000).

33. Plaintiff fully or substantially performed its obligation to provide Public Spaces under the Parking License Agreement. Despite Plaintiff's performance, the Town breached Section 1.07 of the Parking License Agreement by failing to pay rent.

34. Section 3.04 of the Parking License Agreement requires the Town to accept the Premises if constructed in a manner substantially similar to Plaintiff's conceptual plan for the Premises.

35. Plaintiff constructed the Premises in a substantially similar manner to its conceptual plan, and the Town breached Section 3.04 by failing to accept the Premises.

36. Section 7.04 of the Parking License Agreement required the Town to provide Plaintiff with an estoppel certificate on request.

37. Plaintiff requested that the Town provide an estoppel certificate, and the Town breached Section 7.04 of the Parking License Agreement by refusing to provide such estoppel certificate as requested by Plaintiff.

38. The Parking License Agreement contains an implied covenant of good faith and fair dealing, which required the Town to avoid doing anything to impair Plaintiff's rights to receive benefits under the Parking License Agreement.

39. The Town breached the implied covenant of good faith and fair dealing by taking actions deliberately designed to prevent Plaintiff from developing the parking deck as envisioned under the Parking License Agreement and receiving rent thereunder, including (a) adopting zoning amendments that forced Plaintiff to redesign the parking deck and provide fewer spaces than originally planned; (b) requiring larger parking spaces than originally proposed by Plaintiff; (c) refusing to agree that Plaintiff's redesigned plan for the parking deck was "substantially similar" to the plan as envisioned under the Parking License Agreement; (d) refusing to consider a proposed amendment to the Parking License Agreement; (e) refusing to provide an estoppel certificate as requested by Plaintiff; (f) making public statements regarding the economic unfeasibility of the parking deck that made it more difficult for Plaintiff to obtain necessary financing to develop the project; (g) receiving and relying on confidential information improperly obtained by opponents of the project without authorization to concoct pretextual grounds for its failure to honor its contractual obligations; (h) adopting unfavorable interpretations of zoning ordinances to hinder Plaintiff's ability to develop the project; and (i) exploring possible condemnation of the project site to prevent its development and completion.

40. To the extent that Plaintiff failed to provide sufficient Public Spaces and fully satisfy its obligations under the Parking License Agreement, Plaintiff's failure to perform is

excused under the doctrines of impossibility and commercial frustration because the Town rendered Plaintiff's performance impossible.

41. To the extent that Plaintiff failed to provide sufficient Public Spaces and fully satisfy its obligations under the Parking License Agreement, Plaintiff's failure to perform is excused under Section 2.06 of the Parking License Agreement, which provides that a party shall not be deemed in default with respect to any terms, covenants, or conditions if such default arises from government regulations or controls.

42. As a result of the Town's breaches of the Parking License Agreement, the Town is in default, and Plaintiff is entitled to the rent owed to it by the Town in accordance with Section 6.01 of the Parking License Agreement.

43. As a result of the Town's breaches of the Parking License Agreement, Plaintiff had to cure such breaches, and Plaintiff is entitled to costs incurred to cure such breaches in accordance with Section 6.02 of the Parking License Agreement.

44. Under Section 6.01 of the Parking License Agreement, Plaintiff is entitled costs and attorneys' fees arising from this litigation.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

45. Plaintiff realleges and incorporates the allegations contained in the aforementioned paragraphs as if fully and completely set forth herein verbatim.

46. Plaintiff provided a benefit to the Town in the form of increased public parking spaces available for the public park and restaurants along Shem Creek.

47. The Town has realized the benefit of increased public parking by making the public park and restaurants along Shem Creek more accessible, which has consequently increased tax

revenues for the Town and obviated the need for the Town to make improvements and expenditures for more parking opportunities along Shem Creek.

48. The retention by the Town of the benefits of increased public parking conferred upon it by Plaintiff would be unjust because Plaintiff developed the parking deck project under the reasonable expectation that the Town would pay rent for public parking spaces provided in the parking deck.

49. As a result of the Town being unjustly enriched by Plaintiff's provision of increased public parking along Shem Creek, Plaintiff is entitled to be compensated for the value of providing such public spaces.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. An award of all rent payments due under the Parking License Agreement, or in the alternative, the value of the spaces provided by Plaintiff to the Town;
2. An award for costs incurred to cure the breaches of the Parking License Agreement by the Town;
3. An award of Plaintiff attorneys' fees and costs associated with this matter pursuant to Section 6.01 of the Parking License Agreement; and/or
4. An award of all other appropriate relief as is just and proper under the circumstances.

Dated: October 23, 2017
Charleston, South Carolina

E. B. A. M.

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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

SHEM CREEK DEVELOPMENT GROUP,
LLC,

Case No. 2017-CP-10-5493

Plaintiffs,

ANSWER

vs.

TOWN OF MT. PLEASANT,

Defendants.

FILED
2017 DEC 27 AM 9:26
CLERK OF COURT
JULIE A. HANCOCK

TO: E. BRANDON GASKINS, ATTORNEY FOR PLAINTIFF:

The Defendants responding to the **Complaint** of the Plaintiffs, above named, allege, and say as follows:

FIRST DEFENSE

1. **Complaint:** This lawsuit arises from the Town of Mount Pleasant's refusal to honor its contractual obligations. In 2013, the Town of Mount Pleasant entered into an agreement to rent public spaces in a parking deck to be developed by Shem Creek Development Group. Soon after the Town committed to support the development of the parking deck, a vocal group of opponents engaged in a deliberate campaign to kill the project through political pressure exerted on Town Council and other means. Rather than staying true to its commitment, the Town buckled to the pressure from the opponents of the parking deck by intentionally attempting to prevent the parking deck from being completed. Despite the efforts of the Town and its Council to kill the project, Shem Creek Development Group completed the parking deck in accordance with its agreement with the Town. However, the Town has refused to honor its contractual commitments and pay rent as it promised.

ANSWER: The Defendant admits that in 2013 the Town of Mount Pleasant and Shem Creek Development Group entered into an agreement which related to the rental of a specified number of public parking spaces, subject to expressed and implied terms, conditions, and limitations. The Defendant further admits that this lawsuit generally relates to this agreement. The Defendant acknowledges that the parking garage was the object of opposition by town residents. The Defendant further acknowledges that the project appears to have been completed in some measure but denies that it was completed in accord with the agreement. All remaining or inconsistent allegations in paragraph 1 are denied and the Plaintiff is put to its proof thereof.

THE PARTIES

2. **Complaint:** Plaintiff Shem Creek Development Group, LLC ("Plaintiff") is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

ANSWER: The Defendant admits the allegations of paragraph 2.

3. **Complaint:** Defendant Town of Mount Pleasant (the "Town") is a municipal corporation organized and existing under the laws of the State of South Carolina with corporate limits within Charleston County, South Carolina.

ANSWER: The Defendant admits the allegations of paragraph 3.

VENUE AND JURISDICTION

4. **Complaint:** Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30.

ANSWER: The Defendant admits that venue is proper in this court.

5. **Complaint:** This Court has subject matter jurisdiction concerning such matters pursuant to Article 5 of the South Carolina Constitution.

ANSWER: The Defendant admits that this court has subject matter jurisdiction.

6. **Complaint:** This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803.

ANSWER: The Defendant admits that this court has personal jurisdiction over the parties.

FACTS

7. **Complaint:** In the Town's Comprehensive Plan, the Town recognizes Shem Creek as an important asset to the Town, home to both industrial and commercial activities. Although Shem Creek has been the home to the shrimping industry in Mount Pleasant, it also serves as "a destination for tourists and locals, who enjoy a series of restaurants fronting the creek." To promote Shem Creek as a destination and to increase public access to Shem Creek, the Town developed a public park, which includes approximately 1,000 feet of pier along Shem Creek and is accessible from Coleman Boulevard, which passes over Shem Creek.

ANSWER: The Defendant admits that the Town recognizes Shem Creek as an asset to the community and that citizens, as well as tourists, frequent restaurants along this waterway. The Defendant further admits that it developed a public park, which includes a pier access to Coleman Boulevard. Upon information and belief, the Coleman Boulevard revitalization efforts promote the public enjoyment of the Creek and compliment the Creek's natural beauty and the health of its businesses, particularly of the shrimp fleet and other commercial fishing vessels. As to the remainder of the allegations in paragraph 7, these are denied, and the Plaintiff is put to its proof thereof.

8. **Complaint:** To facilitate increased public access to Shem Creek's restaurants and public park, the Town actively promoted improvements along Shem Creek, including additional

parking. For example, the Town's Coleman and Ben Sawyer Boulevards Revitalization Master Plan identifies a site located near Shem Creek on the corner of Coleman Boulevard and Mill Street as a "Parking Deck Opportunity." In the Coleman and Ben Sawyer Boulevards Revitalization Master Plan, the Town declared, "It is highly recommended that developers consider the viability of providing structured parking within their sites or shared between sites. It is further recommended that the Town pursue opportunities to provide parking decks either as sole owner/operator or as some type of private/public partnership."

ANSWER: The Defendant admits that it is important for the architectural integrity of the overlay district that these parking decks fit in with the surrounding architecture of the area and not be strictly utilitarian in their design. The design should respect and reflect the unique qualities of Mount Pleasant architecture. Also, where parking decks front the boulevards, retail or other commercial uses shall be required at street level so that the presence of parking decks does not detract from the life and vitality of the street. All other or inconsistent allegations in paragraph 8 are denied and the Plaintiff is put to its proof thereof.

9. **Complaint:** In response to the growing need for parking, Plaintiff pursued the development of a parking deck near Shem Creek on the corner of Coleman Boulevard and Mill Street (the "Site"), which was the same site that had been identified by the Town as a "Parking Deck Opportunity" in the Town's Coleman and Ben Sawyer Boulevards Revitalization Master Plan. Plaintiff's pursuit of the development of the parking deck was supported by the Town because it was consistent with the Town's goal of increasing public access to Shem Creek, improving and increasing parking opportunities, and

redeveloping the Coleman and Ben Sawyer Boulevards corridor in accordance with the Coleman and Ben Sawyer Boulevards Revitalization Master Plan.

ANSWER: The Defendant admits that there may have been a need for parking along Coleman Boulevard and that the Defendant had a goal of increasing access to Shem Creek for the public. The Defendant also admits that it is important for the architectural integrity of the overlay district that these parking decks fit in with the surrounding architecture of the area and not be strictly utilitarian in their design. The design should respect and reflect the unique qualities of Mount Pleasant architecture. Also, where parking decks front the boulevards, retail or other commercial uses shall be required at street level so that the presence of parking decks does not detract from the life and vitality of the street. As to all remaining allegations in paragraph 9, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

10. **Complaint:** Because of the Town's and Plaintiffs common interest in developing the Site as a parking deck, Plaintiff and the Town began negotiations in 2013 to enter into a public-private partnership for the development.

ANSWER: The Defendant admits that for a valid public purpose it began negotiating an agreement with the Plaintiff in 2013. The Defendant specifically denies that there was a public-private partnership or that such a partnership was the object of any negotiations. The Defendant specifically denies that there was a public-private partnership or that such a partnership was the object of any negotiations. In fact, section 8.05 of the Agreement specifically provides that not a partnership. As to the remaining allegations in paragraph 10, the Defendant alleges a lack of information and knowledge sufficient to form a belief as

to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

11. **Complaint:** On October 8, 2013, the Town's Council adopted a resolution approving the Town's entry into a license agreement with Plaintiff to reserve parking spaces in Plaintiffs proposed parking deck.

ANSWER: The Defendant admits that on or about October 8, 2013, Town Council adopted a resolution concerning a license agreement related to the parking garage. The Defendant denies all remaining or inconsistent allegations in paragraph 11 and puts the Plaintiff to its proof thereof.

12. **Complaint:** On October 17, 2013, the Town and Plaintiff executed and entered into a parking license agreement (the "Parking License Agreement"), which described the parking deck project as consisting of "a multi-level structured parking garage, comprised of 276 total parking spaces and a proposed office complex." Under the Parking License Agreement, 132 spaces were designated for public use (the "Public Spaces"), and 144 spaces were reserved for private use (the "Reserved Spaces"). The Public Spaces were intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek waterfront and to provide parking for existing local businesses.

ANSWER: The Defendant admits that on or about October 14, 2013, the Town and the Plaintiff entered into an agreement, which is in writing, and speaks for itself and contains various terms, conditions, and limitations which more accurately describe its contents. As to the remainder of the allegations contained in paragraph 12, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

13. **Complaint:** In consideration for Plaintiff's provision of the Public Spaces, the Town agreed, pursuant to Section 1.07 of the Parking License Agreement, to pay Plaintiff annual rent in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000) for fifteen (15) years, for a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000).

ANSWER: The Defendant admits that Parking License Agreement is in writing and contains various terms, conditions and limitations which, in combination, determine the potential obligations of the Parties. As to the remaining allegations in paragraph 13, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

14. **Complaint:** Soon after the Town entered into the Parking License Agreement, opposition to Plaintiff's proposed parking deck began to mount from Save Shem Creek, an anti-development political organization, and certain residents of the Old Village in Mount Pleasant. The opponents of the parking garage initiated a campaign to prevent the construction of the parking deck and to stop the Town from providing any funds to Plaintiff under the Parking License Agreement.

ANSWER: The Defendant admits that there was opposition to the License Agreement. As to the allegations in paragraph 14, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

15. **Complaint:** Because of growing opposition to Plaintiff's plans for the parking deck, the Town began exploring ways to escape its contractual obligations under the Parking

License Agreement. However, because the Town feared a potential lawsuit that would follow if it terminated the Parking License Agreement unilaterally, it sought to undermine the economic and practical feasibility of the development rather than terminate the Parking License Agreement directly.

ANSWER: The Defendant denies the allegations in paragraph 15 and puts the Plaintiff to its proof thereof.

16. **Complaint:** During the Town's Council meeting on April 8, 2014, Town Council adopted a zoning ordinance designed to interfere with the development of the parking deck and hinder Plaintiffs' ability to design the parking deck in a manner which would allow it to provide all 276 spaces envisioned under the Parking License Agreement. Specifically, the Town adopted Ordinance No. 14022, which changed the setbacks specifically for Mill Street, where the parking deck was to be located, and eliminated language allowing setbacks to be reduced to no less than five feet if certain conditions were met.

ANSWER: The Defendant admits that on or about April 8, 2014 Town Council adopted Ordinance 14022 but denies it was designed to hinder or interfere with the development or design of the parking deck. Defendant further and specifically denies that the Plaintiff submitted to the Defendant any plans, drawing or specifications for the parking deck at any time prior to the adoption of Ordinance 14022. As to the remainder of the allegations contained in paragraph 16, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

17. **Complaint:** Although the Parking License Agreement attached and incorporated Plaintiff's plan for the parking deck, the Town took the position that the changes adopted

pursuant to Ordinance No. 14022 after the parties had entered into the Parking License Agreement applied to the development of the parking deck. The Town adopted this interpretation knowing that such interpretation would have a negative impact on Plaintiff's project and ability to provide all 276 spaces envisioned under the Parking License Agreement.

ANSWER: Defendant alleges that Plaintiff made a business decision to maximize profit at the expense of the creation of the required parking spaces. The Defendant also alleges that it was not aware that Plaintiff was unable or, more to the point, unwilling to create 276 spaces through design in its zeal to maximize profits. Further, the only attachment to the Parking License Agreement was a conceptual rendering of what the garage might look like from the exterior. As to the remainder of the allegations contained in paragraph 17, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

18. **Complaint:** In an attempt to accommodate the changes in the design necessitated by the Town's adoption of the zoning changes in Ordinance No. 14022, Plaintiff requested that the Town apply a five foot rear setback for the project based on the fact that it abutted an abandoned street which was being used for a parking lot rather than a public street. Although the Town had not performed maintenance on the street, it claimed that the abandoned street was nevertheless a "street" as defined by the Town's Code of Ordinances because the Town was responsible for maintaining it.

ANSWER: The Defendant admits that the Plaintiff, in some form, applied for a five-foot rear setback. The Defendant alleges that Church Street is, in all relevant respects, a public

street and was never abandoned. As to the remainder of the allegations contained in paragraph 18, the Defendant denies said allegations and puts the Plaintiff to its proof thereof.

19. **Complaint:** As a result of the Town's adoption of Ordinance No. 14022 and its interpretation regarding the application of the zoning changes to the development, Plaintiff was forced, at considerable expense, to redesign the parking deck to comply with the requirements imposed by the Town under its interpretation and application of Ordinance No. 14022. Based on the requirements imposed by the Town, Plaintiff's redesigned parking deck consisted of 234 total parking spaces.

ANSWER: The Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

20. **Complaint:** On September 24, 2014, Plaintiff's redesigned proposed office building and parking deck received approval from the Town's Design Review Board based on the redesigned plan.

ANSWER: The Defendant admits that on or about September 24, 2014 the Town's Design Review Board approved a plan for a building and parking garage. As to the remainder of the allegations contained in paragraph 20, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

21. **Complaint:** On November 11, 2014, Town Administrator Eric DeMoura sent a letter to Plaintiff's legal counsel of his opinion that Plaintiff's plan for the parking deck did not satisfy the obligations under the Parking License Agreement because the plan did not

include 276 Public Spaces available during non-business hours and did not include 132 Public Spaces during business hours. In his letter, DeMoura explained that his letter and the positions stated therein "should not be considered binding or final as Town Council has the sole authority to decide policy matters."

ANSWER: The Defendant admits that on or about November 11, 2014, Mr. Eric DeMoura sent a letter to counsel for the Plaintiff, and is the best evidence of its contents. As to remainder of the allegations contained in paragraph 21, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

22. **Complaint:** After receiving Mr. DeMoura's letter, Plaintiff proposed an amendment to the Parking License Agreement to provide for fewer total parking spaces and fewer Public Spaces in the parking deck than initially envisioned under the Parking License Agreement and reduced rent to be paid by the Town. However, the Town refused to consider Plaintiff's proposed amendment to the Parking License Agreement.

ANSWER: The Defendant admits that the Plaintiff proposed an amendment to the License Agreement which reduced the number of parking spaces and the rent to be paid by the Town. As to the remainder of the allegations contained in paragraph 22, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

23. **Complaint:** On February 10, 2015, Town Council voted to approve the opinions stated in Mr. DeMoura's letter to Plaintiffs legal counsel of November 11, 2014 and to refuse to honor the Town's obligations to pay rent to Plaintiff as required under the Parking License Agreement. Although the purported basis for refusing to pay rent in accordance

with the Parking License Agreement was that Plaintiff could not provide the number of Public Spaces required under the Parking License Agreement, the Town admitted that Plaintiff's proposed project included 334 total spaces, with 234 spaces in the parking deck and 100 surface parking spaces. Nevertheless, the Town claimed that Plaintiffs plan did not provide sufficient Public Spaces because those spaces were required to be used by the neighboring restaurants located on the Shem Creek waterfront. This position was contrary to the Town's prior position that the Public Spaces envisioned under Plaintiff's proposed project would be available for use by those same restaurants and would count towards the amount of Public Spaces required by the Parking License Agreement.

ANSWER: The Defendant admits that on or about February 10, 2015, the Town Council voted to support the position taken by Mr. DeMoura in his letter dated November 11, 2014.

As stated above, this letter was in writing and is the best and most accurate evidence of its contents. The Defendant alleges that the Plaintiff made a unilateral business decision to maximize its profits and not to design the building as to satisfy its obligations under the License Agreement. The Defendant further alleges that the Town's Ordinances clearly require that the adjacent restaurants supply a specified minimum number of parking spaces. As to the remainder of the allegations contained in paragraph 23, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

24. **Complaint:** The Town's decision to refuse to honor its contractual obligation to pay rent to Plaintiff in accordance with the Parking License Agreement was based on pretextual grounds. The Town's actual reason for refusing to pay rent to Plaintiff was to deny a revenue source to Plaintiffs proposed project, thereby rendering it economically

unfeasible and placating the vocal opposition to the project.

ANSWER: The Defendant denies the allegations contained in paragraph 24 and puts the Plaintiff to its proof thereof.

25. **Complaint:** Despite the Town's denial of an anticipated revenue source to support the project, Plaintiff was able to obtain necessary financing to develop the project by entering into a joint venture with a capital partner.

ANSWER: As to the allegations contained in paragraph 25, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

26. **Complaint:** On or around October 10, 2014, Plaintiff requested that the Town provide an estoppel certificate as required by Section 7.04 of the Parking License Agreement. The Town, however, refused to honor the requested estoppel certificate.

ANSWER: The Defendant admits that the Plaintiff on or about October 10, 2014, requested an estoppel certificate. As to the remainder of the allegations contained in paragraph 26, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

27. **Complaint:** Plaintiff commenced construction on the office building and parking deck on or about November 5, 2015. Although Section 1.07(a) of the Parking License Agreement required the Town to pay rent for the first year upon the commencement of construction, the Town did not make the required rental payment in violation of the Parking License Agreement.

ANSWER: The Defendant alleges that the Plaintiff failed to satisfy the terms and

conditions of the License Agreement and, as a result the Town did not make rental payments, which were conditioned on providing a specific number of public spaces. As to the remainder of the allegations contained in paragraph 27, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

28. **Complaint:** During construction of the project, Town Council explored the possibility of condemning the site of the parking deck project through the Town's exercise of eminent domain in an effort to prevent the completion of the project. However, those efforts ultimately failed, and Plaintiff; through its joint venture, completed construction on the office building and parking deck and received its final certificate of occupancy in 2017.

ANSWER: Defendant admits that the Plaintiff completed construction of the office building and parking deck and received a certificate of occupancy in 2017. As to the remainder of the allegations contained in paragraph 28, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

29. **Complaint:** The parking deck opened for business on February 8, 2017. Since that date, Plaintiff's project has provided 234 total parking spaces, including 117 Public Spaces in substantial performance of its obligations under the Parking License Agreement. However, the Town has failed to pay any rent to Plaintiff in breach of its obligations under the Parking License Agreement.

ANSWER: The Defendant admits that the parking deck has opened and is operating, and that the Defendant is not obligated to make any payments to the Plaintiff. The Defendant denies that the Plaintiff substantially performed its obligations under the Parking License

Agreement; in fact, the Plaintiff admits it has failed to satisfy the terms of the Agreement by not providing the specified number of public spaces. As to the remainder of the allegations contained in paragraph 29, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and puts the Plaintiff to its proof thereof.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

30. **Complaint:** Plaintiff realleges and incorporates the allegations contained in the aforementioned paragraphs as if fully and completely set forth herein verbatim.

ANSWER: The Defendant incorporates by reference all ANSWERs to aforementioned paragraphs as if fully set forth herein.

31. **Complaint:** The Parking License Agreement is a valid contract between Plaintiff and the Town.

ANSWER: The Defendant admits above that the Town signed the License Agreement and that said Agreement is in writing and subject to specific terms, conditions, and limitations. The Defendant further alleges that the Plaintiff failed to perform and satisfy specific terms of the Agreement because it made a business decision to maximize its profits and not provide the specific number of public spaces required by the Agreement. Whether the Agreement is “valid” is a matter of law and need not be addressed in this ANSWER. All other allegations in paragraph 31 are denied and the Plaintiff put to its proof thereof.

32. **Complaint:** Section 1.07 of the Parking License Agreement requires the Town to pay to Plaintiff annual rent in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000) for fifteen (15) years, for a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000).

ANSWER: The Defendants alleges that the Plaintiff refused to satisfy the terms of the Agreement, made a business decision to maximize its profits at the expense of providing the Agreement specific number of public spaces, but otherwise admits the allegations of paragraph 32.

33. **Complaint:** Plaintiff fully or substantially performed its obligation to provide Public Spaces under the Parking License Agreement. Despite Plaintiff's performance, the Town breached Section 1.07 of the Parking License Agreement by failing to pay rent.

ANSWER: The Defendant denies the allegations of paragraph 33.

34. **Complaint:** Section 3.04 of the Parking License Agreement requires the Town to accept the Premises if constructed in a manner substantially similar to Plaintiff's conceptual plan for the Premises.

ANSWER: The Defendant alleges that the Town was in no way required to accept fiduciary responsibility for non-compliance and nonperformance of a material term of the Agreement, and, therefore, denies the allegations contained in paragraph 34 and puts the Plaintiff to its proof thereof.

35. **Complaint:** Plaintiff constructed the Premises in a substantially similar manner to its conceptual plan, and the Town breached Section 3.04 by failing to accept the Premises.

ANSWER: The Defendant denies the allegations of paragraph 35.

36. **Complaint:** Section 7.04 of the Parking License Agreement required the Town to provide Plaintiff with an estoppel certificate on request.

ANSWER: The Defendant denies that any section of the Agreement, including Section 7.04, requires under all circumstances that an estoppel certificate be provided at the will of the Plaintiff. All remaining allegations are denied.

37. **Complaint:** Plaintiff requested that the Town provide an estoppel certificate, and the Town breached Section 7.04 of the Parking License Agreement by refusing to provide such estoppel certificate as requested by Plaintiff.

ANSWER: The Defendant admits that the Plaintiff requested of the Town an estoppel certificate but denies all remaining allegations of paragraph 37, including the allegation that the Town breached any provision of the Agreement, and puts the Plaintiff to its proof thereof.

38. **Complaint:** The Parking License Agreement contains an implied covenant of good faith and fair dealing, which required the Town to avoid doing anything to impair Plaintiffs rights to receive benefits under the Parking License Agreement.

ANSWER: Paragraph 38 contains legal arguments to which a response is not required. As to the remaining allegations, should a response be required, Defendant denies the allegations of paragraph 38 and puts the Plaintiff to its proof thereof.

39. **Complaint:** The Town breached the implied covenant of good faith and fair dealing by taking actions deliberately designed to prevent Plaintiff from developing the parking deck as envisioned under the Parking License Agreement and receiving rent thereunder, including (a) adopting zoning amendments that forced Plaintiff to redesign the parking deck and provide fewer spaces than originally planned; (b) requiring larger parking spaces than originally proposed by Plaintiff; (c) refusing to agree that Plaintiff's redesigned plan for the parking deck was "substantially similar" to the plan as envisioned under the Parking License Agreement; (d) refusing to consider a proposed amendment to the Parking License Agreement; (e) refusing to provide an estoppel certificate as requested by Plaintiff; (f) making public statements regarding the economic

unfeasibility of the parking deck that made it more difficult for Plaintiff to obtain necessary financing to develop the project; (g) receiving and relying on confidential information improperly obtained by opponents of the project without authorization to concoct pretextual grounds for its failure to honor its contractual obligations; (h) adopting unfavorable interpretations of zoning ordinances to hinder Plaintiffs ability to develop the project; and (i) exploring possible condemnation of the project site to prevent its development and completion.

ANSWER: The Defendant alleges that the Plaintiff attempted to maximize their profits by incorporating compact parking spaces which are not authorized by Town Ordinances and, therefore, the Town refused to permit these non-compliant parking spaces. The Defendant denies every allegation in paragraph 39 and puts the Plaintiff to its proof thereof.

40. **Complaint:** To the extent that Plaintiff failed to provide sufficient Public Spaces and fully satisfy its obligations under the Parking License Agreement, Plaintiff's failure to perform is excused under the doctrines of impossibility and commercial frustration because the Town rendered Plaintiff's performance impossible.

ANSWER: The Defendant denies every allegation contained in paragraph 40 and puts the Plaintiff to its proof thereof.

41. **Complaint:** To the extent that Plaintiff failed to provide sufficient Public Spaces and fully satisfy its obligations under the Parking License Agreement, Plaintiffs failure to perform is excused under Section 2.06 of the Parking License Agreement, which provides that a party shall not be deemed in default with respect to any terms, covenants, or conditions if such default arises from government regulations or controls.

ANSWER: The Defendant denies every allegation in paragraph 41 and puts the Plaintiff to

its proof thereof.

42. **Complaint:** As a result of the Town's breaches of the Parking License Agreement, the Town is in default, and Plaintiff is entitled to the rent owed to it by the Town in accordance with Section 6.01 of the Parking License Agreement.

ANSWER: The Defendant denies every allegation contained in paragraph 42 and puts the Plaintiff to its proof thereof.

43. **Complaint:** As a result of the Town's breaches of the Parking License Agreement, Plaintiff had to cure such breaches, and Plaintiff is entitled to costs incurred to cure such breaches in accordance with Section 6.02 of the Parking License Agreement.

ANSWER: The Defendant denies every allegation contained in paragraph 43 and puts the Plaintiff to its proof thereof.

44. **Complaint:** Under Section 6.01 of the Parking License Agreement, Plaintiff is entitled costs and attorneys' fees arising from this litigation.

ANSWER: The Defendant denies every allegation contained in paragraph 44 and puts the Plaintiff to its proof thereof.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit / Unjust Enrichment)

45. **Complaint:** Plaintiff realleges and incorporates the allegations contained in the aforementioned paragraphs as if fully and completely set forth herein verbatim.

ANSWER: The Defendant incorporates by reference all ANSWERs to aforementioned paragraphs as if fully set forth herein.

46. **Complaint:** Plaintiff provided a benefit to the Town in the form of increased public parking spaces available for the public park and restaurants along Shem Creek.

ANSWER: As the allegations contained in paragraph 46, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

47. **Complaint:** The Town has realized the benefit of increased public parking by making the public park and restaurants along Shem Creek more accessible, which has consequently increased tax revenues for the Town and obviated the need for the Town to make improvements and expenditures for more parking opportunities along Shem Creek.

ANSWER: As the allegations contained in paragraph 47, the Defendant alleges a lack of information and knowledge sufficient to form a belief as to the truth of the allegations and does, therefore, deny the same and put the Plaintiff to its proof thereof.

48. **Complaint:** The retention by the Town of the benefits of increased public parking conferred upon it by Plaintiff would be unjust because Plaintiff developed the parking deck project under the reasonable expectation that the Town would pay rent for public parking spaces provided in the parking deck.

ANSWER: The Defendant assumed the risk of non-compliant construction motivated by a desire to maximize profits because they were clearly put on notice by the Town Administrator and the Town Council more than a year before construction commenced that strict compliance with the provisions of the Agreement was required. The Defendant denies the allegations contained in paragraph 48 and puts the Plaintiff to its proof thereof.

49. **Complaint:** As a result of the Town being unjustly enriched by Plaintiffs provision of increased public parking along Shem Creek, Plaintiff is entitled to be compensated for the value of providing such public spaces.

ANSWER: The Defendant denies the allegations contained in paragraph 49 and puts the

Plaintiff to its proof thereof.

50. All allegations not specifically and unreservedly admitted are deemed denied and the Plaintiff is put to its proof thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. An award of all rent payments due under the Parking License Agreement, or in the alternative, the value of the spaces provided by Plaintiff to the Town;
2. An award for costs incurred to cure the breaches of the Parking License Agreement by the Town;
3. An award of Plaintiff attorneys' fees and costs associated with this matter pursuant to Section 6.01 of the Parking License Agreement; and/or
4. An award of all other appropriate relief as is just and proper under the circumstances.

ANSWER: The Defendant denies that the Plaintiff is entitled to any relief including all relief requested in its Prayer For Relief and puts the Plaintiff to its proof thereof.

AFFIRMATIVE DEFENSES

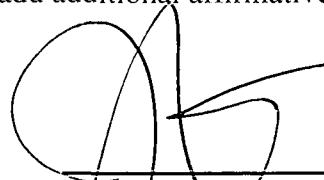
As for further and Affirmative Defenses all of which caused in whole or in part, all damages claimed by the Plaintiff, the Defendant alleges:

1. **Bad Faith Behavior and Unclean Hands.** The Plaintiff acted in bad faith and with unclean hands by, *inter alia*, misrepresenting material facts which formed the basis for the Agreement.
2. **Laches.** The Plaintiff delayed pursuing a claim against the Defendant for an excessive period and consequently, the Defendant is prejudiced in defending the claim.

3. **Business Decision.** The Plaintiff made a business decision to maximize profits by intentionally designing the structure to produce less than the required number of parking spaces despite the contractual provisions mandating a higher number of public spaces.
4. **Breach of Contract.** The Plaintiff intentionally breached the Agreement by failing to provide the requisite number of spaces which it promised to make available to the public.
5. **Equitable Estoppel.** The Plaintiff, by refusing to accept less extraordinary profit on the construction of this structure and failing to provide the required number of public spaces, acted in a manner which communicated that the Defendant's performance has been excused and the Defendant relied on such action.
6. **Mutual Mistake.** Apparently, from reading the Plaintiff's Complaint the number of public spaces to be provided was a rough estimate which could unilaterally be ignored by the Plaintiff in pursuit of extraordinary profits. The Defendant clearly believed the number of public spaces was an essential and material term. Therefore, the parties made a mistake as to this existing material term and condition of the bargain and the Agreement is voidable. If, however, this was a secret reservation known only to the Plaintiff, Plaintiff solely bears the risk of the mistake and the Defendant may be entitled to damages.
7. **Impossibility.** It has become impossible to perform the contract through the unforeseeable act of the Plaintiff in designing the structure to contain far fewer public parking spaces than specified in the Agreement.
8. **No Consideration.** The amended, proposed Agreement lacks consideration and the Defendant was not obligated to perform.
9. **Waiver.** The Plaintiff waived its rights to enforce any obligation contained in the Agreement by, inter alia, failing to provide the required number of public parking spaces.
10. **Absence of Condition Precedent.** A condition precedent to activating performance obligations did not occur. Providing the requisite number of public parking spaces was a

material condition precedent which needed to occur before Plaintiff had a right to enforce any provision of the Agreement.

11. The Defendant reserves the right to amend and add additional affirmative defenses or counterclaims as discovery proceeds.



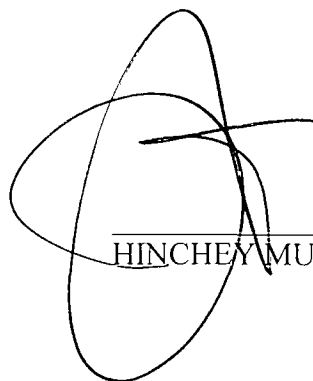
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Attorneys for the Defendants

Charleston, South Carolina
December 22, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certified that on this 22nd day of December 2017, true copies of the foregoing **Defendant's ANSWER** has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto to.

E. Brandon Gaskins
MOORE & VAN ALLEN, PLLC
PO Box 22828
Charleston, SC 29413-2828



HINCHEY MURRAY & PAGLIARINI

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC	)	
	)	
Plaintiff,	)	
	)	MOTIONS FOR NEW TRIAL AND TO
v.	)	RECONSIDER, ALTER OR AMEND
	)	ORDER
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, pursuant to Rule 59(a) and (e), SCRCF, hereby moves the Court for a new trial or to alter or amend or reconsider its Order in favor of the Plaintiff on its Breach of Contract claim and its awarding the Plaintiff damages in the sum of \$2,604,316, in addition to attorney's fees and costs. Defendant also submits this Motion for Reconsideration in accordance with Rule 52(b), SCRCF, on the grounds that the court may amend its findings or make additional findings and may amend the judgment accordingly. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or had made a motion to amend them or a motion for judgment. Defendant renews all trial arguments and objections, in addition to the arguments below, and any pleadings or incorporated memoranda filed in this case.

1. Paragraph 7 incorrectly states that the projected lack of profitability of Plaintiff's project was largely driven by the lack of weekday parking demand. This statement is irrelevant as most ventures are unprofitable in the initial years as investment is recovered. The correct analysis is the difference between the loss expected and the loss experienced as a result of Town conduct. In addition, the arbitrary allocation of profit margin will influence comparative profitability.

2. Paragraphs 8 and 9 make reference to a design or scheme prepared by or on behalf of the Plaintiff. The defendant objects to the inaccurate characterization of this design or scheme as something which “did not necessarily reflect compliance with applicable zoning requirement.” The trial evidence and testimony demonstrated that the concept was drawn to zero lot lines on all sides of the garage, not just on Mill and Church Streets, making it, without rational dispute completely inconsistent with and in stark violation of Town requirements regarding setbacks and parking space width. The plan used by Plaintiff to negotiate the Parking License Agreement was, beyond any factual dispute, a gross overestimation of potential spaces because it failed to comply with the applicable setback requirements or parking space width requirements.
3. Paragraph 10 claims that Mr. Small and Mr. Flesch presented Mr. Betsch’s conceptual plans to the town in 2013. This is not supported by the evidence or testimony as Mr. DeMoura and all staff members testified that they never saw the parking layout concept, only the pictorial exhibit to the PLA. Additionally, there was no evidence that Mr. Flesch presented these plans to the Town. Mr. Small testified that he presented the conceptual plans to the Town, but this was not corroborated by any other witness. Further, the Order incorrectly represents that David Pagliarini, the Town’s attorney, drafted and/or provided revisions to the Agreement.
4. Paragraph 10 incorrectly states the Agreement was the creation of a public-private partnership, in contradiction to the actual language of the Agreement and the testimony of Mr. DeMoura. This contractual recitation is unambiguous and must not be altered by parole evidence.
5. Paragraph 11 incorrectly characterizes the licensing Agreement be interpreted as a construction agreement, when it was not.
6. Paragraph 12 incorrectly states that rent reduction is only a “possibility” if the garage is profitable, when rent reduction was a required and material term without the presence of which the agreement would not have been signed by the Town. The court has, in error, rewritten a material, unambiguous term of the contract and applied its misstatement to negate entirely the required rent reduction.
7. Paragraph 15 states “... the Town conducted no analysis to determine the number of spaces needed to meet parking demand in the area, and the Town never insisted that 276 total spaces and 132 public spaces be a minimum requirement.” This statement of fact is irrelevant in part and clearly erroneous in part. The contract clearly and unambiguously recites that 276 spaces were needed and that was a material inducement to the Town’s execution of the executed PLA. The Town was never required to conduct any supportive analysis to require or expect Plaintiff to fulfill its obligations under the PLA. The court

has, again, in error rewritten the contract to, de facto, delete a material term (provision of 276 spaces) and substitute its flawed determination that 276 parking spaces was meaningless.

8. Paragraph 16 asserts that “Mr. Small informed the Town that the changes were needed to ensure that the development would be economically feasible and maximize the number of spaces provided in the garage component of the project.” This statement is taken out of context, irrelevant and misleading as it fails to include the essential testimonial modification by Mr. Small that he would work with the Town staff to “promote pedestrian activity zones at the garage site.” Additionally, none of the referenced exhibits either refer to or use the phrase “maximize the number of spaces.”
9. Paragraph 17 incorrectly states the amendments proposed and adopted in Ordinance [No. 13077] were solely meant for the economic benefit of Mr. Small. Rather, Ordinance No. 13077 was a comprehensive Ordinance which included changes within the overlay district in addition to those specifically requested by the plaintiff.
10. Paragraph 20 misstates the significance of the survival clause, inappropriately infers the parties’ intent when negotiating the terms of the Agreement, and inappropriately rewrites an unambiguous provision of the Agreement. The survival clause does not extinguish or prohibit the bargained for right to reduced rent for the Town. Further, and as argued in prior motions and at trial, Defendant disputes that the PLA default clause contains a liquidated damages provision. Where the sum stipulated in an agreement is so large that it is plainly disproportionate to any probable damage resulting from a breach of contract, the stipulation would be held as a penalty and not for liquidated damages, regardless of its terminology. Tate v. Master, 231 S.C. 429 at 441, 99 S.E.2d at 46 (1957) (citing 15 Am. Jur. Damages, Sec. 249, p. 681.). If the provision be for a penalty, recovery is measured not by the sum stipulated, but by the amount of *actual damage* proven to have been sustained as the result of the breach. Id. (citing 25 C.J.S. Damages § 116b, p. 704)(emphasis added). Awarding Plaintiff the full amount of the PLA when Plaintiff terminated the Agreement prior to being entitled to the first rent payment is an unenforceable penalty and an abuse of discretion.
11. Paragraph 22 fails to acknowledge an important fact that SMHa immediately, upon engagement by plaintiff, determined that the Betsch concept did not comply with Town regulations and that the Plaintiff could not build 276 spaces. The evidence demonstrates that this fact was presented to the Plaintiff but was never communicated to the Town, despite initial awareness by Plaintiff, prior to the December zoning amendments [Ordinance No. 13077] being enacted.

12. Paragraph 27 incorrectly infers that plaintiff had earlier submitted a site-specific development plan and obtained a vested right to five-foot setbacks. Plaintiff did not submit a proposed plan until after the April 2014 zoning amendments and did not obtain vested rights until months later. Plaintiff neither argues nor offered evidence that it had vested rights which would preclude the application of Ordinance 14022 to the Shem Creek Garage property. S.C. Code Sections 6-29-1510, et seq., and Town Ordinance Sections 156.049, et seq., outline the State and Town requirements for obtaining vested rights, none of which Plaintiff achieved prior to the enactment of Ordinance 14022. Town Staff testified that Plaintiff neither submitted nor received approval of a site-specific development plan, as required by State and Town law, in order to achieve vested rights for the Garage and be protected from the application of Ordinance 14022 to the Project. Tr. pp. 704:22-705:4.

Further, The Court must reject the erroneous position that a municipality must grant vested rights to a developer solely because they are parties to an Agreement. The PLA did not preclude the Town from enacting lawful zoning ordinances that applied to the subject property and if Plaintiff wanted the benefit of the zoning regulations in effect at the time the parties executed the PLA, it needed to fulfill State law and Town of Mount Pleasants requirements for obtaining vested rights.

13. Paragraph 28 incorrectly states that the appropriate width of garage parking spaces was 8 ½' when clearly stated, undisputed trial testimony proved beyond a doubt that the only existing TOMP regulation pertaining to parking space width required 9' spaces.
14. Paragraph 29 incorrectly presumes the Town failed in its State-mandated notice requirements, simply because plaintiff, through its own inadvertence, was unaware of the activities handled in public meetings with published agendas. In effect the decision of this court has erroneously created a new class of citizens vested with rights superior to those granted to all other citizens. Town provided adequate notice of the public meetings. Although Plaintiff and SMHa may not have actually known, it was undisputed that the Town provided the statutorily required public notice and opportunity to comment/ask questions (see Paragraph 30 of the Court's Order) for all of the meetings relative to these changes and neither Plaintiff nor its representatives participated or offered input.

Additionally, the undisputed evidence was that that change to the setback on Mill Street only reduced the number of parking spaces by 1, hardly imperiling the fair value of the project. The December Amendments for the garage created a requirement equally applicable to all garages in the zoning district in question provide activity as outlined in those amendments.

15. Paragraph 29 also erroneously mischaracterizes the actual testimony of Planning director Christine Farrell by incorrectly manufacturing the finding that the footnote requiring a build-to-line was changed “specifically” because of project. Ms. Farrell testified clearly and directly that the amendment eliminating the 5’ setback possibility was comprehensive and affected all streets throughout the UC-OD and was enacted in response to public concerns pertaining to other developments, not the plaintiff’s project.
16. Paragraph 30 is clearly erroneous in that it asserts, without testimonial support beyond mere supposition that the zoning amendments were intended to only effect the project site as opposed to the entire UC-OD. The testimony clearly showed the amendments were intended for an entire zoning district, not just the garage site.
17. Paragraph 32 incorrectly states the facts: Mr. Small had lawful public notice of the amendments and should have made himself aware and commented as all other citizens have the opportunity to do, particularly when they have a substantial project within the boundaries of the zoning district being discussed.
18. Paragraph 33 is incorrect in that it is uncontroverted that this was the first time a plan was presented to the Town - AFTER the April zoning amendments. There is also no dispute that Plaintiff took no action to gain vested rights and protect it from the ordinance. SMHa should have known that the Town’s parking space width was 9’ at all times relevant to this and any other project as this was the requirement. Rather, SMHa incorrectly designed the project with 8 ½ feet spaces with no consideration of the Town’s existing ordinance and the court’s order erroneously rewrote the ordinance to permit 8 1/2’ spaces for this entity only thus creating an Equal Protection violation any time the Town enforced this Ordinance as actually written.
19. Paragraph 34 incorrectly states that requests for accommodations from the plaintiff were uniformly rejected when the evidence at trial demonstrated the Town ruled on the Marine District issue, which permitted Plaintiff to keep the designed width of the building and caused the Town to be subjected to a lawsuit by Save Shem Creek. Further, every Town witness testified that not a single decision by Town staff was made with the intent to “kill the project.”
20. Paragraph 35 erroneously omits the fact that the appropriate course of action in response to a decision of the Zoning Administrator or any member of staff of which you disagree, is to file an appeal to the Board of Zoning Appeals. Plaintiff admits and the Order acknowledges that all of the Town’s decisions were lawful decisions. If Plaintiff disagreed it was duty bound, as all plaintiffs are, to exhaust its remedies and should have appealed the decision. Therefore, Plaintiff should be precluded from raising and the court from considering this argument as evidence of bad faith. Further, the testimony of

the staff members who made those decisions does not support the position that they were acting in bad faith with the intent to kill the project.

21. Paragraph 37 incorrectly omits the fact that the appropriate course of action in response to a decision of the Zoning Administrator or any member of staff of which you disagree, is to file an appeal to the Board of Zoning Appeals. Plaintiff did not exhaust this administrative remedy. Therefore, Plaintiff should be precluded from raising and the court from considering this argument as evidence of bad faith. Further, the testimony of the staff members who made those decisions does not support the position that they were acting in bad faith with the intent to kill the project.
22. Paragraph 38 incorrectly omits the fact that the appropriate course of action in response to a decision of the Zoning Administrator or any member of staff of which you disagree, is to follow through with an appeal to the Board of Zoning Appeals. Plaintiff did not exhaust this administrative remedy. Therefore, Plaintiff should be precluded from raising and the court from considering this argument as evidence of bad faith. Further, the testimony of the staff members who made those decisions does not support the position that they were acting in bad faith with the intent to kill the project.
23. Paragraph 39 mischaracterize the facts and the language of the PLA. The proposed modified design did not comply with Sections 1.05 and 1.06 of the PLA that specifically did not permit the inclusion of surface parking in the number of Garage Parking Spaces. The testimony also supported the fact that this option required DOT approval. Plaintiff provided no evidence that it could or had obtained DOT approval.
24. Paragraph 40 fails to note that the Town approved this shift of the property, was sued by Save Shem Creek for doing so, and successfully defended the lawsuit.
25. Paragraph 43 incorrectly states the facts in that the Town offered testimony from multiple witnesses that the issue with restaurant parking was not that it violated the PLA. Rather, the issue was that the garage was inappropriately displacing existing parking spaces and the Town, from a zoning compliance perspective, had to make sure those spaces were replaced.
26. Paragraph 46 relies specifically on evidence erroneously, inappropriately admitted throughout this trial. As it did in a pre-trial Motion in Limine and during trial, Defendant objects to the admission of unauthenticated, unverified Youtube videos of Town Council meeting in violation of the South Carolina Rules of Evidence, the best evidence rule, and South Carolina precedent, as it was offered to dispute the official record of the meeting. Throughout the playing of the video at trial, it was often difficult to understand what any particular person was saying making attribution impossible guesswork and

misunderstanding even one word of a video can change the entire import or context of the statements at issue. The certified minutes for Town Council meetings are the only appropriate and competent evidence of the proceedings and actions of Town Council. This paragraph improperly has the effect of attributing statements by one Town Council member to all of Town Council.

27. Paragraph 47 is irrelevant because the PLA did not require the Town to substantiate or provide an analysis of the number of spaces it required. The number of spaces, 276, was a required, material term of the PLA upon which the Town relied in calculating the sum to be paid and agreed to by the Plaintiff as a result of protracted negotiation.
28. Paragraph 50 mischaracterizes the testimony of Mr. Prause. Mr. Prause's job is to interpret the language of the ordinance, and, as with each of the decisions addressed, including the decision regarding the 30' Marine District line, Mr. Prause must exercise reasonable discretion in his interpretation.
29. Paragraphs 51 and 52 acknowledge that Plaintiff terminated the PLA prior to the Rental Commencement Date, thus precluding its rights stated in the Agreement, including entitlement to rent or liquidated damages.
30. Paragraph 52 is irrelevant because it was the successor and not Plaintiff who completed the Garage. Plaintiff terminated the PLA before it completed the assignment to the successor and therefore the Town was not contractually obliged to pay rent to the successor as the assignment needed to be executed "at any time during the License Term."
31. Paragraph 53 is irrelevant because the PLA mandated 276 spaces. Furthermore, when Plaintiff terminated the PLA, the Town lost the benefit of the promise that Plaintiff would reserve parking spaces as required. Plaintiff presented no evidence that it is reserving the number of parking spaces as required by the PLA.
32. Paragraph 60 incorrectly creates an intent of the parties beyond the four corners of the Agreement. Defendant argued that "[O]ne who seeks to recover damages for breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was, at the appropriate time, able, ready and willing to perform it." Swinton Creek Nursery v. Edisto Farm Credit, ACA, 326 S.C. 426, 483 S.E.2d 789 (Ct. App. 1997) (citation omitted). "When called upon to construe contracts, courts cannot rule on their wisdom or substitute their interpretation for the agreement clearly entered into between the parties." Texcon, Inc. v. Anderson Aviation, Inc., 284 S.C. 307, 326 S.E.2d 168 (Ct. App. 1985). Plaintiff's breach of contract claim should fail because Plaintiff first breached a material term of the PLA by failing to provide 276 parking spaces. It is

undisputed that Plaintiff failed to provide the 276 spaces required by the PLA. The requirement of 276 parking spaces was a key, material term of the PLA as it provided the scope of Plaintiff's obligation under the PLA. Stevens & Wilkinson, 409 S.C. 568, 762 S.E.2d 696,700 (2014). Plaintiff admitted the PLA expressed a specific number of spaces. Tr. pp. 262:1-3; 368:14:22. Plaintiff readily acknowledges that the Garage as constructed provides only 234 parking spaces, rather than the 276. Tr. pp. 270:2-4; 392:3. That is 42 spaces fewer or only 84.8% of the parking spaces Plaintiff promised in the PLA.

33. Paragraph 62 contradicts the actual language of Council's motion, which the verified minutes show was "to deny any new proposal that may be put forward or submitted by the developer/applicant pertaining to this contract." The inappropriate admission of unverified Youtube video clips of the meeting was not harmless error, but in fact, inappropriately influenced this Court's decision.

In reviewing decisions of municipal governments, "[m]unicipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of governing bodies." Berkeley Elec. Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992). "Parole evidence may not be admitted to explain, enlarge, or contradict minutes which are complete and unambiguous on their face." Id.; Davis v. Orangeburg-Calhoun Law Enf. Comm., 344 S.C. 240, 248, 542 S.E.2d 755 (Ct. App. 2001) (citing). In the present action, the relevant minutes for Town Council's meetings are both extensive and complete in describing the public comments, as well as Town Council's discussions and votes pertaining to the Garage. Given there is no ambiguity in those minutes, The Court should not have allowed Plaintiff to introduce and rely upon any parole evidence for the purpose of challenging the motives or subjective intent of the individual Council members. The minutes provided by the Town, authenticated by staff, were unambiguous, and most importantly, verified. This Court, incorrectly allowed these videos, based on a representation by the Town Administrator, Eric DeMoura, that he had no reason to doubt they were accurate. Tr. 461:2-5.

34. Paragraph 65 commits an error of law in holding that the Town cannot exercise its legislative authority to amend its own zoning ordinances, if the potential ramifications may hinder a private landowner's ability to maximize its investment. Plaintiff neither argued nor offered evidence that it had vested rights which would preclude application of Ordinance 14022 to the garage site. S.C. Code Sections 6-29-1510, et seq., and Town Ordinance Sections 156.049, et seq., outline the State and Town requirements for obtaining vested rights, none of which Plaintiff achieved prior to the enactment of Ordinance 14022. Town Staff testified that Plaintiff neither submitted nor received approval of a site-specific development plan, as required by State and Town law, in order to achieve vested rights for the Garage and be protected from application of Ordinance 14022 to the Project. Tr. pp. 704:22-705:4. Further, Defendant argued the Court should

reject the notion that a municipality should be required to grant vested rights to a developer solely because it was a party to a contract with the municipality. The PLA did not prevent the Town enacting lawful zoning ordinances or interpretations that applied to the garage site. If Plaintiff wanted the benefit of the zoning regulations in effect at the time the parties executed the PLA, it needed to satisfy State law and Town requirements for gaining vested rights.

35. Plaintiff and the Court's Order acknowledge that all of the Town's actions were lawful, yet somehow these "lawful" actions constitute a breach of the covenant of good faith and fair dealing. There is no South Carolina law to support such a bizarrely inconsistent legal assertion. Throughout trial Plaintiff utilized the definition of "Premises" in an attempt to suggest all it really needed to provide was 132 spaces. This mischaracterizes the PLA as a whole. The PLA is clear - Plaintiff was required to provide 276 parking spaces and the Town was paying rent for all of those spaces, not just the 132.
36. Paragraph 67 is an error of law, because the Court is inappropriately acting in an appellate capacity in finding the decisions of staff were arbitrary, capricious, and made in bad faith. Plaintiff should not have the benefit of this appellate review as they chose not to file an appeal with the Board of Zoning Appeals.
37. Paragraph 70 concedes that the Town's actions were lawful, but holds, without rational support, "the exercise of legitimate governmental authority does not immunize the Town from liability for a breach of contract, including for breach of the implied duty of good faith and fair dealing, if it exercises that authority to interfere with the purpose and performance of a contract. To hold otherwise would empower governmental entities to engage in bad faith to destroy or interfere with agreements to which they are parties at their convenience."

In order for the Court to reach a determination that Council's intent was to interfere with the purpose and performance of the contract, it must consider the intent and motivation of each Council member. This holding contradicts current South Carolina precedent, which holds motivation when acting in their legislative capacity simply is not a proper inquiry. See Greenville County v. Kenwood Enters., 353 S.C. 157, 174, 577 S.E.2d 428, 437 (2003) (citing Bear Enters. v. County of Greenville, 319 S.C. 137, 139, n.1, 459 S.E.2d 883, 885 (Ct. App. 1995) ("The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise.")).

38. Paragraph 71 cites cases from other jurisdictions, which are not binding on this Court and readily distinguishable from the present case, for the proposition that "the implied duty of good faith and fair dealing applies equally to discretionary acts of government as it does

to the acts of private parties.” The first case cited by Plaintiff is Guidiville Rancheria of Cal. v. United States, 704 Fed. Appx. 655 (9th Cir. 2017). In Guidiville, the City of Richmond, California entered into a Land Disposition Agreement with a developer and the Guidiville Band of Pomo Indians for the development of a decommissioned naval base. Id. at 657. The plaintiff appellants alleged that the mayor for the City of Richmond breached the implied covenant of good faith and fair dealing by contacting the Bureau of Indian Affairs, Contra Costa County, and various public officials including the Governor of the State of California and United States Senator Dianne Feinstein to encourage them to deny, delay, or otherwise oppose the Tribe’s quest to obtain the necessary federal and state approvals for gaming. Id. at 657-8. Plaintiffs alleged that as a result of the City’s actions, the federal gaming approval process was delayed and the U.S. Dept. of Interior determined that the property was not eligible for gaming, both of which the City used as reasons to abandon the agreement. Id. at 658.

In the present case, trial testimony demonstrated the Town enacted Ordinance 14022 and made the zoning interpretations in question in good faith. There is no evidence that any public official(s) enacted Ordinance 14022 with the intent to thwart development of the Garage. Further and unlike Guidiville Rancheria, there is no evidence that any Town official interpreted the Town’s zoning ordinances with the intent to stop the Garage.

The next case Plaintiff cites is Reserve at Woodstock, LLC v. City of Woodstock, 958 N.E.2d 1100 (Ill. 2011). In that case, the plaintiff developer submitted a plat to the City of Woodstock, Illinois, to develop certain property pursuant to an annexation agreement. Id. at 1104. The City denied the plat and eventually rezoned and disconnected the property. Id. The Court found however, the City rezoned the property AFTER the developer filed a lawsuit to enforce the annexation agreement. Id. at 1113. The annexation agreement contained specific provisions as to when and how property could be rezoned and disconnected. Id. The court held the City’s action with regard to rezoning and disconnecting the property after the property owner had filed suit to enforce its rights were inconsistent with the specific terms of the annexation agreement and a violation its duty of good faith and fair dealing. Id.

Unlike Reserve at Woodstock, neither the Town’s enactment of Ordinance 14022 nor the interpretations of the Town’s zoning ordinance are inconsistent with the Parking License Agreement nor any Town ordinance. Further, all parties agree that the Town’s actions were legal. As such, Reserve at Woodstock has no application to the present case.

Finally, Plaintiff cites the case of City of Golden v. Parker, 138 P.3d 285 (Colo. 2006), wherein plaintiff developers filed suit pursuant to economic incentive agreements entered with the City of Golden. Id. at 288. The dispute arose from the City’s subsequent

enactment of an amendment to its home rule city charter which required voter approval of all new grants of development subsidies or incentives in excess of \$25,000. Id. The primary issues in City of Golden were whether the subsequent ordinance retroactively applied to the prior economic incentive agreements and whether the developers had vested rights in the economic incentive agreements. Id. at 290-92. Although the court recognized that the implied duty of good faith and fair dealing may apply to discretionary budgetary appropriations where there are contractual assurances that a municipality would exercise its discretion in appropriation of city funds, that holding was made in considering the question of whether the developers had a vested right in the incentive agreements. Id. at 292-3. Here, Plaintiff did not even allege that the Parking License Agreement conferred some sort of vested right. Rather, trial testimony clearly established that Plaintiff had not taken the steps required by State or local law to confer a vested right. Unlike the developers in City of Golden, Plaintiff cannot establish it had a vested right.

39. Paragraph 72 incorrectly holds that the Town was required to exercise its legislative authority only in a way to favor a party to a contract. This is an error of law in that it creates an “implied contractual vested right” that binds actions of future Council in derogation of the precedent set by Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), which stands for the simple proposition that municipal councils may not deprive successor councils of discretion in matters involving their legislative or governmental powers, because public policy demands they should be left unimpaired. This holding inappropriately delegates that legislative authority to anyone contracted with the Town. Further, the holding in Paragraph 72 illegally creates a vested right, implied by contract, which exists nowhere in State or Federal law, case law, statute or ordinance.

The precedent created by Paragraph 72 will hinder the ability of a municipality to enter into future agreements and force each municipality to strongly reassess current contractual arrangements, if the governing body cannot make any legislative decision that could potentially impair a party’s ability to maximize its purpose or rights under said contract.

40. Paragraph 74 is an error of law, because the Court disregards a material, stated term of agreement, 276 spaces, when it relied, over the Town’s objection, on parole evidence and hearsay to determine that the true intent and purpose of the parties was to simply satisfy the need for additional parking in the Shem Creek area. Under the parole evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract. Penton v. J.F. Cleckley & Co., 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). As such, Plaintiff should not be permitted to admit parole evidence regarding the plain terms of the Parking License Agreement, which the Court clearly relied on. In construing and determining the

effect of a written contract, the intention of the parties and the meaning are determined only from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) “If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect.” Ward v. West Oil Co., 379 S.C. 225, 239, 665 S.E.2d 618, 625 (Ct. App. 2008).

41. The Court committed an error of law in admitting every single piece of evidence into the record, despite the Town’s objection, under the legal premise proposed by Brown v. Allstate, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001). In Brown, the Supreme Court agreed that the lower court during a bench trial committed an error when it admitted irrelevant evidence. The Court then determined, however, that this error was harmless, because there was not a sufficient showing the trial judge affirmatively relied on the incompetent evidence. Here, the Court clearly and erroneously relied on irrelevant evidence submitted, over the Town’s objections, to reach its conclusion that 276 parking spaces was never a material term of the Agreement and that Council violated the good faith and fair dealing clause of the Agreement.
42. Paragraph 75 incorrectly holds, through consideration of parole evidence that 276 parking spaces was not a material term, disregarding the fact that the dollar amount was tied directly to the number of spaces. Plaintiff had not substantially performed under the PLA in producing 276 parking spaces and its breach of contract claim should have failed. First, the PLA was a licensing agreement and not a construction contract. The Town has no property interest in the Garage and does not possess any portion thereof.

Further, Plaintiff terminated the PLA prior to the Rental Commencement Date in the PLA. As such, the Garage provides only 234 of the 276 total spaces (85%) and 117 of the 132 (89%) public spaces, and, importantly, the Town did not receive the benefit of the promises under the PLA: for Plaintiff to reserve spaces as the contract required. As such, the parking spaces have “been returned” to Plaintiff. Plaintiff produced no evidence that it is reserving spaces as outlined in the PLA. To the extent Plaintiff is providing spaces to the public as required by Town regulations, it cannot argue that the Town is getting the benefits of the PLA. Plaintiff has not substantially performed under the contract.

43. Paragraphs 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89 incorrectly rely on the analysis provided in Kiriakides v. United Artists Commc’ns, Inc., 312 S.C. 271, 275-76, 440 S.E.2d 364, 366-67 (1994), for the proposition that its failure to provide 276 parking spaces is not a material breach of the Parking License Agreement. Kiriakides is readily distinguishable from the present action and even if applied, demonstrates Plaintiff

materially breached the PLA. In Kiriakides the court was interpreting the State's ejectment statute, S.C. Code Section 27-37-10, in the context of a commercial lease whereby the landlord sought to evict a tenant for a very minor breach of the lease. Kiriakides, 312 S.C. at 274-275, 440 S.E.2d at 365-66. In contrast, the present action involves a licensing agreement where neither the State ejectment statute nor eviction of a leasehold tenant are involved.

Also, unlike the present situation, the court in Kiriakides was concerned that the landlord's interpretation of the ejectment statute "would lead to the absurd result that leases could be terminated for immaterial and trivial breaches." Kiriakides, 312 S.C. at 275, 440 S.E.2d at 366.

Applying the factors to this case: (a) The Town will be deprived of 15% of the parking spaces of which it financially bargained for under the Agreement; (b) the Town cannot be compensated adequately damages for the 42 lost spaces. These spaces are lost for the entirety of the 30 Year License Term and there is nothing in the PLA that permits the Town to seek a reduction in rent for fewer spaces; (c) although Plaintiff would suffer a forfeiture of the Town's rent payments, Plaintiff had the opportunity to terminate the PLA, but rather chose to proceed with constructing a Project that did not comply with the PLA and continue with the Project at its own peril; (d) it is impossible for Plaintiff to provide the lost spaces and cure the breach at this point; (e) Whether Kiriakides or general contract principles apply, Plaintiff's choice to provide only 85% of the required parking spaces is a material breach of the PLA.

44. Paragraph 81 incorrectly identifies the concept of "adequacy" to inappropriately alter the written, material terms in the Agreement and, inexplicably, attributes more significance to this judicially manufactured term than to an unambiguously stated material term. The PLA contained nothing to indicate Plaintiff could comply with the agreement by providing an "adequate" number of parking spaces.
45. Paragraph 87 incorrectly states facts that are inconsistent with the testimony offered by the plaintiff's own architect who presented the option, Mr. Betsch. Mr. Betsch testified that the inclusion of a 3rd level would not have taken away office space. Plaintiff may not have been obligated to provide a third level, but they were obligated to provide the number of spaces promised in the Agreement regardless of the impact on office space square footage or views of the water, which was not a part of the Agreement.
46. Paragraphs 90-93 incorrectly state the facts in that the Town did not prevent Plaintiff from performing under the Agreement, but rather Plaintiff was unable to fully perform because of its own mistakes, unreasonable assumptions, and desire for additional office space. Plaintiff's first mistake was commissioning the initial conceptual drawings without

any analysis or consideration of the Town's zoning regulations, including setbacks. In fact, the sketch attached to the PLA provides no indication of what setbacks, if any, applied to the Garage. The renderings were drawn with "zero lot lines", meaning that the conceptual sketches assumed zero setbacks and drawn to the property lines. This first misstep was pivotal because it was these sketches that Plaintiff used to negotiate the terms of the PLA, which promised 276 parking spaces.

The evidence revealed that rather than having zero lot lines on the adjoining streets, Coleman Boulevard had a 20-30' build-to-line, Mill Street had a 20' setback, and Church Street had a 20' setback. These mistaken assumptions by Plaintiff regarding the setbacks caused it to vastly overestimate the foot print of the building and the number of parking spaces it could provide when negotiating the Agreement with the Town.

47. Paragraph 92 mischaracterizes the terms of the Agreement, because while Section 2.06 governs excuse of performance, Sections 2.01(a) and 2.03 specifically say the project is subject to the zoning laws and Town approvals.
48. Paragraphs 94, 95, 96, 97, 98, and 99 state errors of law, because the Court incorrectly determined the number of parking spaces was immaterial, despite the express and explicit reference to the number and it being commensurate with the amount to be paid. Where a party fails to comply with an express condition of a contract, that party has no right to enforce the contract. Ahrens v. McDaniel, 287 S.C. 63, 66, 336 S.E.2d 505, 507 (Ct. App. 1985). "A condition precedent to a contract is 'any fact, other than mere lapse of time, which, unless excused, must exist or occur before a duty of immediate performance by the promisor can arise.'" M&M Group, Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262, 266 (Ct. App. 2008) (citations omitted). "The question of whether a provision in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ." Id.

M&M Group Inc., involved a contract where a purchaser's obligation to purchase the property involved was contingent upon purchaser's ability to secure commercial financing. Id. at 266-267. In affirming the grant of summary judgment on the plaintiff's claims, the court held that the parties' "use of the language 'is contingent upon' is unequivocal and patently indicates the parties' respective obligations to buy and sell the business are contingent on [defendant's] ability to secure financing. No other meaning could be deduced from such clear and commonly used language." Id.

In the present case, pursuant to the Agreement's express language, both Plaintiff's obligation to license spaces to the Town and the Town's obligation to pay rent under the PLA were contingent upon and subject to Plaintiff's ability to build a parking garage with

276 spaces in accordance with the Town's zoning laws and necessary approvals. Under the PLA, Plaintiff granted "an exclusive License over the Premises to [the Town] and [the Town] accepts same, subject only to the terms and conditions herein contained, and all applicable liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Property." See PLA, ¶ 2.01(a).

Further, Section 2.03 titled Licensors's Contingency provides:

Licensor's obligations under the [PLA], including but not limited to the obligation to construct the Project, are contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity. Licensor, in its sole and absolute discretion, may elect to terminate this License Agreement at any time prior to the earlier of (i) twenty-four (24) months from the Effective Date, or (ii) Licensor's commencement of construction of the Parking Garage." Id.

Like the contract in M&M Group, Inc., the Agreement specifically contemplated Plaintiff's ability to construct the Garage in compliance with the Town's zoning laws and required approvals as express conditions precedent to parties' obligations thereunder.

Because Plaintiff failed to construct the Garage with 276 spaces in compliance with the Town's zoning laws and regulations, neither Plaintiff's obligation to license the spaces nor the Town's obligation to pay rent arose. The intent of the parties to treat the construction of the Garage as a condition precedent to the licensing of parking is further demonstrated by the fact that the same section of the PLA that created this condition permitted Plaintiff to unilaterally terminate the agreement. Plaintiff had two years to decide whether it wanted to construct the Garage and, if not, could freely terminate the PLA with no consequences. No Garage, then no Parking License Agreement.

Plaintiff argues that by providing only 234 of the 276 promised parking spaces it has substantially performed under the PLA. "[T]he doctrine of substantial performance does not apply to express conditions. Ahrens, 287 S.C. at 66-67, 336 S.E.2d at 507 (citation omitted); see also McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) ("If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arise.")). Thus, any evidence to show they substantially performed the contract is immaterial. Id. If substantial performance does not entitle a party to recovery on the contract, a judge is not required to hear an argument on the issue of substantial performance. Ahrens, 287 S.C. 63, 67, 336 S.E.2d 505, 508.

The doctrine of substantial performance does not apply in this instance because Plaintiff failed to fulfill the express condition precedent of constructing the Garage with 276 parking spaces in accordance with the Town's laws.

49. Paragraph 100 is an error of law. If, in fact, the PLA only required the number of parking spaces to be "substantially similar" to 276, then the PLA did not set out this material, essential term which the court inexplicably uses to modify an unambiguous material term. It is therefore, not enforceable. For a contract to be binding, material terms cannot be left for future agreements. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d at 700 (citing Aperm of S.C. v. Roof, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986)). Material terms must be set out with reasonable certainty and the absence of material terms renders the agreement unenforceable. Rose Elec., Inc. v. Cooler Erectors of Atl., Inc., 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016).

As demonstrated during trial, the number of parking spaces was a material term to the Town, as it was committing tax dollars to a stated parking need, and was material to defining the scope of Plaintiff's obligation to perform under the PLA. Tr. pp. 496:14-497:17. Plaintiff's interpretation that its only obligation was to provide a "substantially similar" number of parking spaces is a vague promise that does not define this material term with reasonable certainty and renders the PLA impossible to understand and administer. Such indefiniteness in this material term renders the PLA unenforceable. Plaintiff is unable to say with any certainty how many spaces it was required to provide.

50. Paragraphs 101, 102, 103, and 104 as they relate to damages are in error, as the Agreement contained no Liquidated Damages provision. The touchstone question in determining whether a sum stipulated in a contract is a liquidated damage or an unenforceable penalty is whether the amount is "reasonably intended by the parties as the predetermined measure of compensation for actual damages *that might be sustained* by reason of nonperformance...." ERIE Ins. Co. v. Winter Const. Co., 393 S.C. 455, 462, 713 S.E.2d 318, 322 (Ct. App. 2011)(citing Tate v. Master, 231 S.C. 429, 441, 99 S.E.2d at 46 (1957) (emphasis added); see also Restatement (Second) of Contracts § 356 (1981).

The language used by the parties in this Agreement is conclusive of the question of whether the stipulation is for liquidated damages or for a penalty. Id. (citing Ould v. Spartanburg Realty Co., 94 S.C. 184, 77 S.E. 866 (1913)). It is clear within the four corners of this contract, that liquidated damages were never a consideration for the Town. The Court's attempt to surmise the Town's intent using parole evidence from negotiations is inappropriate. However, if this Court determines that the Town's redlines during negotiations are determinative of its intent, it should be noted that Town representatives also removed Plaintiff's ability to accelerate rent payments in a breach,

which directly contradicts the supposition that liquidated damages were contemplated. Removal of the acceleration clause is certainly inconsistent with Plaintiff's attempt to recover rent payments for the entire 15 years when Plaintiff terminated the agreement prior to a Certificate of Occupancy being issued.

The Town filed a motion to compel on October 22, 2019, seeking the compel financial documentation of the operating profit for the garage. The Court denied this motion by order dated January 22, 2020 denying the same holding that the survival clause did not provide for the survival of any rights of the Town, including the right to calculate the amount of rent that may be due by eliminating Section 1.07(b) and subjects the Town to an unenforceable penalty. The Town filed a Motion for Reconsideration on January 29, 2020, which was denied by the Court without the benefit of oral argument, in error, prior to the start of trial.

Respectfully submitted,

s/Julia P. Copeland
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Charleston, South Carolina

July 20, 2020

Attorneys for the Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certified that on this 20th day of July, 2020, true copies of the foregoing **DEFENDANT'S MOTIONS FOR NEW TRIAL AND TO RECONSIDER, ALTER OR AMEND ORDER** has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto to.

E. Brandon Gaskins
MOORE & VAN ALLEN, PLLC
PO Box 22828

Charleston, SC 29413-2828

S/Julia P. Copeland
Hinchey, Murray & Pagliarini

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF ATTORNEYS' FEES
	)	AND COSTS
v.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

Personally appeared before the undersigned officer duly authorized to administer oaths, E. Brandon Gaskins, who, on oath, states as follows:

1. I, E. Brandon Gaskins, am over eighteen (18) years old, and of sound mind and body. I am competent to give this affidavit, and it is based upon my own personal knowledge.
2. I am the attorney for Plaintiff Shem Creek Development Group, LLC in the above-captioned action with the law firm of Moore & Van Allen, PLLC.
3. Plaintiff's attorneys' fees in this action are recoverable by Plaintiff from Defendant The Town of Mount Pleasant, South Carolina, pursuant to Section 6.01 of the Parking License Agreement, which is the subject matter of this action, and Paragraph 104 of the Court's Order granting judgment in favor of Plaintiff, which was issued by the Honorable Maite Murphy on July 13, 2020.
4. I was admitted to the Bar of the Supreme Court of South Carolina in 2004 and have been actively engaged in the practice of law since that time. A substantial portion of my practice relates to commercial litigation matters.

5. I am also a member of the Bar of the United States Court of Appeals for the Fourth Circuit and of the United States District Court for the District of South Carolina.

6. I am informed and believe that, under *Baron Data Systems, Inc. v. Loter*, 297 SC 382, 377 S.E.2d 296 (1989), and *Blumberg v. Nealco*, 310 SC 482, 427 S.E.2d 659 (Ct. App. 1993), there are six factors which should be considered in determining the reasonableness of a fee including: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) the fee customarily charged in the location for similar services; and (6) the beneficial results obtained.

7. I have attached hereto as Exhibit A a detailed spreadsheet showing all of Moore & Van Allen PLLC attorneys' fees, paralegal fees, and costs on this file beginning on September 15, 2017 through August 10, 2020. The amounts shown in Exhibit " represent a true and accurate reflection of time, effort and costs of my firm's legal services in this action. The spreadsheet has been redacted in part to protect certain information protected by the attorney-client privilege and the attorney work product doctrine.

8. As shown on Exhibit A, Plaintiff has incurred legal fees in the amount of Two Hundred Forty-Three Thousand Seven Hundred Eighty-Eight and 50/100 Dollars (\$243,788.50) for attorney and paralegal time related to the prosecution and trial of this action. In addition, Plaintiff has incurred costs in the amount of Thirty-Eight Thousand Six Hundred Forty-Eight and 62/100 Dollars (\$38,648.62) for filing fees, courier fees and postage, copying charges, travel expenses, research costs, deposition costs, expert fees, and other related litigation costs.

9. Prior to my involvement in Plaintiff's dispute with the Town of Mount Pleasant, Plaintiff was represented by attorneys Gray Taylor and Hamlin O'Kelly of the law firm of Buist

Byars & Taylor (“BB&T”). I have reviewed BB&T’s invoices issued to Plaintiff for its legal services. Based upon my review, Plaintiff incurred Thirteen Thousand One Hundred Thirty-Eight Dollars (\$13,138.00) in attorneys’ fees for BB&T’s services that were directly related to the dispute regarding the Parking License Agreement. This amount does not include legal fees related to the lawsuit of *Save Shem Creek v. Town of Mount Pleasant*, for which BB&T also provided legal services to Plaintiff.

10. In addition, Plaintiff incurred direct litigation costs of Three Thousand One Hundred Sixty-Nine and 27/100 Dollars (\$3,169.27) in this action for (1) technology costs for document production and trial paid to H.P. Technology (\$2,609.45); (2) lodging during trial (\$519.76); and (3) mileage reimbursement from Mount Pleasant to Ridgeland (\$40.06).

11. In sum, Plaintiff has incurred Two Hundred Ninety-Eight Thousand Seven Hundred Forty-Four and 39/100 (\$298,744.39) in attorneys’ fees and costs in pursuing this action and in other fees related to the dispute about the Parking License Agreement.

12. I believe that these fees and costs are reasonable under the six factors discussed above based on the following: (1) the matter was highly disputed and involved complex issues of contract and municipal law, a significant amount in controversy, a large volume of documents produced during discovery, and multiple discovery disputes; (2) the matter was litigated through trial and post-trial motions for nearly three years; (3) I am a lawyer in good standing with the South Carolina Bar, have never been involved any disciplinary proceedings, and believe I have a good reputation among other lawyers in the area who practice commercial litigation; (4) the matter was not based on a contingency arrangement, but the amount billed in fees by Moore & Van Allen for this action is less than what would be payable under a typical contingency fee arrangement of 33.3% or 40% of the award; (5) my hourly rate, which ranged from \$325/hour when the

representation commenced in 2017 to \$395/hour when the case was completed in 2020, is within the range of hourly rates customarily charged by commercial litigators of similar experience who practice in the Charleston area; and (6) Plaintiff obtained the beneficial result of a recovery in the full amount sought at trial.

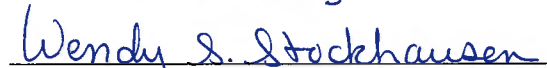
13. I am further informed and believe that in the absence of any presentation of evidence to the contrary by Defendant in this action, it is appropriate to award the relief requested, including attorneys' fees and costs in the amount requested.



E. Brandon Gaskins

Subscribed and Sworn to before me

This 10th day of August, 2020



Notary Public for the State of South Carolina

My Commission expires 05-12-2024

EXHIBIT A

Fees Billed - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM 043920.000001)				
Timekeeper	Transaction Date	Billed Amount	Narrative	Billed Hours
Gaskins, Edward B. (02733)	9/15/2017	\$ 162.50	Phone conference w/ Tex Small re: [REDACTED] Emails to and from Mr. Small re: [REDACTED]. Phone conference w/ Gray Taylor re: case and client documents.	0.50
Gaskins, Edward B. (02733)	9/21/2017	\$ 845.00	Analyze relevant documents for complaint. Draft complaint.	2.60
Gaskins, Edward B. (02733)	9/22/2017	\$ 65.00	Phone conference w/ Chris Anderson re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	9/25/2017	\$ 1,852.50	Draft and revise complaint.	5.70
Scarminach, Charles R. (02797)	9/26/2017	\$ 360.00	Working session with Brandon Gaskins regarding Indemnification Agreement. Draft Indemnification Agreement.	1.60
Gaskins, Edward B. (02733)	9/28/2017	\$ 162.50	Revise indemnity agreement.	0.50
Gaskins, Edward B. (02733)	9/29/2017	\$ 65.00	Revise indemnity agreement.	0.20
Gaskins, Edward B. (02733)	10/2/2017	\$ 65.00	Phone conference w/ Tex Small re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	10/11/2017	\$ 682.50	Analyze revisions to indemnification agreement from Somera Capital counsel. Phone conference w/ Tex Small re: [REDACTED]. Research legal materials re: [REDACTED]. Revise complaint.	2.10
Gaskins, Edward B. (02733)	10/20/2017	\$ 162.50	Final review and revisions of complaint and email same to clients.	0.50
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Process fee request to Clerk of Court for filing of Civil Cover Sheet, Summons and Complaint.	0.20
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Communications with Process Server regarding service of Summons and Complaint upon Town of Mt. Pleasant council.	0.20
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Draft Summons	0.20
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Draft Civil Cover Sheet.	0.20
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Revise Complaint.	0.20
Gaskins, Edward B. (02733)	10/23/2017	\$ 520.00	Revise 101 Capital Partners indemnification agreement and email to counsel. Revise complaint. Final review and execution of summons and complaint and coordinate filing of same.	1.60
Stockhausen, Wendy S. (08669)	10/23/2017	\$ 27.00	Communications with Clerk of Court regarding filing of Summons and Complaint.	0.20
Stockhausen, Wendy S. (08669)	10/24/2017	\$ 27.00	Communications with Process Server regarding confirmation of service of Summons and Complaint upon Ms. Barrett for Town of Mt. Pleasant council.	0.20
Gaskins, Edward B. (02733)	10/24/2017	\$ 97.50	Emails to and from clients re: [REDACTED]. Email and call to David Slade re: lawsuit. Phone conference w/ opposing counsel re: lawsuit.	0.30
Gaskins, Edward B. (02733)	10/26/2017	\$ 97.50	Phone interview with channel 5 reporter re: lawsuit. Emails to and from clients re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	10/27/2017	\$ 552.50	Analyze filing in Jim Owens v. ADC lawsuit for information re: [REDACTED]. Emails to and from channel 2 reporter re: lawsuit.	1.70
Gaskins, Edward B. (02733)	11/16/2017	\$ 65.00	Emails to and from Julia Copeland re: extension to file answer. Emails to and from clients re: [REDACTED]	0.20
Stockhausen, Wendy S. (08669)	11/21/2017	\$ 27.00	Create secure Share File for uploading of documents by Mr. Flesch; e-mail communications to Mr. Flesch regarding [REDACTED].	0.20
Gaskins, Edward B. (02733)	11/21/2017	\$ 780.00	Review and analyze ADC court documents and client documents in preparation of meeting w/ clients. Travel to and from and meet w/ clients re: [REDACTED]	2.40
Gaskins, Edward B. (02733)	11/22/2017	\$ 325.00	Draft letter to ADC re: notice of claims and tolling agreement.	1.00
Scarminach, Charles R. (02797)	11/27/2017	\$ 450.00	Draft tolling agreement for ADC Engineering. Draft tolling agreement for Stubbs Muldrow Herin Architects.	2.00
Gaskins, Edward B. (02733)	11/28/2017	\$ 195.00	Review and revise tolling agreements for ADC and SMHA.	0.60
Gaskins, Edward B. (02733)	11/30/2017	\$ 260.00	Revise letter to ADC Engineering re: notice of claims and tolling agreement. Draft and revise tolling agreement. Email to client re: [REDACTED]	0.80
Stockhausen, Wendy S. (08669)	12/13/2017	\$ 27.00	Review notification from Sharefile; access and process SMH contract.	0.20

Gaskins, Edward B. (02733)	12/14/2017	\$ 227.50	Analyze contract b/t client and Stubbs, Muldrow & Herin Architects. Draft and revise tolling agreement and cover letter to SMHa. Final review and execution of letters to SMHa and ADC re: tolling agreement.	0.70
Stockhausen, Wendy S. (08669)	12/14/2017	\$ 67.50	Revise ADC Tolling Agreement (.2); revise letters to ADC and SMHa regarding tolling agreements (.2); process for service by certified mail (.1).	0.50
Gaskins, Edward B. (02733)	12/20/2017	\$ 65.00	Review correspondence from ADC Engineering. Emails to and from clients re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	12/22/2017	\$ 97.50	Emails to and from Julia Copeland re: answer to complaint. Analyze answer to complaint.	0.30
Gaskins, Edward B. (02733)	12/27/2017	\$ 195.00	Phone conference w/ counsel for SMHa re: tolling agreement. Phone conference w/ opposing counsel re: referral to business court. Email to client re: [REDACTED]	0.60
Gaskins, Edward B. (02733)	1/4/2018	\$ 34.50	Emails to and from attorney for SMHa re: tolling agreement.	0.10
Firestone, Lesley A. (02763)	1/10/2018	\$ 27.50	Communicate re: drafting joint motion to refer matter to the business court.	0.10
Gaskins, Edward B. (02733)	1/17/2018	\$ 34.50	Review revisions to tolling agreement from ADC and SMHa attorneys.	0.10
Gaskins, Edward B. (02733)	1/18/2018	\$ 69.00	Final review and execution of tolling agreement w/ ADC and SMHa and multiple emails re: same.	0.20
Firestone, Lesley A. (02763)	1/24/2018	\$ 412.50	Review Complaint and Answer and begin drafting Motion for Case Assignment to Business Court and Description of Claims.	1.50
Firestone, Lesley A. (02763)	1/24/2018	\$ 192.50	Review S.C. Supreme Court Order and Form and Business Court Orders re: moving for case assignment to Business Court.	0.70
Firestone, Lesley A. (02763)	1/25/2018	\$ 880.00	Finalize cover letter, Joint Motion for Case Assignment to the Business Court Program, and Description of Claims.	3.20
Gaskins, Edward B. (02733)	2/9/2018	\$ 172.50	Emails to and from opposing counsel re: motion to refer to business court. Final review, execution, and coordination of filing of motion to refer to business court.	0.50
Stockhausen, Wendy S. (08669)	2/9/2018	\$ 40.50	Prepare motion cover sheet for business court motion; process fee request; communications with court regarding filing; finalize business court motion package for filing with court.	0.30
Stockhausen, Wendy S. (08669)	2/9/2018	\$ 27.00	E-mail communications with opposing counsel regarding motion to transfer to business court.	0.20
Stockhausen, Wendy S. (08669)	2/23/2018	\$ 67.50	Draft First Requests for Production to Town of Mount Pleasant.	0.50
Stockhausen, Wendy S. (08669)	2/23/2018	\$ 94.50	Draft First Interrogatories to Town of Mount Pleasant.	0.70
Gaskins, Edward B. (02733)	2/28/2018	\$ 1,035.00	Analyze case file and ordinances for drafting of discovery requests. Draft and revise discovery requests. Email to clients.	3.00
Gaskins, Edward B. (02733)	3/1/2018	\$ 138.00	Review comments from Tyler Flesch re: [REDACTED]	0.40
Gaskins, Edward B. (02733)	3/7/2018	\$ 69.00	Emails to and from Judge Young law clerk. Review order assigning case to business court.	0.20
Gaskins, Edward B. (02733)	3/16/2018	\$ 276.00	Review client documents for ESI protocol analysis. Draft ESI protocol.	0.80
Gaskins, Edward B. (02733)	3/19/2018	\$ 379.50	Draft ESI search protocol and email to opposing counsel.	1.10
Stockhausen, Wendy S. (08669)	3/21/2018	\$ 40.50	Draft Consent Scheduling Order.	0.30
Gaskins, Edward B. (02733)	3/21/2018	\$ 138.00	Review and revise draft scheduling order and email same to clients.	0.40
Gaskins, Edward B. (02733)	4/2/2018	\$ 34.50	Correspondence to and from Judge Murphy's law clerk re: scheduling order.	0.10
Gaskins, Edward B. (02733)	4/4/2018	\$ 448.50	Prepare for and attend conference w/ opposing counsel re: discovery issues and search protocol for electronically stored information. Revise letter to Judge Murphy re: scheduling order.	1.30
Stockhausen, Wendy S. (08669)	4/18/2018	\$ 27.00	Draft Subpoena duces tecum to ADC.	0.20
Stockhausen, Wendy S. (08669)	4/18/2018	\$ 27.00	Draft Subpoena duces tecum to Stubbs Muldrow Herin Architects.	0.20
Gaskins, Edward B. (02733)	5/1/2018	\$ 207.00	Draft correspondence to opposing counsel re: discovery issues. Analyze recent SC judicial decision re: [REDACTED]	0.60
Stockhausen, Wendy S. (08669)	5/8/2018	\$ 54.00	Draft service letters for subpoenas to SMHa and ADC; prepare certificates of authenticity; draft Exhibit A to ADC subpoena.	0.40

Gaskins, Edward B. (02733)	5/8/2018	\$ 69.00	Emails to and from and phone conference w/ opposing counsel re: electronic discovery issues.	0.20
Gaskins, Edward B. (02733)	5/23/2018	\$ 138.00	Revise subpoenas to SMHA and ADC Engineering.	0.40
Stockhausen, Wendy S. (08669)	5/24/2018	\$ 108.00	Revise and finalize subpoenas and service correspondence; process for service by mail; e-mail communications with counsel for SMHA and ADC forwarding copies of same; e-mail communications to opposing counsel providing copies of subpoenas for notice.	0.80
Gaskins, Edward B. (02733)	5/24/2018	\$ 345.00	Draft exhibits to subpoenas for ADC and SMHA. Emails to and from counsel for ADC and SMHA re: service of subpoenas. Revise letters to ADC and SMHA re: service of subpoenas.	1.00
Stockhausen, Wendy S. (08669)	5/25/2018	\$ 13.50	Communications with opposing counsel regarding receipt of subpoenas to SMHA and ADC.	0.10
Stockhausen, Wendy S. (08669)	5/25/2018	\$ 13.50	Communications with counsel for ADC regarding request for authorization to accept service of subpoena.	0.10
Stockhausen, Wendy S. (08669)	5/29/2018	\$ 148.50	Draft Answers and Responses to TOMP's First Interrogatories and Requests for Production.	1.10
Gaskins, Edward B. (02733)	5/30/2018	\$ 414.00	Initial review of document production from Town. Emails to and from opposing counsel re: technical issues w/ form of production.	1.20
Stockhausen, Wendy S. (08669)	5/31/2018	\$ 27.00	Prepare Motion cover sheet for Consent Scheduling Order; finalize and process for filing.	0.20
Stockhausen, Wendy S. (08669)	6/4/2018	\$ 40.50	Review filed Consent Scheduling Order; enter deadlines into VisionSQL docketing system.	0.30
Gaskins, Edward B. (02733)	6/5/2018	\$ 69.00	Draft and send case status update to clients.	0.20
Stockhausen, Wendy S. (08669)	6/6/2018	\$ 67.50	Process voluminous document production received from opposing counsel to MVA file system; communications with Jessica Bearding regarding processing to Relativity.	0.50
Beard, Jessica M. (08612)	6/7/2018	\$ 180.00	Configure and import electronic data into discovery database for attorney review.	1.00
Beard, Jessica M. (08612)	6/8/2018	\$ 144.00	Analyze and configure data set for attorney review.	0.80
Gaskins, Edward B. (02733)	6/8/2018	\$ 69.00	Working session re: technical issues w/ Town's document production. Emails to and from opposing counsel re: document production.	0.20
Beard, Jessica M. (08612)	6/11/2018	\$ 216.00	Analyze and configure data set for attorney review.	1.20
Gaskins, Edward B. (02733)	6/12/2018	\$ 241.50	Begin reviewing Town's document production.	0.70
Stockhausen, Wendy S. (08669)	6/12/2018	\$ 162.00	Draft Answers to Town of Mount Pleasant Interrogatories and Requests for Production.	1.20
Gaskins, Edward B. (02733)	6/13/2018	\$ 172.50	Continue reviewing documents produced by Town.	0.50
Stockhausen, Wendy S. (08669)	6/13/2018	\$ 54.00	Process e-mail document production received from opposing counsel to MVA file system; communications with Jessica Bearding regarding processing to Relativity.	0.40
Beard, Jessica M. (08612)	6/14/2018	\$ 324.00	Analyze and configure data set for attorney review.	1.80
Beard, Jessica M. (08612)	6/15/2018	\$ 90.00	Analyze and configure data set for attorney review.	0.50
Stockhausen, Wendy S. (08669)	6/15/2018	\$ 54.00	Process O'Neal e-mail document production received from opposing counsel to MVA file system; communications with Jessica Bearding regarding processing to Relativity.	0.40
Beard, Jessica M. (08612)	6/18/2018	\$ 144.00	Analyze and configure data set for attorney review.	0.80
Gaskins, Edward B. (02733)	6/25/2018	\$ 414.00	Emails to and from counsel for ADC and SMHA re: subpoena responses. Continue reviewing Town document production.	1.20
Beard, Jessica M. (08612)	6/26/2018	\$ 54.00	Analyze and configure data set for attorney review.	0.30
Gaskins, Edward B. (02733)	6/26/2018	\$ 1,173.00	Draft answers to Defendant's interrogatories. Analyze Town documents for answers to interrogatories.	3.40
Stockhausen, Wendy S. (08669)	6/26/2018	\$ 67.50	Review documents received from Stubbs Muldrow in response to subpoena; bates label and process to MVA file system; communications with Jessica Bearding regarding processing to Relativity.	0.50
Beard, Jessica M. (08612)	6/27/2018	\$ 450.00	Analyze and configure data set for attorney review.	2.50
Stockhausen, Wendy S. (08669)	6/27/2018	\$ 94.50	Process Carrier and Page e-mail document production received from opposing counsel to MVA file system; communications with Jessica Bearding regarding processing to Relativity.	0.70
Gaskins, Edward B. (02733)	6/27/2018	\$ 621.00	Continue drafting interrogatory responses and reviewing Town documents.	1.80
Gaskins, Edward B. (02733)	6/28/2018	\$ 241.50	Continue drafting interrogatory responses and reviewing Town document production.	0.70
Stockhausen, Wendy S. (08669)	7/6/2018	\$ 27.00	Review e-mail from Mr. Gaskins and ADC Engineering regarding subpoena response; access secure file share and download files; extract from zipfile and process to MVA file system.	0.20

Stockhausen, Wendy S. (08669)	7/6/2018	\$ 27.00	Review e-mail communications between Mr. Gaskins and opposing counsel regarding extension of time to respond to discovery requests; docket new deadline.	0.20
Gaskins, Edward B. (02733)	7/6/2018	\$ 103.50	Conduct preliminary review of documents received in response to ADC subpoena. Emails to and from opposing counsel re: discovery responses.	0.30
Gaskins, Edward B. (02733)	7/12/2018	\$ 931.50	Continue drafting and revise interrogatory answers.	2.70
Gaskins, Edward B. (02733)	7/13/2018	\$ 379.50	Revise interrogatory responses. Draft responses to requests for production. Email to client re: [REDACTED]	1.10
Gaskins, Edward B. (02733)	7/19/2018	\$ 345.00	Prepare for and participate in phone conference w/ Tex Small and Tyler Flesch re: [REDACTED]	1.00
Gaskins, Edward B. (02733)	7/25/2018	\$ 276.00	Draft search terms and guidelines for discovery document search and email to clients.	0.80
Gaskins, Edward B. (02733)	7/26/2018	\$ 241.50	Continue reviewing TOMP document production.	0.70
Gaskins, Edward B. (02733)	8/13/2018	\$ 655.50	Continue reviewing town documents.	1.90
Gaskins, Edward B. (02733)	8/27/2018	\$ 310.50	Complete review of Town produced documents.	0.90
Beard, Jessica M. (08612)	9/10/2018	\$ 324.00	Analyze and configure data set for attorney review.	1.80
Stockhausen, Wendy S. (08669)	9/26/2018	\$ 135.00	Review Scheduling Order; calculate new dates; draft Motion to Amend Scheduling Order and proposed Consent Scheduling Order.	1.00
Gaskins, Edward B. (02733)	10/2/2018	\$ 103.50	Review and revise consent motion to amend scheduling order and proposed scheduling order. Emails to and from opposing counsel re: same.	0.30
Stockhausen, Wendy S. (08669)	10/2/2018	\$ 27.00	E-mail to Mr. Gaskins regarding Consent Motion to Amend Scheduling Order and proposed Amended Scheduling; review reply; communications to opposing counsel forwarding same.	0.20
Gaskins, Edward B. (02733)	10/4/2018	\$ 103.50	Conduct initial review of documents produced by client.	0.30
Stockhausen, Wendy S. (08669)	10/4/2018	\$ 27.00	Review e-mail from Mr. Gaskins and Mr. Flesch; access site; download and process documents to MVA electronic file system.	0.20
Stockhausen, Wendy S. (08669)	10/5/2018	\$ 13.50	Communications with Mr. Hawkins regarding input of documents into Relativity.	0.10
Stockhausen, Wendy S. (08669)	10/5/2018	\$ 27.00	Draft correspondence to Clerk of Court and to Judge Murphy regarding Amended Scheduling Order.	0.20
Hawkins, Matthew C. (07012)	10/9/2018	\$ 58.50	Analyze Flesch data importing into document discovery database.	0.30
Trunk, Chelsea L. (08847)	10/9/2018	\$ 262.50	Analyze and configure data set for import into Relativity database.	1.50
Stockhausen, Wendy S. (08669)	10/10/2018	\$ 27.00	E-mail to Judge Murphy regarding Joint Motion to Amend Scheduling Order and proposed Order; review e-mail received from Judge Murphy's law clerk regarding same; docket new deadlines.	0.20
Gaskins, Edward B. (02733)	10/17/2018	\$ 897.00	Analyze client documents for discovery production.	2.60
Gaskins, Edward B. (02733)	10/25/2018	\$ 207.00	Continue analyzing client documents for production.	0.60
Gaskins, Edward B. (02733)	11/1/2018	\$ 276.00	Continue reviewing client documents for production.	0.80
Stockhausen, Wendy S. (08669)	11/2/2018	\$ 54.00	Review file; access SMHA document production from website; re-process SMHA subpoena responsive documents to MVA electronic file system to include documents not included in original download.	0.40
Gaskins, Edward B. (02733)	11/2/2018	\$ 724.50	Continue review of documents for document production. Revise interrogatory responses. Email to client re: [REDACTED]	2.10
Trunk, Chelsea L. (08847)	11/2/2018	\$ 175.00	Analyze and configure data set for import into Relativity database.	1.00
Stockhausen, Wendy S. (08669)	11/5/2018	\$ 54.00	Revise and finalize Seamon Whiteside subpoena; prepare Certificate of Authenticity for same; revise and finalize service letter; process for service upon registered agent by certified mail; e-mail to counsel of record providing copy of subpoena.	0.40
Trunk, Chelsea L. (08847)	11/5/2018	\$ 87.50	Analyze and configure data set for import into Relativity database.	0.50
Gaskins, Edward B. (02733)	11/20/2018	\$ 276.00	Continue reviewing documents for document production.	0.80
Gaskins, Edward B. (02733)	11/21/2018	\$ 759.00	Continue reviewing client documents for document production.	2.20
Gaskins, Edward B. (02733)	11/26/2018	\$ 241.50	Continue reviewing client documents for document production.	0.70
Trunk, Chelsea L. (08847)	11/27/2018	\$ 262.50	Assist case team with production of documents.	3.00
Gaskins, Edward B. (02733)	11/27/2018	\$ 2,656.50	Complete review of client documents for document production. Review SSC and SHMA large volume of documents for interrogatory responses and document production. Revise responses to interrogatories and requests for production.	7.70

Stockhausen, Wendy S. (08669)	11/28/2018	\$	135.00	Compile and process document production and subpoena responses for electronic service via secure ShareFile; review, revise, and finalize discovery responses; prepare cover letter; e-mail(s) to opposing counsel regarding correspondence, discovery responses, link to protected production, and password; process discovery responses for service by mail in compliance with SC Rule.	1.00
Gaskins, Edward B. (02733)	11/28/2018	\$	241.50	Final review of, revisions to, and execution of responses to interrogatories and requests for production.	0.70
Trunk, Chelsea L. (08847)	12/11/2018	\$	105.00	Retrieve data from secure file transfer site and load to database.	0.60
Gaskins, Edward B. (02733)	12/11/2018	\$	552.00	Prepare for and participate in office conference w/ clients re: [REDACTED]	1.60
Gaskins, Edward B. (02733)	12/12/2018	\$	207.00	Phone conference w/ opposing counsel re: discovery matters. Working session re: subpoenas and expert issues.	0.60
Stockhausen, Wendy S. (08669)	12/12/2018	\$	81.00	Research of information regarding service of subpoenas on Channel 2 and Channel 4 news stations; draft subpoenas to Channel 2 and Channel 4 news stations; draft service letters regarding same.	0.60
Gaskins, Edward B. (02733)	12/13/2018	\$	207.00	Phone conference w/ Roy Strickland re: [REDACTED] Email Roy Strickland materials for re: [REDACTED] Working session re: subpoenas.	0.60
Stockhausen, Wendy S. (08669)	12/13/2018	\$	94.50	Review online news videos of press conference; research regarding service of subpoena on Channel 5; draft subpoena to Channel 5 news station; draft service correspondence.	0.70
Trunk, Chelsea L. (08847)	12/14/2018	\$	87.50	Plan and prepare for production of documents.	0.50
Stockhausen, Wendy S. (08669)	12/14/2018	\$	135.00	Continued research regarding press conference and service of subpoenas; revise and finalize subpoenas to Channel 2, Channel 4, and Channel 5 news stations; revise and finalize service correspondence; prepare Certificate of Authenticity for each entity; process subpoena packages for service.	1.00
Stockhausen, Wendy S. (08669)	12/14/2018	\$	13.50	E-mail to opposing counsel providing copies of subpoenas to news stations and Clawson & Staubes.	0.10
Gaskins, Edward B. (02733)	12/14/2018	\$	793.50	Draft and revise subpoenas to Clawson & Staubes and TV stations. Analyze parking revenue data. Emails to and from client re: [REDACTED]. Review and working session re: production of SMHa documents.	2.30
Stockhausen, Wendy S. (08669)	12/14/2018	\$	54.00	Revise and finalize Subpoena to Clawson and Staubes; prepare Certificate of Authenticity; prepare service letter; process for service by certified mail; e-mail to Matthew Story providing copy.	0.40
Trunk, Chelsea L. (08847)	12/17/2018	\$	437.50	Assist with production of documents.	2.50
Gaskins, Edward B. (02733)	12/17/2018	\$	103.50	Phone conference w/ Matt Story of Clawson and Staubes re: subpoena. Phone conference w/ Tyler Flesch re: [REDACTED]	0.30
Trunk, Chelsea L. (08847)	12/18/2018	\$	-		0.30
Gaskins, Edward B. (02733)	12/18/2018	\$	69.00	Review proposed retainer agreement and invoice from DHG for [REDACTED] and email clients re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	12/31/2018	\$	241.50	Revise expert disclosure and draft interrogatory answers re: expert.	0.70
Gaskins, Edward B. (02733)	1/2/2019	\$	37.50	Emails to and from opposing counsel re: protective order.	0.10
Gaskins, Edward B. (02733)	1/3/2019	\$	37.50	Phone conference w/ Alex Smith from DHG re: [REDACTED]	0.10
Gaskins, Edward B. (02733)	1/4/2019	\$	37.50	Email to and from WCIV representative re: subpoena response.	0.10
Gaskins, Edward B. (02733)	1/8/2019	\$	262.50	Review subpoenas and deposition notice from defendant. Revise protective order. Multiple emails to and from opposing counsel protective order and deposition of Roy Strickland. Phone conference w/ Roy Strickland re: [REDACTED] [REDACTED] Emails to and from clients re: [REDACTED]	0.70
Stockhausen, Wendy S. (08669)	1/9/2019	\$	27.00	Review correspondence and cd received from WCIV; process video to MVA file system; email to Mr. Gaskins regarding same.	0.20
Gaskins, Edward B. (02733)	1/16/2019	\$	187.50	Review and respond to opposing counsel re: protective order/confidentiality agreement. Emails to clients re: [REDACTED]	0.50
Gaskins, Edward B. (02733)	1/30/2019	\$	150.00	Review, identify, and send documents to Roy Strickland for [REDACTED]	0.40

Gaskins, Edward B. (02733)	1/31/2019	\$	37.50	Phone conference w/ Alex Smith of DHG re: [REDACTED]	0.10
Stockhausen, Wendy S. (08669)	1/31/2019	\$	27.00	Review Notice of Deposition received from counsel for defendant; process notice and docket deposition date.	0.20
Gaskins, Edward B. (02733)	2/1/2019	\$	150.00	Review and analyze Rule 30(b)(6) deposition topics. Multiple emails w/ opposing counsel re: depositions.	0.40
Gaskins, Edward B. (02733)	2/4/2019	\$	712.50	Prepare for and participate in office conference w/ clients and damages expert. Emails and phone conference w/ opposing counsel re: scheduling order and discovery issues.	1.90
Gaskins, Edward B. (02733)	2/6/2019	\$	112.50	Phone conference and emails w/ attorney for Stubbs Muldrow Herin architects re: Jeff Johnston interview.	0.30
Gaskins, Edward B. (02733)	2/8/2019	\$	337.50	Review Stubbs Muldrow Herrin documents in preparation for meeting w/ Jeff Johnston.	0.90
Gaskins, Edward B. (02733)	2/11/2019	\$	1,200.00	Review Stubbs Muldrow Herrin documents. Prepare for and participate in interview of Linda Page.	3.20
Gaskins, Edward B. (02733)	2/12/2019	\$	937.50	Review documents for, prepare for, travel to and from, and participate in witness interview of Jeff Johnston.	2.50
Gaskins, Edward B. (02733)	2/14/2019	\$	37.50	Review subpoena response from Clawson & Staubes.	0.10
Gaskins, Edward B. (02733)	2/18/2019	\$	37.50	Review proposed amended scheduling order and emails to and from opposing counsel re: same.	0.10
Gaskins, Edward B. (02733)	3/5/2019	\$	75.00	Phone conference w/ opposing counsel re: legal issues re: interview/depositions of council members.	0.20
Gaskins, Edward B. (02733)	3/7/2019	\$	112.50	Analyze issues re: [REDACTED] Emails to and from opposing counsel re: motion for protective order prohibiting interviews/depositions of council members.	0.30
Gaskins, Edward B. (02733)	3/12/2019	\$	225.00	Analyze and revise draft confidentiality order. Emails to and from opposing counsel re: deposition scheduling and confidentiality order. Analyze motion for protective order re: depositions/interviews of council members.	0.60
Gaskins, Edward B. (02733)	3/21/2019	\$	375.00	Review discovery re: outstanding discovery items. Multiple emails w/ opposing counsel re: deposition schedule and deposition of council members. Emails to and from client re: [REDACTED]	1.00
Stockhausen, Wendy S. (08669)	3/25/2019	\$	94.50	Review attorney communications; draft deposition notices and certificates of service for E. DeMoura, K. Prause, C. Farrell, M. Robertson, and B. Morrison.	0.70
Stockhausen, Wendy S. (08669)	3/26/2019	\$	81.00	Online research of deponents; revise and finalize deposition notices and certificates of service for E. DeMoura, K. Prause, C. Farrell, M. Robertson, and B. Morrison; prepare service correspondence; process for service by mail and e-mail; e-mail to opposing counsel forwarding copies of same.	0.60
Stockhausen, Wendy S. (08669)	3/27/2019	\$	27.00	Docket deposition dates and times; communications with court reporter regarding coverage.	0.20
Gaskins, Edward B. (02733)	3/29/2019	\$	300.00	Review deposition Rule 30(b)(6) deposition notice. Emails and phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED] Conduct initial review of financial documents provided.	0.80
Trunk, Chelsea L. (08847)	4/1/2019	\$	175.00	Configure and import electronic data into discovery database for attorney review.	1.00
Gaskins, Edward B. (02733)	4/8/2019	\$	300.00	Analyze supplemental financial documents from client.	0.80
Beard, Jessica M. (08612)	4/8/2019	\$	216.00	Assist with production of documents.	1.20
Stockhausen, Wendy S. (08669)	4/8/2019	\$	27.00	Process supplemental production to password protected zipfile and upload to ShareFile in preparation of production.	0.20
Gaskins, Edward B. (02733)	4/9/2019	\$	75.00	Analyze 30(b)(6) deposition topics and begin preparing objections.	0.20
Stockhausen, Wendy S. (08669)	4/9/2019	\$	13.50	E-mail to opposing counsel providing link and password for access to supplemental production.	0.10
Stockhausen, Wendy S. (08669)	4/10/2019	\$	27.00	Communications with opposing counsel regarding signed copy of Consent Order.	0.20
Gaskins, Edward B. (02733)	4/11/2019	\$	600.00	Research caselaw re: [REDACTED]. Begin drafting correspondence to opposing counsel re: objections to Rule 30(b)(6) deposition notice.	1.60
Gaskins, Edward B. (02733)	4/15/2019	\$	900.00	Draft and revise letter to opposing counsel re: objections to Rule 30(b)(6) notice. Begin reviewing documents for deposition prep.	2.40
Gaskins, Edward B. (02733)	4/16/2019	\$	150.00	Phone conference w/ Tex Small re: [REDACTED] Phone conference w/ Alex Smith of DHG re: [REDACTED]	0.40

Gaskins, Edward B. (02733)	4/17/2019	\$ 37.50	Emails to and from opposing counsel re: Rule 30(b)(6) deposition issues.	0.10
Gaskins, Edward B. (02733)	4/18/2019	\$ 1,275.00	Review and identify documents for client deposition prep.	3.40
Gaskins, Edward B. (02733)	4/19/2019	\$ 825.00	Begin drafting client outline for Rule 30(b)(6) deposition.	2.20
Stockhausen, Wendy S. (08669)	4/19/2019	\$ 675.00	Analyze and compile voluminous exhibits for Shem Creek 30(b)(6) deposition preparation; assemble into notebooks; draft index for same.	5.00
Stockhausen, Wendy S. (08669)	4/20/2019	\$ 270.00	Finalize exhibit notebooks for deposition preparation of Shem Creek 30(b)(6) deponents; finalize index.	2.00
Gaskins, Edward B. (02733)	4/22/2019	\$ 525.00	Continue drafting outline for Rule 30(b)(6) deposition.	1.40
Gaskins, Edward B. (02733)	4/22/2019	\$ 675.00	Draft deposition outline for Rule 30(b)(6) deposition.	1.80
Gaskins, Edward B. (02733)	4/22/2019	\$ 1,425.00	Prepare for and participate in office conference w/ clients for [REDACTED]	3.80
Stockhausen, Wendy S. (08669)	4/22/2019	\$ 27.00	Review e-mail and Feasibility Study attached; bates label in preparation of production; e-mail to opposing counsel forwarding same.	0.20
Gaskins, Edward B. (02733)	4/23/2019	\$ 712.50	Phone conference w/ clients to [REDACTED]. Review documents re: outstanding deposition issues. Emails to and from opposing counsel re: deposition.	1.90
Stockhausen, Wendy S. (08669)	4/23/2019	\$ 40.50	Communications with opposing counsel concerning start time of Shem Creek 30(b)(6) deposition and production of documents; process certain document production to MVA ShareFile; e-mail to opposing counsel providing link to production.	0.30
Gaskins, Edward B. (02733)	4/24/2019	\$ 2,662.50	Prepare and attend Rule 30(b)(6) deposition of SCDG.	7.10
Stockhausen, Wendy S. (08669)	4/26/2019	\$ 472.50	Analyze and compile exhibits for Eric DeMoura deposition; assemble into notebook for attorney reference and folders for witness and court reporter; prepare index for same.	3.50
Gaskins, Edward B. (02733)	4/26/2019	\$ 1,425.00	Review documents and identify exhibits for DeMoura deposition. Begin drafting outline for DeMoura deposition.	3.80
Gaskins, Edward B. (02733)	4/28/2019	\$ 1,312.50	Draft outline for DeMoura deposition. Analyze exhibits and prepare for DeMoura deposition.	3.50
Stockhausen, Wendy S. (08669)	4/29/2019	\$ 175.50	Analyze and add additional documents to notebooks; revise and finalize index and notebooks.	1.30
Stockhausen, Wendy S. (08669)	4/29/2019	\$ 67.50	Analyze and compile additional documents for inclusion in DeMoura Exhibit Notebook and folders; revise index; research Mt. Pleasant Town Meeting Minutes from 2013; process for inclusion in deposition.	0.50
Gaskins, Edward B. (02733)	4/29/2019	\$ 2,362.50	Prepare for and take deposition of Eric DeMoura.	6.30
Stockhausen, Wendy S. (08669)	4/30/2019	\$ 54.00	Begin reviewing and analyzing documents in preparation of Kent Prause deposition.	0.40
Gaskins, Edward B. (02733)	4/30/2019	\$ 2,137.50	Identify and analyze exhibits for Prause deposition. Draft outline and prepare for Prause deposition.	5.70
Stockhausen, Wendy S. (08669)	4/30/2019	\$ 580.50	Analyze and compile exhibits in preparation of Kent Prause deposition; assemble into notebook for attorney reference and folders for witness and court reporter; prepare index for same.	4.30
Gaskins, Edward B. (02733)	5/1/2019	\$ 2,962.50	Prepare for and take deposition of Kent Prause.	7.90
Stockhausen, Wendy S. (08669)	5/1/2019	\$ 162.00	Review file; analyze documents and compile potential exhibits in preparation of C. Farrell deposition; prepare exhibit notebook and index.	1.20
Gaskins, Edward B. (02733)	5/2/2019	\$ 2,962.50	Prepare for and take deposition of Christiane Farrell.	7.90
Stockhausen, Wendy S. (08669)	5/2/2019	\$ 27.00	Analyze additional documents and compile additional exhibits in preparation of C. Farrell deposition; revise exhibit index.	0.20
Gaskins, Edward B. (02733)	5/7/2019	\$ 300.00	Emails to and from Judge Murphy re: hearing on Town's motion for protective order. Phone conference w/ Roy Strickland re: [REDACTED]. Analyze ULI study re: [REDACTED]	0.80
Gaskins, Edward B. (02733)	5/9/2019	\$ 112.50	Phone conference w/ Alex Smith re: [REDACTED]. Email to clients re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	5/10/2019	\$ 225.00	Email to client re: [REDACTED]. Phone conference w/ Tyler Fleesch re: [REDACTED]. Search for documents re: Town's engagement of PR firm.	0.60

Stockhausen, Wendy S. (08669)	5/13/2019	\$ 54.00	Review and process deposition transcripts of Mr. Flesch and Mr. Small received from court reporter; communications with Mr. Flesch and Mr. Small regarding [REDACTED]	0.40
Stockhausen, Wendy S. (08669)	5/14/2019	\$ 40.50	Draft Plaintiff's Second Interrogatories and Second Request for Production to Defendant.	0.30
Stockhausen, Wendy S. (08669)	5/14/2019	\$ 40.50	Research Rawle Murdy; draft subpoena to Rawle Murdy Associates, Inc.	0.30
Stockhausen, Wendy S. (08669)	5/15/2019	\$ 54.00	Draft Exhibit A to Rawle Murdy Associates, Inc.'s subpoena.	0.40
Gaskins, Edward B. (02733)	5/22/2019	\$ 37.50	Emails to and from Trenholm Walker and opposing counsel re: mediation.	0.10
Gaskins, Edward B. (02733)	5/28/2019	\$ 75.00	Multiple emails w/ opposing counsel re: mediation. Email to T. Walker re: mediation.	0.20
Gaskins, Edward B. (02733)	5/29/2019	\$ 525.00	Draft supplemental discovery requests. Phone conference w/ Tyler Flesch re: [REDACTED] Research Town credit rating and bond issuances.	1.40
Stockhausen, Wendy S. (08669)	5/30/2019	\$ 27.00	Review notification received from court reporter; analyze and process Kent Prause deposition transcript with corrected exhibits.	0.20
Gaskins, Edward B. (02733)	5/31/2019	\$ 37.50	Email to mediator re: mediation dates.	0.10
Gaskins, Edward B. (02733)	6/3/2019	\$ 300.00	Research SEC rules re: municipal securities disclosures. Finalize supplemental request for production to Town.	0.80
Stockhausen, Wendy S. (08669)	6/3/2019	\$ 40.50	Revise and finalize Plaintiff's Second Requests for Production to Defendant; draft service correspondence and Certificate of Service; process for service by hand delivery; e-mail to opposing counsel regarding same.	0.30
Gaskins, Edward B. (02733)	6/4/2019	\$ 525.00	Analyze Town's memo in support of motion for protective order. Begin researching case law for [REDACTED]	1.40
Stockhausen, Wendy S. (08669)	6/4/2019	\$ 67.50	Draft Memorandum in Opposition to Defendants' Motion for Protective Order.	0.50
Gaskins, Edward B. (02733)	6/6/2019	\$ 562.50	Begin drafting memo in opposition to motion for protective order. Analyze caselaw [REDACTED]	1.50
Gaskins, Edward B. (02733)	6/7/2019	\$ 1,575.00	Research caselaw for [REDACTED] Draft memo in opposition to motion for protective order.	4.20
Gaskins, Edward B. (02733)	6/10/2019	\$ 1,387.50	Draft and revise memo in opposition to motion for protective order. Prepare for motion hearing.	3.70
Stockhausen, Wendy S. (08669)	6/10/2019	\$ 202.50	Analyze Memorandum in Opposition to Defendant's Motion for Protective Order; compile exhibits; communication with Clerk of Court regarding filing; finalize Memorandum and exhibits; prepare filing and service correspondence; process Memorandum and exhibits for filing and service.	1.50
Gaskins, Edward B. (02733)	6/11/2019	\$ 1,312.50	Travel to and from and attend hearing on Town's motion for protective order.	3.50
Gaskins, Edward B. (02733)	6/17/2019	\$ 262.50	Emails to and from clients re: [REDACTED] Emails to and from judge's law clerk and opposing counsel re: status conference.	0.70
Gaskins, Edward B. (02733)	6/21/2019	\$ 225.00	Status conference w/ Judge Murphy and David Pagliarini re: trial scheduling. Emails to and from clients re: [REDACTED] Phone conference w/ David Pagliarini re: mediation. Phone conference w/ Tyler Flesch re: [REDACTED]	0.60
Gaskins, Edward B. (02733)	6/27/2019	\$ 150.00	Phone conference w/ clients re: [REDACTED]	0.40
Gaskins, Edward B. (02733)	7/9/2019	\$ 75.00	Phone conference w/ Roy Strickland re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	7/10/2019	\$ 150.00	Email to clients re: [REDACTED] Phone conference w/ Julia Copeland re: expert depositions.	0.40
Gaskins, Edward B. (02733)	7/11/2019	\$ 75.00	Preliminary review of discovery responses. Emails to and from Town counsel re: email search terms.	0.20
Gaskins, Edward B. (02733)	7/16/2019	\$ 37.50	Phone conference w/ Roy Strickland re: [REDACTED]	0.10
Gaskins, Edward B. (02733)	7/17/2019	\$ 825.00	Multiple phone conferences w/ Alex Smith re: [REDACTED] Analyze financial statements and lease agreement for [REDACTED] Emails and phone conference w/ Tyler Flesch re: [REDACTED]	2.20
Beard, Jessica M. (08612)	7/17/2019	\$ 360.00	Analyze and configure data set for attorney review.	2.00

Gaskins, Edward B. (02733)	7/18/2019	\$ 600.00	Multiple phone conferences w/ Alex Smith re: [REDACTED] [REDACTED] Analyze PLA re: [REDACTED] [REDACTED] Review case documents re: [REDACTED] [REDACTED] Research caselaw and accounting materials re: [REDACTED]	1.60
Beard, Jessica M. (08612)	7/18/2019	\$ 180.00	Analyze and configure data set for attorney review.	1.00
Gaskins, Edward B. (02733)	7/19/2019	\$ 1,350.00	Phone conference w/ Roy Strickland re: [REDACTED] Phone conference w/ Tyler Flesch re: [REDACTED] Conduct independent analysis re: damages. Research and analyze caselaw and other legal materials re: [REDACTED]	3.60
Trunk, Chelsea L. (08847)	7/22/2019	\$ 210.00	Configure and import produced documents into discovery database for attorney review.	1.20
Hawkins, Matthew C. (07012)	7/22/2019	\$ 156.00	Resolve technical issue related to corrupted files.	0.80
Gaskins, Edward B. (02733)	7/22/2019	\$ 1,275.00	Multiple phone conferences w/ Alex Smith and Roy Strickland re: [REDACTED] Analyze and conduct research re: [REDACTED] Review and analyze supplemental documents produced by Town.	3.40
Gaskins, Edward B. (02733)	7/23/2019	\$ 1,537.50	Multiple phone conferences w/ Alex Smith re: [REDACTED] [REDACTED] Phone conference w/ Roy Strickland re: [REDACTED] [REDACTED] Phone conference w/ Tyler Flesch re: [REDACTED] Review rent damages calculation. Draft and revise supplemental discovery responses re: damages and subpoena to Missy Johnson. Phone conference w/ Julia Copeland re: expert issues.	4.10
Gaskins, Edward B. (02733)	7/25/2019	\$ 150.00	Review correspondence re: Town's withdrawal of expert and deposition of Tyler Flesch. Emails to and from opposing counsel re: deposition of B. Morrison. Phone conferences w/ Tyler Flesch re: [REDACTED]	0.40
Trunk, Chelsea L. (08847)	7/29/2019	\$ 175.00	Configure and import electronic data into discovery database for attorney review.	1.00
Stockhausen, Wendy S. (08669)	7/29/2019	\$ 27.00	Revise Notice of Deposition for Brad Morrison; process for service by mail; email to counsel of record regarding same.	0.20
Stockhausen, Wendy S. (08669)	7/29/2019	\$ 13.50	Communications with court reporter regarding coverage for Brad Morrison deposition.	0.10
Gaskins, Edward B. (02733)	7/29/2019	\$ 75.00	Review deposition notice for Tyler Flesch. Email to clients re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	7/31/2019	\$ 900.00	Identify and analyze documents for Morrison deposition. Research statutes and Town documents in preparation for Morrison deposition.	2.40
Stockhausen, Wendy S. (08669)	7/31/2019	\$ 13.50	Communications with court reporter confirming Brad Morrison deposition coverage.	0.10
Gaskins, Edward B. (02733)	8/1/2019	\$ 112.50	Phone conference w/ Julia Copeland re: Morrison deposition and documents. Phone conference w/ Tyler Flesch re: [REDACTED] Emails to and from J. Copeland re: document production issues.	0.30
Stockhausen, Wendy S. (08669)	8/1/2019	\$ 94.50	Analyze, process and compile potential exhibits for Brad Morrison deposition; prepare and index deposition notebook.	0.70
Trunk, Chelsea L. (08847)	8/1/2019	\$ 52.50	Prepare produced documents from Relativity for attorney review.	0.30
Gaskins, Edward B. (02733)	8/5/2019	\$ 337.50	Phone conference w/ Julia Copeland re: subpoena. Phone conference w/ Alex Smith and Tyler Flesch re: [REDACTED]	0.90
Gaskins, Edward B. (02733)	8/7/2019	\$ 450.00	Identify document prep exhibits and prepare for deposition prep of Tyler Flesch.	1.20
Gaskins, Edward B. (02733)	8/8/2019	\$ 1,875.00	Prepare for and defend deposition of Tyler Flesch.	5.00
Stockhausen, Wendy S. (08669)	8/8/2019	\$ 108.00	Review, analyze and compile potential exhibits for Morrison deposition; create index for same.	0.80
Gaskins, Edward B. (02733)	8/9/2019	\$ 2,100.00	Identify and review exhibits for, draft outline for, and take deposition of Brad Morrison. Research SEC regulatory guidance re: [REDACTED]	5.60
Gaskins, Edward B. (02733)	8/12/2019	\$ 2,775.00	Draft and revise PowerPoint presentation for mediation. Prepare for mediation.	7.40
Gaskins, Edward B. (02733)	8/13/2019	\$ 2,250.00	Attend mediation.	6.00
Gaskins, Edward B. (02733)	8/14/2019	\$ 187.50	Phone conferences w/ Tyler Flesch re: [REDACTED] [REDACTED]	0.50
Gaskins, Edward B. (02733)	8/16/2019	\$ 150.00	Phone conference w/ Tyler Flesch re: [REDACTED] Draft email to Judge Murphy's law clerk re: trial schedule.	0.40

Gaskins, Edward B. (02733)	8/19/2019	\$ 187.50	Phone conference w/ Tyler Flesch re: [REDACTED] Phone conference w/ Trenholm Walker re: mediation. Email to Judith McInnis re: subpoena to 101 Coleman Partners.	0.50
Gaskins, Edward B. (02733)	8/20/2019	\$ 712.50	Draft letter to opposing counsel re: settlement and mediation. Analyze Town official statement for bond issuance re: [REDACTED]. Phone conference w/ Judith McInnis re: subpoena response.	1.90
Gaskins, Edward B. (02733)	8/21/2019	\$ 112.50	Phone conference w/ Grayson Lambert re: subpoena to 101 Coleman Partners. Phone conference and email to Tyler Flesch re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	8/23/2019	\$ 1,050.00	Draft and revise settlement/mediation letter to Town's attorney. Research case law and legal materials re: [REDACTED]. Emails to and from clients re: [REDACTED]. Review and revise letter re: 101 Coleman Partners subpoena.	2.80
Stockhausen, Wendy S. (08669)	8/26/2019	\$ 27.00	Convert Powerpoint presentation to pdf format; revise and finalize correspondence to Julia Copeland; e-mail to Mr. Gaskins regarding same.	0.20
Stockhausen, Wendy S. (08669)	8/26/2019	\$ 13.50	E-mail to opposing counsel forwarding correspondence to Ms. Copeland and pdf of Mediation PowerPoint Presentation.	0.10
Gaskins, Edward B. (02733)	8/26/2019	\$ 262.50	Phone conferences w/ Tyler Flesch re: [REDACTED]. Revise and send mediation letter to opposing counsel. Phone conference w/ Grayson Lambert re: 101 Coleman Partners subpoena. Review emails from Town counsel and G. Lambert re: 101 Coleman Partners subpoena.	0.70
Gaskins, Edward B. (02733)	9/4/2019	\$ 112.50	Phone conferences w/ Ken Betsch re: subpoena and case.	0.30
Gaskins, Edward B. (02733)	9/9/2019	\$ 112.50	Phone conferences w/ Tyler Flesch re: [REDACTED]. Phone conference w/ Julia Copeland re: mediation/settlement issues. Emails to and from clients re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	9/10/2019	\$ 150.00	Draft responses to 2nd requests for production.	0.40
Stockhausen, Wendy S. (08669)	9/10/2019	\$ 67.50	Draft Responses to Defendant's Second Requests for Production.	0.50
Trunk, Chelsea L. (08847)	9/11/2019	\$ 210.00	Assist with production of documents.	1.20
Gaskins, Edward B. (02733)	9/11/2019	\$ 375.00	Phone conferences w/ Tyler Flesch re: [REDACTED]. Draft responses to 2nd RFP.	1.00
Beard, Jessica M. (08612)	9/13/2019	\$ 216.00	Assist with production of documents.	1.20
Gaskins, Edward B. (02733)	9/13/2019	\$ 1,012.50	Draft responses to 2nd RFPs.. Phone conference w/ Ken Betsch re: subpoena response. Phone conference w/ Tyler Flesch re: [REDACTED]. Draft and revise letter to Town counsel objecting to subpoenas/depositions of Ken Betsch and Jeff Johnston. Review and analyze documents produced by Ken Betsch.	2.70
Stockhausen, Wendy S. (08669)	9/13/2019	\$ 27.00	Draft objection correspondence to opposing counsel regarding notices and subpoenas issued to Ken Betsch and Jeff Johnston.	0.20
Gaskins, Edward B. (02733)	9/16/2019	\$ 150.00	Review proposed amended scheduling order from Town's attorney. Phone conferences w/ Claude Tackett re: discovery order and related issues.	0.40
Beard, Jessica M. (08612)	9/16/2019	\$ 540.00	Assist with production of documents.	3.00
Beard, Jessica M. (08612)	9/17/2019	\$ 36.00	Analyze and configure data set for attorney review.	0.20
Gaskins, Edward B. (02733)	9/17/2019	\$ 75.00	Phone conference w/ Paul Sperry re: Town's notice of deposition of and subpoena to Jeff Johnston.	0.20
Gaskins, Edward B. (02733)	9/19/2019	\$ 75.00	Review Town's motion to amend scheduling order. Revise responses to 2nd RFP.	0.20
Gaskins, Edward B. (02733)	9/20/2019	\$ 300.00	Review motion to amend scheduling order. Review and revise amendment to supplemental answer to interrogatories and responses to 2nd RFP.	0.80
Gaskins, Edward B. (02733)	10/7/2019	\$ 262.50	Draft and revise settlement correspondence to opposing counsel. Phone conferences w/ Tyler Flesch re: [REDACTED]	0.70
Gaskins, Edward B. (02733)	10/9/2019	\$ 75.00	Phone conference w/ Tyler Flesch re: [REDACTED]. Communications w/ Julia Copeland re: mediation and discovery issues.	0.20
Gaskins, Edward B. (02733)	10/14/2019	\$ 262.50	Phone conference w/ Tyler Flesch re: [REDACTED]. Emails to and from opposing counsel re: depositions. Strategy session re: pre-trial preparation.	0.70

Gaskins, Edward B. (02733)	10/15/2019	\$ 112.50	Phone conference w/ Ken Betsch re: deposition. Emails to and from opposing counsel re: depositions.	0.30
Gaskins, Edward B. (02733)	10/16/2019	\$ 75.00	Emails to and from SMHa attorney re: Johnston deposition. Emails to and from opposing counsel re: deposition.	0.20
Gaskins, Edward B. (02733)	10/22/2019	\$ 150.00	Review motion to compel filed by Town. Emails to and from opposing counsel and judge's law clerk re: hearing on motion to compel.	0.40
Phillips, Laura L. (08992)	10/25/2019	\$ 216.00	Prepared proposed Memorandum in Opposition to Defendant's Motion to Compel Production of Documents in Response to their Second Requests for Production.	1.60
Gaskins, Edward B. (02733)	10/31/2019	\$ 37.50	Review notice of depositions for Tex Small and Tyler Flesch. Review email from opposing counsel and notice of deposition re: Jeff Johnston.	0.10
Gaskins, Edward B. (02733)	11/6/2019	\$ 112.50	Phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED] Phone conference w/ Julia Copeland re: deposition scheduling.	0.30
Gaskins, Edward B. (02733)	11/8/2019	\$ 937.50	Review and analyze Town's motion to compel. Research and analyze case law and legal materials re: [REDACTED] [REDACTED] Begin drafting response in opposition to motion to compel.	2.50
Gaskins, Edward B. (02733)	11/11/2019	\$ 937.50	Review correspondence from Grayson Lambert re: motion to compel hearing. Continue drafting response in opposition to motion to compel and review documents related to motion.	2.50
Gaskins, Edward B. (02733)	11/12/2019	\$ 825.00	Continue drafting memo in opposition to motion to compel. Multiple emails to and from law clerk, Town's attorneys, and clients re: motion to compel developments. Phone conference w/ Greyson Lambert re: motion to compel issues.	2.20
Phillips, Laura L. (08992)	11/13/2019	\$ 40.50	Prepared proposed Motion to Strike Defendant's Expert Disclosure.	0.30
Gaskins, Edward B. (02733)	11/13/2019	\$ 1,200.00	Review request for motion to extend discovery. Draft email to judge's law clerk in opposition to extension. Review Town's expert disclosure and previous documents relating to disclosure and withdrawal. Emails to and from client re: [REDACTED] Research and analyze case law re: [REDACTED] Continue drafting memo in opposition to motion to compel discovery.	3.20
Phillips, Laura L. (08992)	11/14/2019	\$ 81.00	Continued preparing proposed Motion to Strike Defendant's Expert Disclosure.	0.60
Gaskins, Edward B. (02733)	11/14/2019	\$ 112.50	Review correspondence from Town attorneys re: motion for extension of discovery. Emails to and from Greyson Lambert re: Town correspondence. Email from judge's law clerk and to clients re: denial of discovery extension.	0.30
Gaskins, Edward B. (02733)	11/15/2019	\$ 225.00	Review subpoena and deposition notice for 101 Coleman Partners. Emails to and from Town attorneys and Greyson Lambert re: 101 Coleman deposition. Phone conference w/ Tyler Flesch re: [REDACTED] Phone conference w/ Greyson Lambert re: deposition and motion to compel strategy.	0.60
Gaskins, Edward B. (02733)	11/18/2019	\$ 600.00	Research and analyze case law for [REDACTED] [REDACTED] Phone conference w/ Ken Betsch re: deposition.	1.60
Phillips, Laura L. (08992)	11/19/2019	\$ 27.00	Reviewed Motion to Strike Defendant's Expert Witness and gathered corresponding exhibits to the motion.	0.20
Phillips, Laura L. (08992)	11/19/2019	\$ 13.50	Prepared Motion to Strike Defendant's Expert Witness for electronic submission with the Charleston Clerk and electronically submitted same.	0.10
Gaskins, Edward B. (02733)	11/19/2019	\$ 75.00	Final review and revisions to motion to strike expert.	0.20
Gaskins, Edward B. (02733)	11/20/2019	\$ 3,562.50	Travel to and from and participate in deposition of Ken Betsch.	9.50
Gaskins, Edward B. (02733)	11/25/2019	\$ 225.00	Draft memo in opposition to motion to compel. Email to Judge Murphy's law clerk re: motion to strike expert.	0.60
Phillips, Laura L. (08992)	11/26/2019	\$ 27.00	Began gathering exhibits to Memorandum in Opposition to Defendant's Motion to Compel Production of Documents in Second Requests for Production and Documents per Subpoena to 101 Coleman Partners.	0.20
Gaskins, Edward B. (02733)	11/26/2019	\$ 2,287.50	Draft and revise memo in opposition to motion compel.	6.10

Phillips, Laura L. (08992)	11/27/2019	\$ 13.50	Correspondence to Tyler Flesch re: [REDACTED]	0.10
Phillips, Laura L. (08992)	11/27/2019	\$ 324.00	Continued gathering exhibits to Memorandum in Opposition to Defendant's Motion to Compel Production of Documents in Second Requests for Production and Documents per Subpoena to 101 Coleman Partners.	2.40
Phillips, Laura L. (08992)	11/27/2019	\$ 27.00	Prepared Memorandum in Opposition to Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the Alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to 101 Coleman Partners for electronic submission with Charleston Clerk and electronically submitted same.	0.20
Phillips, Laura L. (08992)	11/27/2019	\$ 13.50	Prepared correspondence to Judge Murphy re: submission of Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel.	0.10
Phillips, Laura L. (08992)	12/2/2019	\$ 13.50	Correspondence from counsel for 101 Coleman Partners re: their Opposition to Defendant's Motion to Compel and their Motion to Quash the 30(b)(6) Deposition of 101 Coleman Partners.	0.10
Gaskins, Edward B. (02733)	12/2/2019	\$ 112.50	Phone conference w/ SMHa attorney re: Jeff Johnston deposition. Emails to and from clients re: [REDACTED]	0.30
Phillips, Laura L. (08992)	12/3/2019	\$ 13.50	Prepared Notice of Deposition of Missy Johnson.	0.10
Phillips, Laura L. (08992)	12/3/2019	\$ 13.50	Prepared deposition subpoena to Missy Johnson.	0.10
Phillips, Laura L. (08992)	12/3/2019	\$ 13.50	Prepared letter to Missy Johnson re: the Notice of Deposition and Deposition Subpoena for the taking of her deposition.	0.10
Phillips, Laura L. (08992)	12/3/2019	\$ 13.50	Processed outgoing Notice of Deposition and deposition subpoena to Missy Johnson.	0.10
Phillips, Laura L. (08992)	12/3/2019	\$ 162.00	Prepared proposed Memorandum in Support of Motion to Strike Defendant's Expert Witness.	1.20
Gaskins, Edward B. (02733)	12/3/2019	\$ 900.00	Analyze case law for [REDACTED] Draft memo in support of motion to strike.	2.40
Phillips, Laura L. (08992)	12/4/2019	\$ 324.00	Gathered and organized proposed exhibits to the deposition of Jeff Johnston.	2.40
Phillips, Laura L. (08992)	12/4/2019	\$ 40.50	Gathered and organized exhibits to the Memorandum in Support of Motion to Strike Defendant's Expert.	0.30
Phillips, Laura L. (08992)	12/4/2019	\$ 13.50	Prepared Memorandum in Support of Motion to Strike Defendant's Expert Witness for electronic submission with the court and electronically submitted same.	0.10
Phillips, Laura L. (08992)	12/4/2019	\$ 13.50	Prepared correspondence to Judge Murphy and her Law Clerk re: the Memorandum in Support of Motion to Strike Defendant's Expert Witness.	0.10
Gaskins, Edward B. (02733)	12/4/2019	\$ 2,437.50	Draft, revise, and prepare for filing memo in support of motion to strike expert. Phone conference w/ Tyler Flesch. Identify documents for deposition prep w/ Jeff Johnston. Participate in deposition prep w/ Jeff Johnston. Review Town's response to motion to strike.	6.50
Phillips, Laura L. (08992)	12/5/2019	\$ 13.50	Correspondence from counsel for Defendant re: their Memorandum in Opposition to Plaintiff's Motion to Strike its Expert Witness.	0.10
Phillips, Laura L. (08992)	12/5/2019	\$ 40.50	Prepared draft of Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike Defendant's Expert.	0.30
Phillips, Laura L. (08992)	12/5/2019	\$ 40.50	Reviewed select documents previously produced to see if 101 Coleman Partners was identified.	0.30
Magill, Clinton T. (02892)	12/5/2019	\$ 385.00	Supplement and revise our Reply to Defendant's Memorandum in Opposition to our Motion to Strike prior to filing same with Court	1.40
Phillips, Laura L. (08992)	12/5/2019	\$ 27.00	Gathered and organized exhibit to Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike Defendant's Expert.	0.20
Phillips, Laura L. (08992)	12/5/2019	\$ 13.50	Prepared Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike Defendant's Expert Witness for electronic submission with the Charleston Clerk and electronically submitted same.	0.10
Phillips, Laura L. (08992)	12/5/2019	\$ 13.50	Prepared correspondence to Judge Murphy and her Law Clerk re: Plaintiff's Reply to Defendant's Memorandum in Opposition to Motion to Strike Defendant's Expert Witness	0.10

Gaskins, Edward B. (02733)	12/5/2019	\$ 2,175.00	Draft and revise reply to Town's memo in opposition to motion to strike. Attend deposition of Jeff Johnston. Research law re: [REDACTED] Review deposition transcripts for deposition prep for Tex Small.	5.80
Gaskins, Edward B. (02733)	12/6/2019	\$ 750.00	Deposition prep w/ Tex Small.	2.00
Gaskins, Edward B. (02733)	12/9/2019	\$ 37.50	Review correspondence from Elliott Davis counsel re: subpoena to Missy Johnson.	0.10
Gaskins, Edward B. (02733)	12/10/2019	\$ 1,125.00	Meet w/ Tex Small in preparation for deposition. Attend deposition of Tex Small.	3.00
Phillips, Laura L. (08992)	12/11/2019	\$ 67.50	Prepared proposed Order Granting Motion to Strike Defendant's Expert Witness.	0.50
Phillips, Laura L. (08992)	12/11/2019	\$ 67.50	Prepared proposed Order Denying Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the Alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC.	0.50
Gaskins, Edward B. (02733)	12/11/2019	\$ 75.00	Review correspondence from Judge Murphy's law clerk re: rulings on motions. Email and phone conference w/ client re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	12/12/2019	\$ 37.50	Emails to and from counsel for Elliot Davis re: cancelation of deposition of Missy Johnson.	0.10
Gaskins, Edward B. (02733)	12/16/2019	\$ 450.00	Participate in deposition prep w/ Tyler Flesch.	1.20
Gaskins, Edward B. (02733)	12/17/2019	\$ 900.00	Attend deposition of Tyler Flesch. Phone conference w/ Robert Behre re: case status and issues.	2.40
Phillips, Laura L. (08992)	12/20/2019	\$ 351.00	Prepared initial draft of Pre-Trial Brief.	2.60
Phillips, Laura L. (08992)	12/23/2019	\$ 40.50	Organized and updated pleadings and correspondence.	0.30
Phillips, Laura L. (08992)	12/27/2019	\$ 418.50	Prepared deposition summary of Robert Small, Jr. taken 4/24/19.	3.10
Phillips, Laura L. (08992)	12/30/2019	\$ 229.50	Continued preparing summary of Robert Small, Jr.'s deposition taken 4/24/19.3	1.70
Phillips, Laura L. (08992)	12/30/2019	\$ 189.00	Prepared deposition summary of Tyler Flesch's deposition taken 4/24/19.	1.40
Phillips, Laura L. (08992)	1/2/2020	\$ 27.00	Prepared proposed Extension of Tolling Agreement to ADC Engineering.	0.20
Phillips, Laura L. (08992)	1/2/2020	\$ 13.50	Prepared proposed Extension of Tolling Agreement to Stubbs Muldrow Herin Architects.	0.10
Phillips, Laura L. (08992)	1/2/2020	\$ 432.00	Continued deposition summary of Tyler Flesch taken 4/24/19.	3.20
Gaskins, Edward B. (02733)	1/2/2020	\$ 908.50	Draft and revise proposed orders on motion to compel, motion to quash, and motion to strike expert.	2.30
Phillips, Laura L. (08992)	1/3/2020	\$ 13.50	Communications from Defendant's counsel re: their Supplemental Responses to Plaintiff's Second Requests for Production.	0.10
Phillips, Laura L. (08992)	1/3/2020	\$ 13.50	Prepared the proposed Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness and the proposed Order Denying Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and the Production of the Same Documents in	0.10
Phillips, Laura L. (08992)	1/3/2020	\$ 13.50	Prepared correspondence to Judge Murphy's Law Clerk re: the proposed Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness and the proposed Order Denying Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC for electronic submission with the Charleston Clerk and electronically submitted same.	0.10
Phillips, Laura L. (08992)	1/3/2020	\$ 283.50	Continued deposition summary of Tyler Flesch taken 4/24/19.	2.10
Phillips, Laura L. (08992)	1/6/2020	\$ 661.50	Prepared deposition summary of Eric DeMoura taken 4/29/19.	4.90
Gaskins, Edward B. (02733)	1/6/2020	\$ 118.50	Emails to and from opposing counsel re: trial issues. Conduct initial review of draft pre-trial brief.	0.30
Phillips, Laura L. (08992)	1/7/2020	\$ 108.00	Continued deposition summary of Eric DeMoura taken 4/29/19.	0.80
Phillips, Laura L. (08992)	1/8/2020	\$ 513.00	Continued deposition summary of Eric DeMoura taken 4/29/19.	3.80
Phillips, Laura L. (08992)	1/9/2020	\$ 351.00	Prepared deposition summary of Kent Prause.	2.60
Phillips, Laura L. (08992)	1/10/2020	\$ 27.00	Phone conferences with the Jasper County Clerk re: location of trial.	0.20
Phillips, Laura L. (08992)	1/10/2020	\$ 324.00	Continued summary of deposition of Kent Prause.	2.40
Gaskins, Edward B. (02733)	1/10/2020	\$ 39.50	Emails to and from law clerk re: trial location.	0.10

Gaskins, Edward B. (02733)	1/13/2020	\$ 2,330.50	Conduct research for pre-trial brief. Draft pre-trial brief. Phone conference w/ opposing counsel re: case developments.	5.90
Phillips, Laura L. (08992)	1/13/2020	\$ 486.00	Prepared deposition summary of Jeff Johnston.	3.60
Phillips, Laura L. (08992)	1/14/2020	\$ 459.00	Recreated Deposition Preparation Notebook for Tyler Flesch.	3.40
Gaskins, Edward B. (02733)	1/14/2020	\$ 1,817.00	Continue researching and drafting pre-trial brief.	4.60
Phillips, Laura L. (08992)	1/14/2020	\$ 243.00	Prepared list of exhibits marked during depositions taken in this case in preparation of identifying them in the Pre-Trial Brief.	1.80
Phillips, Laura L. (08992)	1/15/2020	\$ 310.50	Continued preparing list of exhibits marked during depositions taken in this case in preparation of identifying them in the Pre-Trial Brief.	2.30
Phillips, Laura L. (08992)	1/15/2020	\$ 418.50	Prepared deposition summary of Brad Morrison.	3.10
Gaskins, Edward B. (02733)	1/15/2020	\$ 869.00	Continue drafting pre-trial brief.	2.20
Phillips, Laura L. (08992)	1/16/2020	\$ 13.50	Reviewed correspondence from Clerk re: Defendant's Motion for Summary Judgment and Memorandum in Support.	0.10
Phillips, Laura L. (08992)	1/16/2020	\$ 418.50	Prepared deposition summary of Ken Betsch.	3.10
Gaskins, Edward B. (02733)	1/16/2020	\$ 1,106.00	Analyze Town's motion for summary judgment and supporting materials. Begin outlining case theme and opening statement. Revise pre-trial brief.	2.80
Phillips, Laura L. (08992)	1/17/2020	\$ 378.00	Prepared deposition summary of Robert Small taken 12/10/19.	2.80
Phillips, Laura L. (08992)	1/17/2020	\$ 283.50	Prepared deposition summary of Tyler Flesch taken 8/8/19.	2.10
Phillips, Laura L. (08992)	1/21/2020	\$ 13.50	Correspondence from Clerk re: Defendant's Motion for Reconsideration of Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness and Memorandum in Support.	0.10
Phillips, Laura L. (08992)	1/21/2020	\$ 13.50	Prepared exhibits to accompany the Pre-Trial Brief.	0.10
Gaskins, Edward B. (02733)	1/21/2020	\$ 2,409.50	Phone conference w/ Tyler Flesch re: [REDACTED] Continue researching and analyzing law for pre-trial brief. Draft, revise and submit pre-trial brief. Review motion to reconsider order striking expert. Initial review of Town's pre-trial brief.	6.10
Phillips, Laura L. (08992)	1/21/2020	\$ 418.50	Prepared deposition summary of Christiane Farrell taken 5/2/19.	3.10
Phillips, Laura L. (08992)	1/22/2020	\$ 94.50	Prepared proposed Motion in Limine.	0.70
Phillips, Laura L. (08992)	1/22/2020	\$ 27.00	Prepared trial subpoena to Eric DeMoura.	0.20
Gaskins, Edward B. (02733)	1/22/2020	\$ 1,027.00	Review order from court denying motion to compel. Review case documents and identify exhibits for trial.	2.60
Phillips, Laura L. (08992)	1/22/2020	\$ 324.00	Continued deposition summary of Christiane Farrell.	2.40
Phillips, Laura L. (08992)	1/23/2020	\$ 13.50	Prepared trial subpoena to Christiane Farrell.	0.10
Phillips, Laura L. (08992)	1/23/2020	\$ 13.50	Prepared trial subpoena to Brad Morrison.	0.10
Phillips, Laura L. (08992)	1/23/2020	\$ 13.50	Prepared trial subpoena to Kent Prause.	0.10
Phillips, Laura L. (08992)	1/23/2020	\$ 27.00	Prepared trial subpoena to Jeff Johnston.	0.20
Phillips, Laura L. (08992)	1/23/2020	\$ 54.00	Processed outgoing trial subpoenas.	0.40
Phillips, Laura L. (08992)	1/23/2020	\$ 81.00	Prepared notebook containing deposition summaries completed to date in preparation for trial.	0.60
Phillips, Laura L. (08992)	1/23/2020	\$ 229.50	Continued deposition summary of Christiane Farrell.	1.70
Gaskins, Edward B. (02733)	1/23/2020	\$ 1,066.50	Review, revise, and execute trial subpoenas. Phone conference w/ Julia Copeland re: pre-trial matters. Phone conference w/ Paul Sperry re: Jeff Johnston trial prep and attendance. Review depositions for witness examinations.	2.70
Phillips, Laura L. (08992)	1/23/2020	\$ 432.00	Prepared deposition summary of Tyler Flesch taken 12/17/19.	3.20
Phillips, Laura L. (08992)	1/24/2020	\$ 688.50	Prepared notebook containing proposed Trial Exhibits.	5.10
Gaskins, Edward B. (02733)	1/24/2020	\$ 711.00	Continue reviewing depositions for witness examinations.	1.80
Beard, Jessica M. (08612)	1/24/2020	\$ 19.00	Analyze and configure data set for attorney review.	0.10
Gaskins, Edward B. (02733)	1/26/2020	\$ 1,382.50	Analyze trial exhibits for witness examination outlines. Begin drafting direct examination outline for Tex Small.	3.50
Phillips, Laura L. (08992)	1/27/2020	\$ 13.50	Correspondence from Clerk re: Defendant's Motion in Limine to Challenge, Limit, Exclude Parol Evidence of Council Members' Motives or Subjective Intent.	0.10
Phillips, Laura L. (08992)	1/27/2020	\$ 13.50	Correspondence from Clerk re: Defendant's in Limine to Challenge, Limit, Exclude Evidence of the Town's Zoning Ordinance Interpretations.	0.10
Phillips, Laura L. (08992)	1/27/2020	\$ 13.50	Correspondence from Clerk re: Defendant's Motion in Limine to Challenge, Limit, Exclude Parol Evidence Regarding the Terms of the Parking License Agreement.	0.10

Phillips, Laura L. (08992)	1/27/2020	\$ 13.50	Prepared Motion in Limine for electronic submission with the Charleston Clerk and electronically submitted same.	0.10
Phillips, Laura L. (08992)	1/27/2020	\$ 94.50	Revised Index to Trial Exhibit Notebook and rearranged notebook per revisions.	0.70
Gaskins, Edward B. (02733)	1/27/2020	\$ 2,449.00	Phone conference w/ Judge Murphy and opposing counsel re: trial matters. Review exhibits and revise exhibit list. Review and revise motion in limine. Review Town's motions in limine. Conduct legal research re: [REDACTED] Draft examination outline for Tex Small.	6.20
Phillips, Laura L. (08992)	1/27/2020	\$ 216.00	Reviewed video of Town Council Meeting held April 8, 2014 and summarized discussion regarding parking garage and citizen comments.	1.60
Phillips, Laura L. (08992)	1/28/2020	\$ 94.50	Meeting with Paralegal Stockhausen to go over Trial Director program in preparation of trial.	0.70
Phillips, Laura L. (08992)	1/28/2020	\$ 364.50	Reviewed video of Town Council Meeting held February 10, 2015 and summarized discussions regarding parking garage and citizen comments.	2.70
Gaskins, Edward B. (02733)	1/28/2020	\$ 4,384.50	Draft and revise direct examination outlines for Tex Small and Tyler Flesch. Review case documents for trial exhibits for Small and Flesch examinations.	11.10
Phillips, Laura L. (08992)	1/29/2020	\$ 324.00	Prepared notebooks for Robert Small and Tyler Flesch containing Exhibits identified in Direct Examination outline.	2.40
Gaskins, Edward B. (02733)	1/29/2020	\$ 3,871.00	Revise examination outlines for Tex Small and Tyler Flesch. Meet w/ Tex Small and Tyler Flesch and prepare for direct examination. Begin drafting Jeff Johnston direct examination outline.	9.80
Phillips, Laura L. (08992)	1/30/2020	\$ 121.50	Gathered trial exhibits for Tyler Flesch's direct examination [REDACTED]	0.90
Phillips, Laura L. (08992)	1/30/2020	\$ 108.00	Revised Index to Trial Exhibit Notebook, rearranged notebook per revisions, and added additional exhibits.	0.80
Phillips, Laura L. (08992)	1/30/2020	\$ 256.50	Scanned and saved Trial Exhibit Notebook.	1.90
Phillips, Laura L. (08992)	1/30/2020	\$ 13.50	Phone conference with Clerk of Court for Jasper County re: need to test equipment out for trial.	0.10
Phillips, Laura L. (08992)	1/30/2020	\$ 40.50	Prepared proposed Memorandum in Support of Defendant's Motion to Summary Judgment.	0.30
Gaskins, Edward B. (02733)	1/30/2020	\$ 3,792.00	Analyze Town motion to reconsider order denying motion to compel. Identify trial exhibits for Jeff Johnston. Revise trial exhibit list. Participate in exhibit conference w/ opposing counsel. Phone conferences w/ Tyler Flesch re: [REDACTED] Draft and revise direct examination outline for Jeff Johnston.	9.60
Stockhausen, Wendy S. (08669)	1/30/2020	\$ 135.00	Assist with exhibits in preparation of trial.	1.00
Phillips, Laura L. (08992)	1/31/2020	\$ 513.00	Travel to and from Jasper County Courthouse in Ridgeland, SC and tested equipment in courtroom.	3.80
Phillips, Laura L. (08992)	1/31/2020	\$ 81.00	Marked Trial Exhibits.	0.60
Gaskins, Edward B. (02733)	1/31/2020	\$ 4,147.50	Prepare for and participate in witness prep w/ Jeff Johnston. Review and revise examination outlines for Tex Small and Tyler Flesch. Review Betsch designated deposition testimony and identify counter-designations. Draft outline for Eric DeMoura examination.	10.50
Magill, Clinton T. (02892)	1/31/2020	\$ 2,007.50	Analyze extensive meeting minutes from Town Council, Planning Committee, and Planning Commission identified by Defendant in advance of trial re [REDACTED]	7.30
Hawkins, Matthew C. (07012)	1/31/2020	\$ 246.00	Assist with preparations for February trial.	1.20
Phillips, Laura L. (08992)	2/1/2020	\$ 27.00	Prepared proposed Counter-Designations for Ken Betsch deposition.	0.20
Phillips, Laura L. (08992)	2/1/2020	\$ 432.00	Made copies of exhibits to be used at trial.	3.20
Gaskins, Edward B. (02733)	2/1/2020	\$ 3,160.00	Direct examination preparation w/ Tex Small and Tyler Flesch.	8.00
Phillips, Laura L. (08992)	2/2/2020	\$ 256.50	Prepared exhibits to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.	1.90
Phillips, Laura L. (08992)	2/2/2020	\$ 148.50	Prepared Notebooks of deposition transcripts needed for trial.	1.10
Phillips, Laura L. (08992)	2/2/2020	\$ 54.00	Loaded additional trial exhibits to the Trial Director program.	0.40
Phillips, Laura L. (08992)	2/2/2020	\$ 108.00	Labeled trial exhibits to be presented at trial.	0.80
Phillips, Laura L. (08992)	2/2/2020	\$ 54.00	Prepared Notebook of Pre-trial Motions.	0.40

Gaskins, Edward B. (02733)	2/2/2020	\$ 4,740.00	Draft and revise memo in opposition to motion for summary judgment. Analyze case law for [REDACTED]. Prepare for and outline arguments for pre-trial motions. Identify additional trial exhibits. Draft and practice opening statement. Continue drafting examination outline for Eric DeMoura. Revise examination outline for Tyler Flesch.	12.00
Phillips, Laura L. (08992)	2/3/2020	\$ 1,350.00	Travel to and from Jasper County Courthouse and attend trial.	10.00
Gaskins, Edward B. (02733)	2/3/2020	\$ 5,925.00	Travel to Jasper County for trial. Attend hearings on pre-trial motions and MSJ. Attend trial. Prepare outlines and identify exhibits for Eric DeMoura.	15.00
Phillips, Laura L. (08992)	2/4/2020	\$ 1,350.00	Travel to and from Jasper County Courthouse and attend trial.	10.00
Gaskins, Edward B. (02733)	2/4/2020	\$ 5,530.00	Attend trial. Draft and revise examination outlines for Kent Prause and Christiane Farrell.	14.00
Phillips, Laura L. (08992)	2/5/2020	\$ 1,350.00	Travel to and from Jasper County Courthouse and attend trial.	10.00
Gaskins, Edward B. (02733)	2/5/2020	\$ 5,530.00	Attend trial. Travel from Jasper County. Review and revise examination outline for Jeff Johnston. Prepare outline for closing argument.	14.00
Phillips, Laura L. (08992)	2/6/2020	\$ 1,201.50	Travel to and from Jasper County Courthouse and attend trial.	8.90
Gaskins, Edward B. (02733)	2/6/2020	\$ 3,357.50	Travel to and from Jasper County. Attend trial.	8.50
Phillips, Laura L. (08992)	2/7/2020	\$ 13.50	Phone conference with the Charleston Clerk's office re: process of submitting sealed trial exhibits to the Charleston Clerk.	0.10
Phillips, Laura L. (08992)	2/7/2020	\$ 94.50	Compiled notebook of exhibits admitted during trial for Judge Murphy.	0.70
Gaskins, Edward B. (02733)	2/7/2020	\$ 118.50	Working session w/ Laura Phillips re: post-trial tasks. Emails to and from Judge Murphy's law clerk and opposing counsel re: supplemental briefing issues.	0.30
Phillips, Laura L. (08992)	2/10/2020	\$ 202.50	Continued compiling notebook of exhibits admitted during trial for Judge Murphy.	1.50
Phillips, Laura L. (08992)	2/11/2020	\$ 13.50	Correspondence to court reporter from trial re: trial transcript.	0.10
Phillips, Laura L. (08992)	2/11/2020	\$ 13.50	Prepared letter to Judge Murphy re: notebook of trial exhibits and Counter-Designations for Ken Betsch's deposition.	0.10
Phillips, Laura L. (08992)	2/11/2020	\$ 13.50	Phone conference with Caroline Leonard with Charleston County re: further need for instructions in submitting trial exhibits as evidence.	0.10
Gaskins, Edward B. (02733)	2/14/2020	\$ 158.00	Phone conference w/ Tyler Flesch re: [REDACTED]	0.40
Gaskins, Edward B. (02733)	2/17/2020	\$ 79.00	Phone conference w/ Paul Sperry re: trial and related claims against SMHa.	0.20
Phillips, Laura L. (08992)	2/19/2020	\$ 175.50	Prepared draft of proposed Order for Judgment in favor of Plaintiff.	1.30
Phillips, Laura L. (08992)	2/20/2020	\$ 81.00	Organized and updated pleadings and correspondence.	0.60
Phillips, Laura L. (08992)	2/21/2020	\$ 27.00	Revised proposed Order for Judgment in favor of Plaintiff.	0.20
Phillips, Laura L. (08992)	3/11/2020	\$ 13.50	Correspondence to Defense counsel re: the Trial Exhibit List for the notebook that was sent to Judge Murphy in February.	0.10
Gaskins, Edward B. (02733)	3/23/2020	\$ 908.50	Continue drafting proposed order.	2.30
Gaskins, Edward B. (02733)	3/27/2020	\$ 671.50	Continue drafting proposed order.	1.70
Gaskins, Edward B. (02733)	3/27/2020	\$ 316.00	Continue drafting proposed order. Emails to and from Judge Murphy's law clerk and opposing counsel re: proposed orders.	0.80
Gaskins, Edward B. (02733)	3/27/2020	\$ 553.00	Continue drafting proposed order.	1.40
Gaskins, Edward B. (02733)	3/28/2020	\$ 987.50	Continue drafting proposed order.	2.50
Gaskins, Edward B. (02733)	3/29/2020	\$ 869.00	Continue drafting proposed order.	2.20
Gaskins, Edward B. (02733)	3/30/2020	\$ 1,777.50	Continue drafting proposed order. Research and analyze caselaw re: [REDACTED]	4.50
Phillips, Laura L. (08992)	3/31/2020	\$ 121.50	Inserted sections of the Parking License Agreement into the proposed Order for Judgment in Favor of the Plaintiff.	0.90
Gaskins, Edward B. (02733)	3/31/2020	\$ 671.50	Revise draft proposed order. Phone conference w/ Tyler Flesch re: [REDACTED]. Phone conference w/ Julia Copeland re: transcript. Email to opposing counsel re: transcript.	1.70
Gaskins, Edward B. (02733)	4/2/2020	\$ 197.50	Multiple emails w/ judge's law clerk and opposing counsel re: deadline for proposed orders. Phone conference w/ Tyler Flesch re: [REDACTED]	0.50
Gaskins, Edward B. (02733)	4/3/2020	\$ 474.00	Begin drafting supplemental brief on exhaustion of administrative remedies.	1.20

Gaskins, Edward B. (02733)	4/4/2020	\$	711.00	Revise proposed order.	1.80
Gaskins, Edward B. (02733)	4/5/2020	\$	632.00	Revise proposed order and reviewed trial exhibits for cites in proposed order.	1.60
Gaskins, Edward B. (02733)	4/6/2020	\$	1,856.50	Research and analyze caselaw for memo re: [REDACTED] [REDACTED] Continue drafting memo re: exhaustion. Review L. Firestone's revisions and comments to proposed order. Phone conference w/ Tyler Flesch re: [REDACTED]	4.70
Firestone, Lesley A. (02763)	4/6/2020	\$	2,340.00	Review proposed order and parking license agreement and revise proposed order; shepardize all cases contained within proposed order and revise citations; review case law to add to proposed order; and correspond re: revisions to proposed order.	7.20
Gaskins, Edward B. (02733)	4/7/2020	\$	3,397.00	Revise proposed order and supplemental memo on exhaustion of administrative remedies. Review trial exhibits and insert citations. Research and analyze case law on [REDACTED] [REDACTED] Review rough drafts of final two days of trial transcript.	8.60
Firestone, Lesley A. (02763)	4/7/2020	\$	552.50	Analyze various cases re: [REDACTED] [REDACTED] and revise Order to include argument re: SCDG's substantial performance of the parking license agreement.	1.70
Gaskins, Edward B. (02733)	4/24/2020	\$	237.00	Phone conference w/ Julia Copeland re: unjust enrichment claim. Initial review of Town's proposed order and supplemental brief. Phone conference w/ Tyler Flesch re: [REDACTED]	0.60
Gaskins, Edward B. (02733)	4/25/2020	\$	1,461.50	Analyze Town's proposed order and supplemental briefing. Email to court re: objections. Review transcript for testimony cited in Town's proposed order.	3.70
Gaskins, Edward B. (02733)	4/27/2020	\$	1,264.00	Phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED] Emails to and from opposing counsel re: objections to proposed order and deadlines. Research Town ordinances and meeting minutes re: [REDACTED] [REDACTED]. Continue reviewing transcript for objections to Town's proposed order.	3.20
Gaskins, Edward B. (02733)	4/29/2020	\$	1,027.00	Analyze Town's objections to proposed order. Continue drafting objections to Town's proposed order. Research and analyze case law re: [REDACTED] [REDACTED]	2.60
Gaskins, Edward B. (02733)	4/29/2020	\$	1,580.00	Continue reviewing transcript and begin drafting objections to Town's proposed order.	4.00
Gaskins, Edward B. (02733)	4/30/2020	\$	1,066.50	Continue reviewing transcript and drafting objections to Town's proposed orders.	2.70
Gaskins, Edward B. (02733)	4/30/2020	\$	118.50	Phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED]	0.30

Fees Unbilled - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM 043920.000001)					
Timekeeper	Transaction Date	To Bill Amount	Narrative		To Bill Hours
Gaskins, Edward B. (02733)	5/1/2020	\$1,145.50	Revise objections to Town's proposed order. Review transcript and draft supplemental filing of evidentiary support in response to Town's objections to SCDG's proposed order.		2.90
Gaskins, Edward B. (02733)	5/5/2020	\$118.50	Review Town's revised proposed order. Phone conference w/ Tyler Flesch re: [REDACTED]		0.30
Gaskins, Edward B. (02733)	6/5/2020	\$158.00	Emails to and from Judge Murphy's law clerk re: status of order. Phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED]		0.40
Gaskins, Edward B. (02733)	6/8/2020	\$79.00	Phone conference w/ Tyler Flesch re: [REDACTED]		0.20
Gaskins, Edward B. (02733)	6/19/2020	\$79.00	Phone conference w/ Tyler Flesch re: [REDACTED]		0.20
Gaskins, Edward B. (02733)	6/25/2020	\$79.00	Emails to and from Judge Murphy's law clerk re: order status.		0.20
Gaskins, Edward B. (02733)	7/8/2020	\$869.00	Review court order granting judgment. Phone conference w/ Tyler Flesch re: [REDACTED]		2.20
Gaskins, Edward B. (02733)	7/9/2020	\$118.50	Phone conference w/ Tyler Flesch re: [REDACTED] [REDACTED]		0.30
Gaskins, Edward B. (02733)	7/13/2020	\$1,027.00	Multiple phone conferences w/ Tyler Flesch re: [REDACTED] [REDACTED] Phone conference w/ Julia Copeland re: possible settlement discussions. Review and revise letter to Town Council from T. Flesch re: settlement. Research SEC rules re: [REDACTED]		2.60

Phillips, Laura L. (08992)	7/14/2020	\$81.00	Prepared draft of Affidavit of Attorneys' Fees and Costs.	0.60
Gaskins, Edward B. (02733)	7/14/2020	\$237.00	Multiple phone conferences and emails w/ Tyler Flesch and Julia Copeland re: potential settlement.	0.60
Gaskins, Edward B. (02733)	7/15/2020	\$158.00	Multiple phone conferences w/ Tyler Flesch re: [REDACTED]	0.40
Gaskins, Edward B. (02733)	7/20/2020	\$276.50	Phone conferences w/ Tyler Flesch re: [REDACTED] [REDACTED] Phone conference w/ Julia Copeland re: scheduling issues. Email to court re: proposed scheduling order. Preliminary review of Town's motion for reconsideration.	0.70
Stockhausen, Wendy S. (08669)	7/21/2020	\$40.50	Draft Consent Scheduling Order with regard to Defendant's Motion for Reconsideration; finalize and format for compliance with South Carolina E-filing requirements;	0.30
Gaskins, Edward B. (02733)	7/21/2020	\$1,461.50	Draft and revise proposed scheduling order. Emails to and from opposing counsel and court re: proposed scheduling	3.70
Gaskins, Edward B. (02733)	7/22/2020	\$79.00	Phone conference w/ Tyler Flesch re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	7/24/2020	\$39.50	Phone conference w/ David Pagliarini re: settlement.	0.10
Gaskins, Edward B. (02733)	7/28/2020	\$118.50	Phone conference w/ Tyler Flesch re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	7/30/2020	\$197.50	Multiple phone conferences w/ Julia Copeland re: settlement meeting issues. Multiple phone conferences w/ Tyler Flesch re: [REDACTED]	0.50
Phillips, Laura L. (08992)	7/31/2020	\$94.50	Prepared draft of Response in Opposition to Defendant's Motions for New Trial and to Reconsider, Alter, or Amend Order.	0.70
Phillips, Laura L. (08992)	7/31/2020	\$54.00	Reviewed FOIA response from Town of Mount Pleasant's Administrative Services Department and separately calculated totals for attorneys' fees and for costs.	0.40
Gaskins, Edward B. (02733)	7/31/2020	\$1,659.00	Phone conference w/ Tyler Flesch re: [REDACTED] Communications to and from Julia Copeland re: settlement meeting. Begin reviewing information for compilation of attorneys fees. Emails to and from Hamlin O'Kelly re:	4.20
Gaskins, Edward B. (02733)	8/2/2020	UNPOSTED TIME	Continue analyzing motion for reconsideration in comparison to order. Begin drafting response to Town's motion for reconsideration.	2.70
Phillips, Laura L. (08992)	8/3/2020	UNPOSTED TIME	Continued preparing draft of Response in Opposition to Defendant's Motions for New Trial and to Reconsider, Alter, or Amend Order.	0.90
Gaskins, Edward B. (02733)	8/3/2020	UNPOSTED TIME	Continue drafting and revise response to Town's motion for reconsideration. Review trial transcript for record citations in response to motion for reconsideration. Research and analyze case law for [REDACTED]	6.20
Phillips, Laura L. (08992)	8/4/2020	UNPOSTED TIME	Prepared Response in Opposition to Defendant's Motions for New Trial and to Reconsider, Alter, or Amend Order for electronic submission with the Clerk and electronically submitted same.	0.10
Gaskins, Edward B. (02733)	8/4/2020	UNPOSTED TIME	Phone conference w/ Tyler Flesch re: [REDACTED]	0.30
Gaskins, Edward B. (02733)	8/5/2020	UNPOSTED TIME	Phone conference w/ Trenholm Walker re: mediation.	0.30
Gaskins, Edward B. (02733)	8/6/2020	UNPOSTED TIME	Phone conference w/ Tyler Flesch re: [REDACTED] Phone conference w/ Trenholm Walker re: mediation.	0.90
Gaskins, Edward B. (02733)	8/7/2020	UNPOSTED TIME	Attend mediation.	4.00
Gaskins, Edward B. (02733)	8/9/2020	UNPOSTED TIME	Revise affidavit of attorneys fees. Review BB&T invoices for affidavit of attorneys fees.	1.50
Gaskins, Edward B. (02733)	8/10/2020	UNPOSTED TIME	Review, revise and finalize affidavit of attorneys fees. Phone conference w/ Tyler Flesch re: [REDACTED]	2.20

Costs Billed - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM 043920.000001)		
Transaction Date	Billed Amount	Narrative
4/28/2020	\$ 297.00	Computer Aided Research
4/27/2020	\$ 415.80	Computer Aided Research
4/27/2020	\$ 63.60	Computer Aided Research
4/7/2020	\$ 712.80	Computer Aided Research
4/7/2020	\$ 63.60	Computer Aided Research
4/6/2020	\$ 114.00	Computer Aided Research
4/6/2020	\$ 31.80	Computer Aided Research
4/6/2020	\$ 31.80	Computer Aided Research
4/6/2020	\$ 1,069.20	Computer Aided Research
4/6/2020	\$ 356.40	Computer Aided Research
4/6/2020	\$ 31.80	Computer Aided Research
3/31/2020	\$ 415.80	Computer Aided Research
3/31/2020	\$ 63.60	Computer Aided Research
3/23/2020	\$ 1,487.50	VENDOR: Town Of Mount Pleasant INVOICE#: FY20-05 DATE: 3/23/2020 TOWN OF
3/11/2020	\$ (25.00)	Cancellation of: Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON COUNTY, S.C.
2/11/2020	\$ 14.95	Postage
2/11/2020	\$ 1.50	Postage
2/6/2020	\$ 86.39	VENDOR: Laura Phillips INVOICE#: 3986291202132142 DATE: 2/13/2020 Phillips, L - Travel to and from Jasper County Courthouse to attend trial to provide support to attorney. - Charleston, SC to Ridgeland, SC - 02/06/20
2/6/2020	\$ 86.43	VENDOR: Brandon Gaskins INVOICE#: 3951796402272043 DATE: 2/27/2020 Gaskins, E - Reimbursement for mileage for trial in Jasper County, SC. - Charleston, SC to Ridgeland, SC and back to Charleston, SC - 02/06/20
2/5/2020	\$ 86.39	VENDOR: Laura Phillips INVOICE#: 3986291202132142 DATE: 2/13/2020 Phillips, L - Travel to and from Jasper County Courthouse to attend trial to provide support to attorney. - Charleston, SC to Ridgeland, SC - 02/05/20

2/5/2020	\$	43.18	VENDOR: Brandon Gaskins INVOICE#: 3951796402272043 DATE: 2/27/2020 Gaskins, E - Reimbursement for mileage for trial in Jasper County, SC. - Ridgeland, SC to Charleston, SC - 02/05/20
2/5/2020	\$	259.88	VENDOR: Brandon Gaskins INVOICE#: 3951796402272043 DATE: 2/27/2020 Gaskins, E - Reimbursement for hotel stay related to trial. - 02/03/2020
2/4/2020	\$	86.39	VENDOR: Laura Phillips INVOICE#: 3986291202132142 DATE: 2/13/2020 Phillips, L - Travel to and from Jasper County Courthouse to attend trial to provide support to attorney. - Charleston, SC to Ridgeland, SC - 02/04/20
2/3/2020	\$	86.39	VENDOR: Laura Phillips INVOICE#: 3986291202132142 DATE: 2/13/2020 Phillips, L -
2/3/2020	\$	43.22	VENDOR: Brandon Gaskins INVOICE#: 3951796402272043 DATE: 2/27/2020 Gaskins, E - Reimbursement for mileage for trial in Jasper County, SC. - Charleston, SC to Ridgeland, SC - 02/03/20
2/2/2020	\$	891.00	Computer Aided Research
1/31/2020	\$	140.00	PAYEE: Prause, W. K.; REQUEST#: 2294840; DATE: 1/31/2020.
1/31/2020	\$	116.66	PAYEE: Johnston, Jeff; REQUEST#: 2294841; DATE: 1/31/2020.
1/31/2020	\$	130.23	PAYEE: DeMoura, Eric; REQUEST#: 2294842; DATE: 1/31/2020.
1/31/2020	\$	135.63	PAYEE: Farrell, Christiana; REQUEST#: 2294843; DATE: 1/31/2020.
1/31/2020	\$	131.84	PAYEE: Morrison, Brad; REQUEST#: 2294844; DATE: 1/31/2020.
1/31/2020	\$	11.19	VENDOR: Stephanie Bynum INVOICE#: 4002058702192013 DATE: 2/19/2020 Bynum, S - SNACKS FOR MEETING - 01/31/20
1/31/2020	\$	86.39	VENDOR: Laura Phillips INVOICE#: 3986291202132142 DATE: 2/13/2020 Phillips, L - Travel to and from Jasper County Courthouse to ensure equipment needed for trial worked. - Charleston, SC to Ridgeland, SC - 01/31/20
1/29/2020	\$	10.35	VENDOR: Phillip Rice INVOICE#: 3903560702192013 DATE: 2/19/2020 Rice, P - Courier Mileage - Office/Location - 01/29/20

1/27/2020	\$	31.74	VENDOR: Stephanie Bynum INVOICE#: 4002058702192013 DATE: 2/19/2020 Bynum, S - FILING FEES - 01/27/20
1/24/2020	\$	1.60	Postage
1/24/2020	\$	0.50	Postage
1/24/2020	\$	6.95	Postage
1/23/2020	\$	7.75	Postage
1/21/2020	\$	594.00	Computer Aided Research
1/21/2020	\$	31.80	Computer Aided Research
1/15/2020	\$	475.20	Computer Aided Research
1/15/2020	\$	31.80	Computer Aided Research
1/15/2020	\$	10.35	VENDOR: Phillip Rice INVOICE#: 3903560702192013 DATE: 2/19/2020 Rice, P -
1/14/2020	\$	1,485.00	Computer Aided Research
12/31/2019	\$	1,135.78	VENDOR: Walker Gressette Freeman & Linton, LLC INVOICE#: 4577 DATE: 12/31/2019 WALKER GRESSETTE FREEMAN & LINTON, LLC PROFESSIONAL SERVICE FEES
12/22/2019	\$	164.75	VENDOR: Teri L. Sampson Db Magnolia Reporting INVOICE#: 2493-TS DATE: 12/22/2019 Teri L. Sampson Db Magnolia Reporting TRANSCRIPT COSTS
12/19/2019	\$	155.85	VENDOR: Teri L. Sampson Db Magnolia Reporting INVOICE#: 2464-MR DATE: 12/19/2019 Teri L. Sampson Db Magnolia Reporting TRANSCRIPT COSTS
12/17/2019	\$	216.00	VENDOR: Teri L. Sampson Db Magnolia Reporting INVOICE#: 2462-TS DATE: 12/17/2019 TERI L. SAMPSON DBA MAGNOLIA REPORTING TRANSCRIPT COSTS
12/5/2019	\$	534.60	Computer Aided Research
12/4/2019	\$	193.50	VENDOR: Teri L. Sampson Db Magnolia Reporting INVOICE#: 2394-RA DATE: 12/4/2019 TERI L. SAMPSON DBA MAGNOLIA REPORTING TRANSCRIPT FEES
12/3/2019	\$	5.95	Copying
12/3/2019	\$	7.25	Postage
11/27/2019	\$	475.20	Computer Aided Research
11/27/2019	\$	63.60	Computer Aided Research
11/26/2019	\$	1,247.40	Computer Aided Research
11/26/2019	\$	31.80	Computer Aided Research
11/20/2019	\$	31.74	VENDOR: Stephanie Bynum INVOICE#: 3878918412262106 DATE: 12/26/2019 Bynum, S - FILING FEES - 11/20/19
11/18/2019	\$	237.60	Computer Aided Research
11/15/2019	\$	178.20	Computer Aided Research
11/11/2019	\$	297.00	Computer Aided Research
11/8/2019	\$	1,366.20	Computer Aided Research
9/20/2019	\$	2.80	Color Copying
9/20/2019	\$	3.40	Copying
9/20/2019	\$	2.60	Postage
9/20/2019	\$	-	Computer Aided Research
9/20/2019	\$	-	Computer Aided Research
9/13/2019	\$	0.50	Postage
9/13/2019	\$	0.17	Copying
9/13/2019	\$	0.35	Color Copying

9/11/2019	\$	237.60	Computer Aided Research
9/10/2019	\$	118.80	Computer Aided Research
8/30/2019	\$	0.34	Copying
8/29/2019	\$	361.55	VENDOR: Cheryl Foults Milligan INVOICE#: 19-649 DATE: 8/29/2019 Cheryl Foults Milligan TRANSCRIPT FEES
8/23/2019	\$	-	Computer Aided Research
8/23/2019	\$	-	Computer Aided Research
8/23/2019	\$	-	Computer Aided Research
8/20/2019	\$	115.25	VENDOR: Teri L. Sampson Db Magnolia Reporting INVOICE#: 2126-TS DATE: 8/20/2019 TERI L. SAMPSON DBA MAGNOLIA REPORTING TRANSCRIPT COSTS
8/9/2019	\$	2.55	Copying
8/9/2019	\$	1.53	Copying
8/9/2019	\$	1.40	Color Copying
8/9/2019	\$	2.04	Copying
8/9/2019	\$	2.04	Copying
8/8/2019	\$	2.04	Copying
8/6/2019	\$	12,500.00	VENDOR: DIXON HUGHES GOODMAN INVOICE: 000957819 C599DATE: 8/6/2019
8/5/2019	\$	4.48	SoundPath Conference Brandon Gaskins
8/1/2019	\$	2.04	Copying
8/1/2019	\$	0.51	Copying
8/1/2019	\$	2.10	Color Copying
7/29/2019	\$	0.51	Copying
7/29/2019	\$	0.68	Copying
7/29/2019	\$	0.50	Postage
7/29/2019	\$	1.00	Postage
7/23/2019	\$	1.87	Copying
7/23/2019	\$	4.93	Copying
7/23/2019	\$	2.04	Copying
7/23/2019	\$	4.25	Copying
7/23/2019	\$	1.00	Postage
7/23/2019	\$	1.30	Postage
7/23/2019	\$	1.45	Postage
7/22/2019	\$	-	Computer Aided Research
7/22/2019	\$	-	Computer Aided Research
7/19/2019	\$	-	Computer Aided Research
7/19/2019	\$	-	Computer Aided Research
7/17/2019	\$	5.78	Copying
6/21/2019	\$	1.25	SoundPath Conference Brandon Gaskins
6/10/2019	\$	82.62	Copying
6/10/2019	\$	2.50	VENDOR: Phillip Rice INVOICE#: 3390198507101946 DATE: 7/10/2019 Rice, P - Courier Mileage - 06/10/19
6/10/2019	\$	54.74	Copying
6/10/2019	\$	1.05	Color Copying
6/10/2019	\$	2.38	Copying
6/10/2019	\$	2.38	Copying
6/10/2019	\$	2.21	Copying
6/10/2019	\$	2.38	Copying
6/10/2019	\$	2.38	Copying
6/10/2019	\$	2.38	Copying
6/10/2019	\$	1.87	Copying
6/10/2019	\$	1.87	Copying
6/7/2019	\$	-	Computer Aided Research
6/7/2019	\$	-	Computer Aided Research
6/4/2019	\$	-	Computer Aided Research
6/4/2019	\$	-	Computer Aided Research

4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/22/2019	\$	-	Copying
4/20/2019	\$	-	Copying
4/20/2019	\$	-	Copying
4/20/2019	\$	-	Color Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/19/2019	\$	-	Copying
4/18/2019	\$	-	Copying
4/11/2019	\$	1.20	Computer Aided Research
4/11/2019	\$	-	Copying
4/9/2019	\$	-	Copying
3/26/2019	\$	2,827.50	VENDOR: DIXON HUGHES GOODMAN INVOICE: 000906097 DATE: 3/26/2019
3/26/2019	\$	1.45	Postage
3/26/2019	\$	1.45	Postage
3/26/2019	\$	0.85	Copying
3/26/2019	\$	3.85	Color Copying
2/12/2019	\$	2.55	Desktop Copying
2/12/2019	\$	2.55	Desktop Copying
2/12/2019	\$	1.87	Desktop Copying
2/12/2019	\$	5.25	Desktop Copying
2/4/2019	\$	2.55	Desktop Copying
2/4/2019	\$	8.67	Desktop Copying
12/31/2018	\$	1.63	Postage Postage Meter
12/31/2018	\$	2.72	Copying
12/27/2018	\$	0.47	Postage Postage Meter
12/14/2018	\$	6.67	Postage Postage Meter
12/14/2018	\$	7.41	Postage Postage Meter
12/14/2018	\$	3.06	Copying
12/14/2018	\$	1.87	Desktop Copying
12/14/2018	\$	6.67	Postage Postage Meter
12/14/2018	\$	7.41	Postage Postage Meter
12/14/2018	\$	6.67	Postage Postage Meter
12/14/2018	\$	7.41	Postage Postage Meter
12/14/2018	\$	7.35	Color Copying
12/14/2018	\$	6.67	Postage Postage Meter
11/28/2018	\$	-	Postage Postage Meter
11/28/2018	\$	-	Desktop Copying
11/28/2018	\$	-	Copying
11/28/2018	\$	-	Color Copying
11/28/2018	\$	-	Desktop Copying
11/27/2018	\$	-	Desktop Copying
11/27/2018	\$	-	Desktop Copying
10/9/2018	\$	1.42	Postage Postage Meter
10/9/2018	\$	0.68	Postage Postage Meter
10/9/2018	\$	0.34	Copying
10/9/2018	\$	2.50	Overnight Delivery RICE, P - Courier Mileage - 10/09/18
10/9/2018	\$	7.65	Copying
10/9/2018	\$	0.35	Color Copying
10/9/2018	\$	0.70	Color Copying
10/5/2018	\$	25.00	Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON
8/9/2018	\$	2.38	Desktop Copying

7/19/2018	\$	4.93	Desktop Copying
7/19/2018	\$	3.06	Long-Distance Telephone Brandon Gaskins SoundPath Conf Call
7/13/2018	\$	4.93	Desktop Copying
7/12/2018	\$	5.10	Desktop Copying
6/26/2018	\$	3.74	Desktop Copying
5/30/2018	\$	1.02	Copying
5/30/2018	\$	25.00	Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON COUNTY, S.C.
5/24/2018	\$	1.87	Desktop Copying
5/24/2018	\$	1.75	Color Copying
5/24/2018	\$	1.87	Desktop Copying
5/24/2018	\$	3.26	Postage Postage Meter
5/24/2018	\$	4.25	Copying
4/4/2018	\$	3.74	Desktop Copying
3/19/2018	\$	5.27	Desktop Copying
3/19/2018	\$	3.74	Desktop Copying
3/19/2018	\$	3.57	Desktop Copying
3/19/2018	\$	2.05	Postage Postage Meter
2/9/2018	\$	25.00	Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON COUNTY, S.C.
2/9/2018	\$	0.68	Copying
2/9/2018	\$	2.80	Color Copying
1/25/2018	\$	25.00	Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON COUNTY, S.C.
1/24/2018	\$	2.55	Desktop Copying
1/24/2018	\$	3.91	Desktop Copying
12/14/2017	\$	1.87	Copying
12/14/2017	\$	0.35	Color Copying
12/14/2017	\$	13.12	Postage Postage Meter
10/25/2017	\$	2.50	Overnight Delivery RICE, P - Courier Mileage - 10/25/17
10/25/2017	\$	0.70	Color Copying
10/24/2017	\$	95.00	Service Fees/Shf./Proc. Server SERVE-ONE, INC. Process Service
10/23/2017	\$	0.49	Long-Distance Telephone 12024577150 Washington, DC
10/23/2017	\$	2.04	Desktop Copying
10/23/2017	\$	150.00	Filing fees - - VENDOR: CLERK OF COURT - CHARLESTON COUNTY, S.C.
10/23/2017	\$	2.50	Overnight Delivery RICE, P - Courier Mileage - 10/23/17
10/23/2017	\$	7.82	Copying
10/23/2017	\$	2.04	Desktop Copying
10/23/2017	\$	2.04	Desktop Copying
10/18/2017	\$	3.92	Long-Distance Telephone 12024577150 Washington, DC
10/11/2017	\$	0.49	Long-Distance Telephone 12024577150 Washington, DC
9/30/2017	\$	3.00	Computer Aided Research Pacer
9/26/2017	\$	1.47	Long-Distance Telephone 18034793394 Columbia, SC

Costs Unbilled - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM)			
Transaction Date	Billed Amount	Narrative	
6/4/2020	CA Research - Lexis Nexis (017)	\$	950.40
5/1/2020	CA Research - Lexis Nexis (017)	\$	475.20
5/1/2020	CA Research - Lexis Nexis (017)	\$	31.80
7/28/2020	Postage	\$	0.50
7/21/2020	Filing Fee	\$	31.74

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC	)	
	)	
Plaintiff,	)	
	)	DEFENDANT’S OPPOSITION TO
v.	)	ATTORNEY’S FEE AWARD AND
	)	OBJECTIONS TO PLAINTIFF’S
The Town of Mount Pleasant, South	)	ATTORNEY FEE AFFIDAVIT
Carolina,	)	
	)	
Defendant.	)	
_____	)	

The Defendant hereby submits its opposition to the Court’s award of attorneys’ fees and objections to Plaintiff’s Affidavit of Attorneys’ Fees and Costs.

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. Blumberg v. Nealco, Inc., 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993)(citations omitted). There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Id. at 494, 427 S.E.2d at 660. “When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor...” Id. at 494, 427 S.E.2d at 661. These findings of fact must be supported sufficient competent evidence. Baran Data Systems, Inc., v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1988)

Article VI, Section 6.01 of the Parking License Agreement (“PLA”) contains the language cited by the Court and Plaintiff as providing the basis for an attorney’s fee award. Section 6.01 discusses the implications of default under the PLA and provides,

Licensors may, at its option and without further notice to Licensee, (i) terminate Licensee's right to use the premises, (ii) without terminating this License, re-enter and resume exclusive possession of the Premises, or (iii) declare this License terminated, and may thereupon in either event remove all persons and property from the Premises in any manner permitted by South Carolina law. ***In addition, Licensor shall be entitled to bring an action for specific performance or breach of contract against Licensee, but agrees its sole and exclusive remedy shall be the Rent Payments due under this Agreement. Both parties waive any claims that either may have to any consequential or punitive damages, and agree that the prevailing party in any dispute shall be entitled to an award of costs and attorney's fees, including the cost of trial and any appeals.***

A. Plaintiff is not entitled an award of prelitigation attorney's fees.

When reading Section 6.01 and the "attorney's fees" language in context, the parties to the PLA contemplated an award of attorney's fees in a litigation context, NOT a prelitigation scenario. Plaintiff seeks to be awarded \$13,138.00 for fees charged by Buist Byars & Taylor ("BB&T") attorneys Gray Taylor and Hamlin O'Kelly prior to the institution of the present action. BB&T did not represent Plaintiffs in the present action. Rather, BB&T represented Plaintiff in its discussions with the Town regarding Plaintiff's disagreement with various zoning ordinances and decisions years prior to the present litigation. Further, Plaintiff's Attorney's Fees Affidavit provides no evidence relative to the foregoing six factors as to these prelitigation attorney's fees; an analysis and evidence required by South Carolina law. See *Blumberg*, 310 S.C. at 493, 427 S.E.2d at 661. As such, neither the PLA nor South Carolina law permit recovery of these prelitigation attorney's fees.

B. Plaintiff's claim for attorney's fees is not supported by sufficient evidence.

Additionally, Plaintiff's claim for attorney's fees is not supported by sufficient evidence. Consideration must be given to each of the foregoing six factors, with sufficient

evidence supporting each factor. Baran, 297 S.C. at 384, 377 S.E.2d at 297. Plaintiff provided a single Affidavit, executed by its attorney E. Brandon Gaskins, to support its attorney's fees. Although Attorney Gaskins Affidavit addresses each of the six factors, it does so in a very conclusory fashion. For example, in support of factor (5), Attorney Gaskins makes the bald declaration, "my hourly rate, which ranged from \$325/hour when the representation commenced in 2017 to \$395/hour when the case was completed, is within the range of hourly rates customarily charged by commercial litigators of similar experience in the Charleston area." Plaintiff offers no other evidence, such as an affidavit from a disinterested Charleston attorney, to support this statement.

Respectfully submitted,

s/Julia P. Copeland
David Pagliarini
Julia P. Copeland
Hinchey, Murray & Pagliarini, LLC
56 Folly Road Blvd.
Charleston, SC 29401
Telephone: 843-577-7455

Claude Tackett
Claude Tackett Law Firm, LLC
P.O. Box 429
Mount Pleasant, SC 29465
Telephone: 843-800-1126

Charleston, South Carolina

August 21, 2020

Attorneys for the Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certified that on this 21st day of August, 2020, true copies of the foregoing **DEFENDANT'S OPPOSITION TO ATTORNEY'S FEE AWARD AND**

OBJECTIONS TO PLAINTIFF'S ATTORNEY FEE AFFIDAVIT has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto to.

E. Brandon Gaskins
MOORE & VAN ALLEN, PLLC
PO Box 22828
Charleston, SC 29413-2828

S/Julia P. Copeland
Hinchey, Murray & Pagliarini

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	SUPPLEMENTAL AFFIDAVIT OF
	)	ATTORNEYS' FEES AND COSTS
v.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

Personally appeared before the undersigned officer duly authorized to administer oaths, E. Brandon Gaskins, who, on oath, states as follows:

1. I, E. Brandon Gaskins, am over eighteen (18) years old, and of sound mind and body. I am competent to give this affidavit, and it is based upon my own personal knowledge.

2. I previously submitted an affidavit addressing the attorneys' fees and costs incurred by Plaintiff Shem Creek Development Group, LLC. Subsequent to the submission of such affidavit, the Court requested that I supplement that affidavit with additional fees incurred in the preparation of the proposed order denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order.

3. I have attached hereto as Exhibit A a detailed spreadsheet showing all of Moore & Van Allen PLLC attorneys' fees, paralegal fees, and costs on this file beginning on August 10, 2020 through September 15, 2020. The amounts shown in Exhibit A represent a true and accurate reflection of time, effort and costs of my firm's legal services in this action in preparing the proposed Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend

Order. The spreadsheet has been redacted in part to protect certain information protected by the attorney-client privilege and the attorney work product doctrine.

4. As shown on Exhibit A, Plaintiff has incurred legal fees in the amount of Two Thousand Five Hundred Fifty-Seven and 50/100 Dollars (\$2,557.50) for attorney and paralegal time related to the preparation of the proposed Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, the preparation of this affidavit, and other related matters since August 10, 2020. In addition, Plaintiff has incurred costs in the amount of Eight Hundred Thirty-Two and 10/100 Dollars (\$832.10) for postage and research costs. The research costs were incurred on August 3, 2020 in relation to Plaintiff's response to Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, but they were not included because of my firm's billing cycle.

5. In sum, Plaintiff has incurred Three Thousand Three Hundred Eighty-Nine and 60/100 (\$3,389.60) in attorneys' fees and costs since August 10, 2020. Overall, direct litigation attorneys' fees and costs, which do not include pre-litigation fees and costs incurred with Buist, Byars & Taylor, total \$285,826.72.

6. I believe that these fees and costs are reasonable under the six factors discussed above based on the following: (1) the matter was highly disputed and involved complex issues of contract and municipal law, a significant amount in controversy, a large volume of documents produced during discovery, and multiple discovery disputes; (2) the matter was litigated through trial and post-trial motions for nearly three years; (3) I am a lawyer in good standing with the South Carolina Bar, have never been involved any disciplinary proceedings, and believe I have a good reputation among other lawyers in the area who practice commercial litigation; (4) the matter was not based on a contingency arrangement, but the amount billed in fees by Moore & Van Allen for

this action is less than what would be payable under a typical contingency fee arrangement of 33.3% or 40% of the award; (5) my hourly rate, which ranged from \$325/hour when the representation commenced in 2017 to \$395/hour when the case was completed in 2020, is within the range of hourly rates customarily charged by commercial litigators of similar experience who practice in the Charleston area; and (6) Plaintiff obtained the beneficial result of a recovery in the full amount sought at trial.

7. To provide further evidence of the reasonableness of the fees and costs set forth in this and my previous affidavit, I have attached Exhibit B, which is a spreadsheet of Defendant's attorneys' fees and costs incurred in this action between January 25, 2018 through June 2, 2020. This spreadsheet was produced by Defendant in response to a request made under the Freedom of Information Act. According to the information provided by Defendant, its attorneys' fees and costs in this litigation totaled \$282,500.66 prior to the Court's issuance of the order, Defendant's preparation of its Motions for New Trial and to Reconsider, Alter or Amend Order, and the parties' post-trial mediation conducted on July 28, 2020. Thus, it is reasonable to assume that Plaintiff's attorneys' fees and costs incurred in this litigation are less than those incurred by Defendant, which further demonstrates the reasonableness of the fees and costs sought by Plaintiff.

8. I am further informed and believe that in the absence of any presentation of evidence to the contrary by Defendant in this action, it is appropriate to award the relief requested, including attorneys' fees and costs in the amount requested.

E. Brandon Gaskins

E. Brandon Gaskins

Subscribed and Sworn to before me

This 16th day of September, 2020

Christopher T. Colwell

Notary Public for the State of South Carolina

My Commission expires 11-26-23

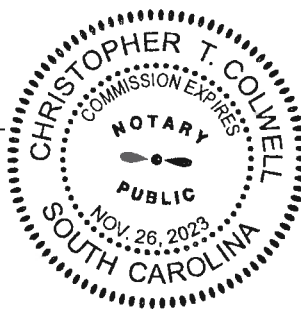


EXHIBIT A

Fees Unbilled - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM 043920.000001)				
Timekeeper	Transaction Date	Billed Amount	Narrative	Hours
Phillips, Laura L. (08992)	8/10/2020	\$ 13.50	Correspondence to Judge Murphy's Law Clerk re: the Affidavit of Attorneys' Fees for submission.	0.10
Phillips, Laura L. (08992)	8/10/2020	\$ 94.50	Reviewed Buist, Byars & Taylor's invoices and calculated the total of fees related to the instant litigation for the Affidavit of Attorneys' Fees to be submitted to the court.	0.70
Phillips, Laura L. (08992)	8/10/2020	\$ 175.50	Reviewed and redacted spreadsheet of costs and fees from the inception of the file to the present to accompany the Affidavit of Attorneys' Fees.	1.30
Phillips, Laura L. (08992)	8/10/2020	\$ 13.50	Correspondence to Judge Murphy's Law Clerk re: the Affidavit of Attorneys' Fees.	0.10
Gaskins, Edward B. (02733)	8/24/2020	\$ 79.00	Review Town's objections to attorneys' fees.	0.20
Phillips, Laura L. (08992)	8/31/2020	\$ 94.50	Prepared proposed Order denying Defendant's Motion for New Trial.	0.70
Gaskins, Edward B. (02733)	8/31/2020	\$ 79.00	Review correspondence from court re: denial of motion for new trial and attorneys' fees issues. Phone conference w/ Tyler Flesch re: [REDACTED]	0.20
Gaskins, Edward B. (02733)	9/2/2020	\$ 355.50	Begin drafting proposed order denying Town motion for new trial.	0.90
Phillips, Laura L. (08992)	9/3/2020	\$ 54.00	Finalized proposed Order Denying Defendants' Motions for New Trial and to Reconsider, Alter or Amend Order.	0.40
Gaskins, Edward B. (02733)	9/3/2020	\$ 1,185.00	Continue drafting and revising order denying motion for new trial.	3.00
Phillips, Laura L. (08992)	9/4/2020	\$ 13.50	Prepared proposed Order Denying Defendant's Motions for New Trial and to Reconsider, Alter, or Amend Order for electronic submission with the Clerk and electronically submitted same.	0.10
Phillips, Laura L. (08992)	9/4/2020	\$ 27.00	Prepared draft of Supplemental Affidavit of Attorneys' Fees.	0.20
Phillips, Laura L. (08992)	9/4/2020	\$ 67.50	Prepared draft of Affidavit of Attorneys' Fees for Hamlin O'Kelley of Buist Byars & Taylor.	0.50
Phillips, Laura L. (08992)	9/4/2020	\$ 108.00	Prepared draft spreadsheet of Buist Byars & Taylor's relevant fees related to the dispute over the Parking License Agreement to accompany the Affidavit of Attorneys' Fees for Hamlin O'Kelley.	0.80
Gaskins, Edward B. (02733)	9/14/2020	\$ 197.50	Draft and revise supplemental affidavit of attorneys' fees.	0.50
TOTAL		\$ 2,557.50		

Fees Unbilled - Shem Creek Development Group, LLC - Shem Creek - Parking License Agreement (CM 043920.000001)			
Transaction Date	Billed Amount	Narrative	
8/18/2020	\$0.50	Postage	
8/3/2020	\$831.60	Computer Aided Research	
TOTAL	\$ 832.10		

EXHIBIT B

By fiscal Year	Requester	Shem Creek	Check Amount
7/3/2019	CLAUDE TACKETT LAW FIRM (11083)	SCDG	\$ 6,876.00
7/22/2019	HINCHEY, MURRAY & PAGLIARINI	SCDG	\$ 721.50
7/22/2019	PROLEGAL	SCDG	\$ 363.01
8/1/2019	CLAUDE TACKETT LAW FIRM	SCDG	\$ 5,382.00
8/19/2019	ELLIOTT DAVIS	SCDG	\$ 9,500.00
8/29/2019	MILLIGAN COURT REPORTING	SCDG	\$ 172.65
9/2/2019	CLAUDE TACKETT LAW FIRM	SCDG	\$ 4,788.00
10/1/2019	CLAUDE TACKETT LAW FIRM	SCDG	\$ 5,796.00
10/29/2019	MAGNOLIA REPORTING	SCDG	\$ 319.31
10/30/2019	CLAUDE TACKETT LAW FIRM	SCDG	\$ 4,932.00
10/30/2019	ELLIOTT DAVIS	SCDG	\$ 611.25
12/1/2019	CLAUDE TACKETT LAW FIRM	SCDG	\$ 5,760.00
12/4/2019	ELLIOTT DAVIS	SCDG	\$ 320.00
12/4/2019	MAGNOLIA REPORTING	SCDG	\$ 421.10
12/31/2019	WALKER GRESSETTE FREEMAN LINGON	SCDG	\$ 1,135.78
1/1/2020	CLAUDE TACKETT LAW FIRM	SCDG	\$ 9,000.00
1/27/2020	Esther Dennis - rental house for trial	SCDG	\$ 1,450.00
2/1/2020	CLAUDE TACKETT LAW FIRM	SCDG	\$ 21,078.00
2/12/2020	HINCHEY, MURRAY & PAGLIARINI	SCDG	\$ 47,451.77
3/2/2020	CLAUDE TACKETT	SCDG	\$ 11,106.00
1/17/2020	PROLEGAL	SCDG	\$ 224.06
12/17/2019	MAGNOLIA REPORTING	SCDG	\$ 466.20
12/19/2019	MAGNOLIA REPORTING	SCDG	\$ 354.65
3/31/2020	CLAUDE TACKETT	SCDG	\$ 4,680.00
5/1/2020	CLAUDE TACKETT	SCDG	\$ 8,352.00
5/15/2020	HINCHEY, MURRAY & PAGLIARINI	SCDG	\$ 15,262.50
6/2/2020	CLAUDE TACKETT	SCDG	\$ 306.00
10/13/2019	MONA MANLEY	SCDG - TRANSCRIPT	\$ 2,975.00
12/4/2019	HINCHEY, MURRAY & PAGLIARINI	TEX SMALL	\$ 20,864.95
12/20/2018	PROLEGAL DISCOVERY SOLUTIONS, INC.	SCDG BREACH OF CONTRACT	\$ 563.64
12/20/2018	PROLEGAL DISCOVERY SOLUTIONS, INC.	SCDG BREACH OF CONTRACT	\$ 96.27
11/5/2018	CLAUDIUS O. TACKETT II	SCDG BREACH OF CONTRACT	\$ 72.00
8/30/2018	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 869.50
1/8/2019	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 5,309.50
2/1/2019	TACKETT LAW FIRM	SCDG BREACH OF CONTRACT	\$ 1,404.00
2/12/2019	PROLEGAL DISCOVERY SOLUTIONS, INC.	SCDG BREACH OF CONTRACT	\$ 241.03
2/19/2019	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 3,237.50
3/1/2019	CLAUDE TACKETT	SCDG BREACH OF CONTRACT	\$ 4,932.00
3/29/2019	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 6,512.00
4/3/2019	TACKETT LAW FIRM	SCDG BREACH OF CONTRACT	\$ 5,713.00
4/22/2019	PROLEGAL DISCOVERY SOLUTIONS, INC.	SCDG BREACH OF CONTRACT	\$ 622.46
5/1/2019	TACKETT LAW FIRM	SCDG BREACH OF CONTRACT	\$ 7,578.00
5/13/2019	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 12,210.00
5/13/2019	MAGNOLIA REPORTING	SCDG BREACH OF CONTRACT	\$ 1,444.40
5/13/2019	JANICE HAYWARD	SCDG BREACH OF CONTRACT	\$ 1,612.65
6/3/2019	CLAUDE TACKETT, LLC	SCDG BREACH OF CONTRACT	\$ 8,046.00
6/5/2019	PROLEGAL DISCOVERY SOLUTIONS, INC.	SCDG BREACH OF CONTRACT	\$ 143.66
7/22/2019	HINCHEY MURRAY & PAGLIARINI	SCDG BREACH OF CONTRACT	\$ 2,019.00
1/25/2018	HINCHEY MURRAY & PAGLIARINI	SCDG	\$ 7,011.50
5/8/2018	HINCHEY MURRAY & PAGLIARINI	SCDG	\$ 6,623.00
6/28/2018	HINCHEY MURRAY & PAGLIARINI	SCDG	\$ 10,508.00
1/25/2018	PROLEGAL DISCOVERY SOLUTIONS, INC. CHS	SHEM CREEK DEVELOPMENT	\$ 508.05
6/5/2018	PROLEGAL DISCOVERY SOLUTIONS, INC. CHS	SHEM CREEK DEVELOPMENT	\$ 96.27
6/12/2018	PROLEGAL DISCOVERY SOLUTIONS, INC. CHS	SHEM CREEK DEVELOPMENT	\$ 1,153.93
6/5/2018	BRANCH TECHNOLOGIES	SHEM CREEK GARAGE	\$ 875.00
6/28/2018	PROLEGAL DISCOVERY SOLUTIONS	SHEM CREEK V. TOMP	\$ 1,082.11
6/30/2018	PROLEGAL DISCOVERY SOLUTIONS	SHEM CREEK V. TOMP	\$ 543.93
6/30/2018	PROLEGAL DISCOVERY SOLUTIONS	SHEM CREEK V. TOMP	\$ 202.53
6/30/2018	e-VOS-LLC	SHEM CREEK V. TOMP	\$ 600.00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	NOTICE OF FILING AFFIDAVIT OF
	)	ATTORNEYS' FEES ANC COSTS
v.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

Plaintiff Shem Creek Development Group, LLC hereby files G. Hamlin O'Kelley, III's Affidavit of Attorneys' Fees and Costs, which is attached hereto as Exhibit 1.

s/E. Brandon Gaskins

E. Brandon Gaskins (State Bar No. 73274)
MOORE & VAN ALLEN PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
Telephone: (843) 579-7000
Facsimile: (843) 579-7099
brandongaskins@mvalaw.com

*Attorney for Plaintiff Shem Creek
Development Group, LLC*

September 17, 2020
Charleston, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	G. HAMLIN O'KELLEY, III'S
	)	AFFIDAVIT OF ATTORNEYS' FEES
v.	)	AND COSTS
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

Personally appeared before the undersigned officer duly authorized to administer oaths, G. Hamlin O'Kelley, III, who, on oath, states as follows:

1. I, G. Hamlin O'Kelley, III, am over eighteen (18) years old, and of sound mind and body. I am competent to give this affidavit, and it is based upon my own personal knowledge.

2. I am an attorney for in the law firm of Buist Byars & Taylor, LLC ("BB&T"), which formerly represented Plaintiff Shem Creek Development Group, LLC in matters relating to the Parking License Agreement between Plaintiff and Defendant Town of Mount Pleasant.

3. I was admitted to the Bar of the Supreme Court of South Carolina in 1998 and have been actively engaged in the practice of law since that time. A substantial portion of my practice relates to commercial litigation matters.

4. I am also a member of the Bar of the United States Court of Appeals for the Fourth Circuit and of the United States District Court for the District of South Carolina.

5. I am informed and believe that, under *Baron Data Systems, Inc. v. Loter*, 297 SC 382, 377 S.E.2d 296 (1989), and *Blumberg v. Nealco*, 310 SC 482, 427 S.E.2d 659 (Ct. App. 1993), there are six factors which should be considered in determining the reasonableness of a fee

including: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) the fee customarily charged in the location for similar services; and (6) the beneficial results obtained.

6. I have attached hereto as Exhibit A a detailed spreadsheet showing BB&T's attorneys' fees, paralegal fees, and costs incurred with respect to the dispute regarding the Parking License Agreement from January 5, 2015 to July 14, 2016. The amounts shown in Exhibit A represent a true and accurate reflection of time, effort and costs of my firm's legal services in this action. The spreadsheet has been redacted in part to protect certain information protected by the attorney-client privilege and the attorney work-product doctrine.

7. As shown on Exhibit A, Plaintiff has incurred legal fees in the amount of Thirteen Thousand One Hundred Thirty-Eight Dollars (\$13,138.50) in attorneys' fees for BB&T's services that were directly related to the dispute regarding the Parking License Agreement. This amount does not include legal fees related to the lawsuit of *Save Shem Creek v. Town of Mount Pleasant*, for which BB&T also provided legal services to Plaintiff.

8. The legal services reflected in Exhibit A were performed by myself, Gray Taylor, Esq., and paralegal Amanda Taylor. Mr. Taylor passed away in 2019. As a result, I am submitting this affidavit to attest to his fees and services as well as mine.

9. I believe that these fees and costs are reasonable under the six factors discussed above based on the following: (1) the matter was highly disputed and involved complex issues of contract and municipal law with a significant amount in controversy; (2) the time and fees incurred are reasonable considering that the dispute was active and unresolved over a period of eighteen months; (3) at all relevant times, Mr. Taylor and I were in good standing with the South Carolina

Bar, have never been involved any disciplinary proceedings, and have a good reputation among other lawyers in the area who practice commercial litigation and commercial transaction; (4) the matter was not based on a contingency arrangement; (5) the hourly rates, which ranged from \$285/hour and \$300/hour when the representation commenced in 2015 to \$300/hour and \$400/hour when the representation was completed in 2016, was within the range of hourly rates customarily charged by attorneys of similar experience to Mr. Taylor and myself, who practice in commercial transactions and litigation in the Charleston area; and (6) Plaintiff benefited from the services performed by BB&T by ultimately obtaining the beneficial result of a recovery in the full amount sought at trial.

10. I am further informed and believe that in the absence of any presentation of evidence to the contrary by Defendant in this action, it is appropriate to award the relief requested, including attorneys' fees and costs in the amount requested.



G. Hamlin O'Kelley, III

Subscribed and Sworn to before me
This 15th day of September, 2020



Notary Public for the State of South Carolina
My Commission expires _____



EXHIBIT A

Timekeeper	Transaction Date	Billed Amount	Narrative	Billed Hours
Taylor, Gray B.	1/5/2015	\$280.00	Finalized shared parking agreement and email to Tyler for review	0.8
Taylor, Gray B.	1/6/2015	\$140.00	Follow up with Tyler and David Pagliarini	0.4
Taylor, Gray B.	1/7/2015	\$280.00	Phone conference with David Pagliarini; emails to clients regarding [REDACTED]	0.8
Taylor, Gray B.	2/9/2015	\$350.00	Calls and emails to and from Tyler regarding [REDACTED]	1
Taylor, Gray B.	2/10/2015	\$1,575.00	Meeting and communications with Tyler Flesch; draft notice of default and forward to the Town; prepar for and attend town council meeting	4.5
O'Kelley, G. Hamlin	2/10/2015	\$85.50	Review and track changes to default letter to David Pagliarini	0.3
O'Kelley, G. Hamlin	2/10/2015	\$57.00	Further revisions to default letter	0.2
O'Kelley, G. Hamlin	2/10/2015	\$57.00	Further revisions to default letter to Town of Mt. Pleasant	0.2
Taylor, Gray B.	2/11/2015	\$105.00	Emails to and from David Pagliarini regarding council resolution	0.3
Taylor, Gray B.	2/11/2015	\$455.00	Phone conference with Tyler; review legal issues regarding [REDACTED] phone conference with Town Attorney	1.3
O'Kelley, G. Hamlin	2/11/2015	\$85.50	Conference with Attorney Taylor re: [REDACTED]	0.3
O'Kelley, G. Hamlin	2/11/2015	\$85.50	Begin review of zoning ordinances re: appeal and status of parking issues	0.3

O'Kelley, G. Hamlin	2/11/2015	\$370.50	Further review of zoning issues.	1.3
O'Kelley, G. Hamlin	2/11/2015	\$171.00	Begin draft memorandum re: zoning, appeals, and other issues.	0.6
O'Kelley, G. Hamlin	2/12/2015	\$85.50	Further review of Town ordinances re: memorandum	0.3
O'Kelley, G. Hamlin	2/13/2015	\$57.00	Further correspondence with Attorney Pagliarini re: old code for town of Mt. Pleasant	0.2
O'Kelley, G. Hamlin	2/17/2015	\$85.50	Receipt and review old code for town of Mt. Pleasant	0.3
O'Kelley, G. Hamlin	2/17/2015	\$114.00	Revise Memo to clients re: [REDACTED]	0.4
Taylor, Amanda	2/22/2015	\$15.00	Communicate (other external) Document Production Review e-mail from Trisha Hughey to Hamlin O'Kelley re: Mount Pleasant Ordinance	0.1
Taylor, Amanda	2/22/2015	\$15.00	Review/analyze Document Production Review Mount Pleasant Ordinance documents produced by Trisha Hughey	0.1
O'Kelley, G. Hamlin	2/23/2015	\$57.00	Telephone call to Attorney Pagliarini re: old code for Mt. Pleasant	0.2
O'Kelley, G. Hamlin	2/24/2015	\$85.50	Review of old Coleman Blvd. Overlay district ordinances	0.3
O'Kelley, G. Hamlin	2/24/2015	\$57.00	Finalize Memorandum to client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	2/24/2015	\$57.00	Revise memorandum to clients re: [REDACTED]	0.2

Taylor, Gray B.	3/11/2015	\$875.00	Meeting with Tylor and Chris; review and revise ground lease for Shem Creek; correspondence to Kent Prause regarding building permit	2.5
O'Kelley, G. Hamlin	3/11/2015	\$57.00	Correspondence with clients re: [REDACTED]	0.2
O'Kelley, G. Hamlin	3/11/2015	\$114.00	Letter to Town of Mt. Pleasant regarding FOIA Request as to communications from Councilman Gary Santos	0.4
O'Kelley, G. Hamlin	3/11/2015	\$57.00	Correspondence with clients re: [REDACTED]	0.2
O'Kelley, G. Hamlin	3/11/2015	\$57.00	Email to Attorney Pagliarini re: status of freedom of information act request	0.2
O'Kelley, G. Hamlin	3/13/2015	\$114.00	Research re: [REDACTED]	0.4
O'Kelley, G. Hamlin	3/13/2015	\$57.00	Email to Attorney Taylor re: [REDACTED]	0.2
O'Kelley, G. Hamlin	3/13/2015	\$57.00	Correspondence from Kent Prause re: parking issues	0.2
O'Kelley, G. Hamlin	3/13/2015	\$57.00	Correspondence from and to Attorney Pagliarini re: constructive notice with Councilman Santos	0.2
Taylor, Amanda	3/25/2015	\$15.00	Review/analyze Document Production Review FOIA request from Hamlin O'Kelley to David Pagliarini returned unable to forward	0.1

Taylor, Amanda	3/25/2015	\$15.00	Communicate (in firm) Document Production E-mail to Hamlin O'Kelley attaching returned FOIA request from David Pagliarini	0.1
Taylor, Amanda	3/25/2015	\$15.00	Communicate (in firm) Document Production E-mail from Hamlin O'Kelley re: returned FOIA request for David Pagliarini	0.1
O'Kelley, G. Hamlin	3/31/2015	\$57.00	Correspondence from town re: FOIA request response	0.2
O'Kelley, G. Hamlin	5/4/2015	\$57.00	Receipt and review correspondence from Kent Prause re: status of parking issues pre-permit	0.2
O'Kelley, G. Hamlin	5/5/2015	\$57.00	Correspondence with clients re: [REDACTED]	0.2
O'Kelley, G. Hamlin	5/5/2015	\$114.00	Conference call with clients and Gray Taylor	0.4
O'Kelley, G. Hamlin	5/8/2015	\$57.00	Correspondence with Town of Mt. Pleasant legal department re: status of FOIA response	0.2
O'Kelley, G. Hamlin	5/8/2015	\$57.00	Telephone call with Julia Copeland re: response to FOIA request from Town of Mt. Pleasant	0.2
O'Kelley, G. Hamlin	5/8/2015	\$57.00	Research re: [REDACTED]	0.2
O'Kelley, G. Hamlin	5/8/2015	\$85.50	Draft of Standard of Review Memorandum for Zoning Administrator Review to BZA	0.3
O'Kelley, G. Hamlin	5/8/2015	\$1,767.00	Review of emails and FOIA documents from Town of Mt. Pleasant	6.2

O'Kelley, G. Hamlin	5/11/2015	\$57.00	Telephone call with Julia Copeland re: status of FOIA documents	0.2
O'Kelley, G. Hamlin	5/11/2015	\$57.00	Further correspondence with Julia Copeland re: FOIA request response	0.2
Taylor, Amanda	5/11/2015	\$15.00	Review/analyze Document/File Management Review letter from David G. Pagliarini to Hamlin O'Kelley re: FOIA request of e-mails	0.1
O'Kelley, G. Hamlin	5/19/2015	\$370.50	Review of emails and text from Santos	1.3
Taylor, Amanda	6/13/2016	\$15.00	Review letter from Hamlin O'Kelley to David Pagliarini re: agreement between Shem Creek Development and Town of Mt. Pleasant	0.1
Taylor, Gray B.	6/6/2016	\$1,040.00	Work on demand letter to Town for breach of parking license agreement	2.6
O'Kelley, G. Hamlin	6/7/2016	\$90.00	Revise demand letter to Town of Mt. Pleasant	0.3
O'Kelley, G. Hamlin	6/7/2016	\$90.00	Draft of letter to Town Council	0.3
O'Kelley, G. Hamlin	6/7/2016	\$90.00	Telephone call with client re: [REDACTED]	0.3
Taylor, Gray B.	6/8/2016	\$160.00	Review and respond to emails from Tyler; revisions to TOMP demand letter	0.4
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Telephone call with Tyler Flesch re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Revise letter to Town of Mt. Pleasant	0.2

O'Kelley, G. Hamlin	6/8/2016	\$60.00	Further telephone calls with client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Further revisions to letter re: status of claims for SCDG demand for PLA	0.2
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Further revisions to demand letter to Mt. Pleasant Town Council	0.2
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Telephone call with client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/8/2016	\$60.00	Further correspondence with client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/9/2016	\$60.00	Correspondence with David Pagliarini re: demand letter and presentation to council	0.2
O'Kelley, G. Hamlin	6/9/2016	\$90.00	Telephone call with Tyler Flesch re: [REDACTED]	0.3
O'Kelley, G. Hamlin	6/9/2016	\$90.00	Telephone call with David Slade at Post & Courier re: settlement demand	0.3
O'Kelley, G. Hamlin	6/13/2016	\$60.00	Telephone call with David Pagliarini re: council meeting	0.2
O'Kelley, G. Hamlin	6/14/2016	\$60.00	Telephone call with Tyler Flesch re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/14/2016	\$90.00	Telephone call with client re: [REDACTED]	0.3
O'Kelley, G. Hamlin	6/14/2016	\$60.00	Telephone call with David Pagliarini re: status of meeting	0.2

O'Kelley, G. Hamlin	6/14/2016	\$90.00	Telephone call with David Pagliarini re: status of claims and counsel meeting	0.3
O'Kelley, G. Hamlin	6/14/2016	\$60.00	Telephone call with Tyler Flesch re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/16/2016	\$90.00	Telephone call with client re: [REDACTED]	0.3
O'Kelley, G. Hamlin	6/20/2016	\$330.00	Meeting with clients re: [REDACTED]	1.1
Taylor, Gray B.	6/20/2016	\$320.00	Meeting with Tyler and Tex on [REDACTED]	0.8
O'Kelley, G. Hamlin	6/21/2016	\$120.00	Draft Termination notice letter to Town of Mount Pleasant	0.4
O'Kelley, G. Hamlin	6/22/2016	\$90.00	Draft FOIA letter to Town of Mt. Pleasant regarding Credit Ratings	0.3
O'Kelley, G. Hamlin	6/22/2016	\$60.00	Telephone call with client re: [REDACTED]	0.2
Taylor, Amanda	6/22/2016	\$30.00	Email letter to David Pagliarini from Hamlin O'Kelley and note deadline to respond timely re: FOIA request	0.2
O'Kelley, G. Hamlin	6/23/2016	\$60.00	Telephone call with Tyler Flesch re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/23/2016	\$60.00	Correspondence with client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	6/23/2016	\$60.00	Revise Termination letter to the Town of Mt. Pleasant	0.2

O'Kelley, G. Hamlin	6/23/2016	\$60.00	Communication with client re: [REDACTED]	0.2
			Correspondence with client re: [REDACTED]	
O'Kelley, G. Hamlin	6/30/2016	\$60.00		0.2
Taylor, Amanda	7/7/2016	\$15.00	Email to Hamlin O'Kelley re: deadline for Town of Mt. Pleasant FOIA request	0.1
Taylor, Amanda	7/11/2016	\$15.00	Email from Hamlin O'Kelley re: FOIA request deadline for Town of Mt. Pleasant	0.1
Taylor, Amanda	7/11/2016	\$15.00	Email to Hamlin O'Kelley re: FOIA request deadline for town of Mt. Pleasant	0.1
			Receipt and review correspondence from Trisha Huey re: status of credit rating issues for the Town of Mt. Pleasant	0.2
O'Kelley, G. Hamlin	7/14/2016	\$60.00	Correspondence with client re: [REDACTED]	0.2
O'Kelley, G. Hamlin	7/14/2016	\$60.00	Review Town of Mt. Pleasant's FOIA response documents	0.2
Taylor, Amanda	7/14/2016	\$30.00		
			Review email from Hamlin O'Kelley to client attaching [REDACTED]	0.1
Taylor, Amanda	7/14/2016	\$15.00		
TOTAL FEES		\$13,138.50		

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
 Shem Creek Development, LLC,	)	
	)	Civil Action No. 2017-CP-10-5493
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO VACATE OR OTHERWISE
The Town of Mount Pleasant,	)	ALTER OR AMEND ORDER
South Carolina,	)	
	)	
Defendant.	)	
_____	)	

TO: THE HONORABLE MAITE MURPHY

E. BRANDON GASKINS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Town of Mount Pleasant will move before the Honorable Maite Murphy at such time and place as may be set by the Court, for an Order, pursuant to Rule 52(b) and Rule 59(e), SCRCF, vacating or otherwise altering, amending, and reconsidering the Order Awarding Plaintiff Attorney's Fees and Costs filed on January 11, 2021.

The Defendant Town of Mount Pleasant's counsel received written notice of entry of the Order Awarding Plaintiff Attorney's Fees and Costs on January 11, 2021.

The Defendant Town of Mount Pleasant's motion is based on the following grounds:

1. On September 17, 2020, the Court issued its Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order. Thereafter, on October 16, 2020, the Defendant Town of Mount Pleasant filed a timely Notice of Appeal with the South Carolina Court of Appeals, and that appeal remains pending. Importantly, that appeal was pending at the

time this Court issued its Order Awarding Plaintiff Attorney's Fees and Costs on January 11, 2021. Therefore, the Order Awarding Plaintiff Attorney's Fees and Costs was issued by the Court in the absence of jurisdiction. As the South Carolina Supreme Court has held, "the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485, 493 (2016). Rule 241(a), SCACR, also provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR. In this case, the Plaintiff's entitlement to the recovery of attorney's fees and costs under Section 6.01 of the PLA is clearly affected by the issues on appeal. The Defendant contends on appeal that the Court erred in entering judgment in favor of the Plaintiff. If the Defendant is successful on appeal, the judgment will be reversed. In that event, the Plaintiff will not qualify as a "prevailing party" under Section 6.01 and will not be entitled to any award of attorney's fees and costs. Instead, the Defendant would be the "prevailing party" and entitled to the recovery of its attorney's fees and costs. Therefore, this Court was divested of jurisdiction at the time this Court entered its January 11, 2021 Order. That Order should be vacated.

2. In its Order Awarding Plaintiff Attorney's Fees and Costs, the Court failed to consider or address the objections to the claimed attorney's fees which were asserted in the Defendant's Opposition to Attorney's Fee Award and Objections to Plaintiff's Attorney Fee

Affidavit filed August 24, 2020. Specifically, the Defendant objected to the Plaintiff's claim of attorney's fees in the amount of \$13,138.00 charged by Buist Byars & Taylor attorneys Gray Taylor and Hamlin O'Kelley. The Defendant maintains that Section 6.01 of the Parking License Agreement ("PLA") provides for the recovery of only litigation-related attorney's fees and costs. The \$13,138.00 in attorney's fees were incurred long prior to suit being filed. The Plaintiff filed its Complaint on October 23, 2017. According to the untimely affidavit filed by Hamlin O'Kelley, the \$13,138.00 in attorney's fees were incurred between January 5, 2015 and July 14, 2016, which was well more than a year before litigation commenced. See, O'Kelley Aff., ¶ 6. Therefore, those attorney's fees are not recoverable under Section 6.01 of the PLA. If the Court continues to exercise jurisdiction, the Court is alternatively requested to rule on this issue and to deny the recovery of the attorney's fees in the amount of \$13,138.00 charged by Buist Byars & Taylor.

The Defendant Town of Mount Pleasant's motion is based upon the pleadings filed in this case; the Order Awarding Plaintiff Attorney's Fees and Costs filed January 11, 2021; the Defendant's Opposition to Attorney's Fee Award and Objections to Plaintiff's Attorney Fee Affidavit filed August 24, 2020; the rules of court; and such other matters as may be properly presented to the Court.

LINDEMANN & DAVIS, P.A.

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Counsel for Defendant Town of Mount Pleasant

January 21, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE IN
	)	OPPOSITION TO DEFENDANT'S
v.	)	MOTION TO VACATE OR
	)	OTHERWISE ALTER OR AMEND
	)	ORDER
The Town of Mount Pleasant, South Carolina,	)	
	)	
Defendant.	)	

Plaintiff Shem Creek Development Group, LLC ("SCDG") files this response in opposition to Defendant the Town of Mount Pleasant's (the "Town") Motion to Vacate or Otherwise Alter or Amend Order. As explained below, the Court retained jurisdiction to award SCDG attorneys' fees and costs after the Town served its notice of appeal. Therefore, the Town's motion should be denied.

ARGUMENT

I. The Court retained jurisdiction to determine attorneys' fees and costs after the Town served its notice of appeal.

The Town mistakenly argues that the order awarding attorneys' fees and costs should be vacated because, once the Town filed its notice of appeal, the Court no longer had jurisdiction to issue the order under Rule 241(a), SCACR. Although the Town correctly states that Rule 241(a), SCACR, creates a "general rule" that service of a notice of appeal divests the trial court of jurisdiction over matters affected by an appeal, the determination of attorneys' fees and costs is not a matter affected or stayed by an appeal according to the South Carolina Supreme Court, the South Carolina Rules of Civil Procedure, and other persuasive authority. As a result, the Court

was not divested of jurisdiction to determine SCDG's request for attorneys' fees and costs during the pendency of the appeal.

A. *A determination of attorneys' fees and costs is not a matter affected by an appeal.*

Under precedent of the South Carolina Supreme Court, a determination of attorneys' fees and costs is not a matter affected by an appeal. Therefore, the Court retained jurisdiction to award SCDG fees and costs in this case.

In *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), the South Carolina Supreme Court directly rejected the argument that the Town makes in its motion to vacate. In that case, the jury entered its verdict against the appellant for a violation of the Regulation of Manufacturers, Distributors, and Dealers Act (the "Dealers Act")¹ on May 12, 1994. *Id.* at 299, 484 S.E.2d at 755. After the verdict, the trial court gave the respondents five days to gather documentation concerning the amount of attorneys' fees to be granted under the Dealers Act, and the respondents filed their motion for attorneys' fees on May 17, 1994. *Id.* The appellants then filed their notice of appeal in June of 1994. *Id.* While the appeal was pending, the trial court held a hearing on the respondents' motion for attorneys' fees several months later in February of 1995 and awarded the respondents' attorneys' fees. *Id.* at 300, 484 S.E.2d at 755.

On appeal, the appellant in *Jackson* argued that the trial court lacked jurisdiction to award the respondent attorneys' fees because appellants timely appealed the jury verdict before the court awarded fees. *Id.* at 311, 484 S.E.2d at 761.² Although the appellants' appeal challenged the

¹ S.C. Code Ann. §§ 56-15-10 to -130.

² In *Jackson*, the appellant relied on former Rule 204, SCACR, to argue that the trial court lacked jurisdiction. Since *Jackson*, former Rule 204 has been renumbered as Rule 205. Rule 205 provides that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." Thus, for purposes of the Town's motion, Rules 205 and 241
(continued on next page)

merits of the jury verdict on liability under the Dealers Act, the Supreme Court nevertheless ruled that the award of attorneys' fees and costs was not affected by the appeal. *Id.*

The procedural posture and issues presented by the Town's motion to vacate are the same as those presented in *Jackson*. As the trial court did in *Jackson*, the Court allowed the prevailing party to provide evidence supporting the award of fees and costs after judgment was issued. And just as the appellant did in *Jackson*, the Town filed a notice of appeal challenging the merits of the underlying judgment before the court awarded fees and then contested the trial court's jurisdiction to award fees during the pendency of the appeal. In *Jackson*, the Supreme Court rejected the same argument advanced by the Town here, and thus, *Jackson* dictates that the Court retained jurisdiction in this case to award fees to SCDG after the Town filed its appeal.

B. The Court has jurisdiction to award fees and costs under Rule 54(d), SCRCP after a notice of appeal is served.

The Court also retained jurisdiction to award SCDG fees and costs pursuant to Rule 54(d), SCRCP, which governs the award of fees and costs to the prevailing party in litigation. Rule 54(d) provides that, upon notice that the matter has been appealed, taxation of costs "may" be delayed until the appeal is completed. The rule's use of the term "may" indicates that delaying taxation of costs until after the appeal is complete is permissive and discretionary, which necessarily means that the court also has discretion to award fees and costs before the appeal is complete.

Significantly, the state "Rule 54(d) is substantially the same as the Federal Rule." *Black v. Roche Biomedical Lab., Div. of Hoffman-Laroche*, 315 S.C. 223, 228, 433 S.E.2d 21, 24 (1993). As a result, it is appropriate to look to the federal courts' construction of Rule 54(d) for guidance

are entirely consistent and applicable, and the fact that the appellant in *Jackson* relied on former Rule 204 makes no material difference with respect to *Jackson's* applicability to the Town's motion to vacate.

on the issue presented by the Town's motion to vacate. *See Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 331, 404 S.E.2d 200 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.").

Like the state Rule 54(d), the federal Rule 54(d) provides the trial court with discretion to rule on a claim for fees while the appeal is pending or defer ruling until the appeal is resolved. Rule 54(d), advisory committee notes (1993 Amendments) ("If an appeal on the merits . . . is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing . . . a new period for filing after the appeal has been resolved."). And federal courts have consistently held that a trial court retains jurisdiction to determine an application of attorneys' fees after a notice of appeal has been served. *See., e.g., Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 225 (2d Cir. 2004) ("[N]otwithstanding a pending appeal, a district court retains residual jurisdiction over collateral matters, including claims for attorneys' fees."); *Garcia v. Burlington N. R.R. Co.*, 818 F.2d 713, 721 (10th Cir. 1989) ("Even after a timely notice of appeal is filed, a district court may retain jurisdiction to determine the propriety and amount of attorney's fees."); *Venen v. Sweet*, 758 F.2d 117, 120 fn.2 (3d Cir. 1985) ("A district court, during the pendency of an appeal is not divested of jurisdiction to determine an application for attorney's fees."); *Masalosalo by Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957 (9th Cir. 1983) ("The district court retain[s] the power to award attorneys' fees after the notice of appeal from the decision on the merits ha[s] been filed.").

These cases further support the plain language of Rule 54(d), SCRCF, and hold that a trial court is not divested of jurisdiction to determine fees and costs during the pendency of an appeal. As a result, the Town's motion to vacate should be denied.

C. Judicial economy supports upholding the award of fees and costs.

Not only is upholding the order of attorneys' fees in this case consistent with precedent and the plain language of Rule 54(d), it also serves judicial economy. As one court stated in denying a motion to stay determination of attorneys' fees pending an appeal under Rule 54(d):

Although an award of attorneys' fees would have to be vacated if the judgment is reversed, this is no different than any other case in which judgment is appealed and the prevailing party is awarded attorneys' fees. The court is in a much better position at the present time, when the details of the proceedings are fresh in its mind, to judge the expertise and time required by defense counsel to prevail in the case than it would be when the appeal has been decided. Judicial economy would not be served by requiring the court to revisit cases years after they were initially decided for the sole purpose of awarding attorneys' fees.

Yenidunya Invs., Ltd. v. Magnum Seeds, Inc., No. Civ. 2:11-1787 WBS, 2012 U.S. Dist. LEXIS 20421, *12-13 (E.D. Cal. Feb. 17, 2012).

The same rationale applies here. If the Town is completely successful on its appeal and SCDG is not the prevailing party, then the award of attorneys' fees will be vacated. However, if SCDG succeeds in the appeal, then the Court and the parties will be better served by having the attorneys' fee award stand because the Court will not have to revisit the issue years after legal services were rendered. Moreover, the Town will suffer no prejudice if its motion to vacate is denied because it can appeal the order awarding attorneys' fees and have that appeal consolidated with its pending appeal. *See Jackson*, 326 S.C. at 295, 486 S.E.2d at 753 (resolving appeal on merits and separate appeal of attorneys' fee award in a consolidated proceeding); *Masalosalo*, 718 F.2d at 957 ("If a district court decides a fee issue early in the course of a pending appeal on the merits, and the fee order is appealed, the appeals may be consolidated."). Therefore, the interest of judicial economy also favors denial of the Town's motion to vacate.

II. The fees for services rendered by Mr. Taylor and Mr. O’Kelley are recoverable under Section 6.01 because they arose from SCDG’s dispute with the Town and were provided in anticipation of litigation.

The Town also mistakenly argues that the award of fees for legal services provided by Gray Taylor and Hamlin O’Kelley are not recoverable under Section 6.01 of the Parking License Agreement, which according to the Town, “provides for the recovery of only litigation-related attorney’s fees and costs.” The Town’s argument should be rejected because it is both legally and factually incorrect.

First, Section 6.01 does not provide for the recovery of “only litigation-related” fees and costs as the Town contends. Instead, that section provides broadly that “the prevailing party in any dispute shall be entitled to an award of costs and attorney’s fees, including the cost of trial and any appeals.” This language contains no language limiting the attorneys’ fees to “only litigation-related” fees. Rather, the language suggests that the fees recoverable must pertain to the dispute being litigated, and there can be no doubt that Mr. Taylor and Mr. O’Kelley’s fees arose from the dispute between SCDG and the Town, which began years before litigation commenced.

Second, Mr. O’Kelley’s affidavit shows that the fees listed therein were directly related to services provided in anticipation of possible litigation arising from SCDG’s dispute with the Town regarding the Parking License Agreement. The time entries attached to the affidavit repeatedly reflect work with respect to claims, demands, and settlement. Although the services were rendered prior to the commencement of litigation, they were directly related to the litigation. Thus, SCDG is entitled to an award of fees charged by Mr. Taylor and Mr. O’Kelley even if the Town’s narrow interpretation of Section 6.01 is accepted.

CONCLUSION

For the foregoing reasons, SCDG respectfully requests that the Court deny the Town's Motion to Vacate or Otherwise Alter or Amend Order.

Respectfully submitted,

s/E. Brandon Gaskins

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*Attorneys for Plaintiff
Shem Creek Development Group, LLC*

January 29, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Shem Creek Development, LLC,
Plaintiff,

Civil Action No. 2017-CP-10-5493

v.

**REPLY MEMORANDUM IN SUPPORT
OF MOTION TO VACATE OR OTHERWISE
ALTER OR AMEND ORDER**

The Town of Mount Pleasant,
South Carolina,
Defendant.

The Plaintiff Shem Creek Development, LLC has filed a memorandum in opposition to the Defendant's Motion to Vacate or Otherwise Alter or Amend Order. The Defendant Town of Mount Pleasant is compelled to reply with the following points:

1. The Plaintiff argues that that South Carolina law allows a circuit court to retain jurisdiction after a notice of appeal is filed in order to adjudicate a motion for attorney's fees and costs. The Plaintiff argues that an award of attorney's fees and costs is not a matter affected by the appeal. The Plaintiff cites to the case of *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), which is inapposite. In *Jackson*, the Supreme Court found that the circuit court's ruling on a motion for attorney's fees did not affect the appeal because the appellant had not appealed "the propriety of awarding attorney's fees." 486 S.E.2d at 761. The present case is clearly different. In its appeal, the Town of Mount Pleasant has asked the Court of Appeals to reverse this Court's finding that the Plaintiff qualifies as a "prevailing party" and is entitled to an award of attorney's fees and costs. Thus, unlike in *Jackson*, the Plaintiff's entitlement to attorney's fees and specifically "prevailing

party" status under the Parking License Agreement ("PLA") is most certainly at issue on appeal. That alone distinguishes the *Jackson* case.

2. The Plaintiff also does not address the impact of Rule 241(a), SCACR, which provides, in pertinent part as follows: "As a general rule, the service of a notice of appeal in a civil matter *acts to automatically stay matters decided in the order*, judgment, decree or decision on appeal." Rule 241(a), SCACR. (Emphasis added). This Court's ruling that the Plaintiff qualifies as a "prevailing party" under the PLA is a ruling that is currently stayed. That ruling was stayed as of the filing of the Town's notice of appeal on October 16, 2020. Because that ruling is stayed, and is subject to reversal on appeal, this Court lacked jurisdiction to proceed with an award of attorney's fees which is necessarily premised on that stayed ruling.

3. The Plaintiff also relies heavily on Rule 54(d) of the Federal Rules of Civil Procedure as well as federal case law that permits, under certain circumstances, for a district court to exercise ancillary jurisdiction after a notice of appeal is filed. The Plaintiff's arguments lack merit. The Plaintiff fails to mention that Rule 54(d) of the Federal Rules of Civil Procedure is entirely different from Rule 54(d) of the South Carolina Rules of Civil Procedure. The two Rule 54's formerly were similar in verbiage, meaning, and application, but significant amendments to both versions of Rule 54 in 1993 (for the state rule) and in 2003 (for the federal rule) have changed that. The Court is urged to compare the language of the two Rule 54's. They are not longer even similar – let alone identical -- in language or application.

Most significantly, the South Carolina version of Rule 54(d) addresses "costs" and not "attorney's fees." South Carolina law has generally held that "costs and disbursements [under Rule 54(d)] do not, however, include attorney fees." *Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 433 S.E.2d 21, 24 (Ct. App. 1993). The original Rule 54, as adopted in 1985, did

not include a subsection (e) or an equivalent provision setting forth a list of taxable costs. Instead, the original Rule 54 was intended to follow existing statutory law for determining eligible costs for taxation. That changed in 1993, when Rule 54 was amended to include, in part, subsection (e). However, subsection (e) only mentions attorney's fees awarded as a court-ordered sanction. Subsection (e) has no applicability to attorney's fees that are not awarded as a sanction or even on a statutory basis. The attorney's fees awarded in the case at bar are pursuant to a contractual provision, and clearly that does not fall within the scope of "taxable costs" under Rule 54.

Nonetheless, as mentioned, the federal version of Rule 54(d) has also been revised substantially and has been augmented by other provisions such as Rule 58(e), FRCP. The federal version of Rule 54(d) expressly includes an attorney's fees provision. Moreover, the federal courts are also guided by Rule 58(e), FRCP, for which there is no South Carolina counterpart. Rule 58(e) actually provides that if a timely motion for attorney's fees is made under Rule 54(d)(2) the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect as a timely post-trial motion. The South Carolina version of Rule 58 does not include such a provision.

In sum, the Plaintiff's reliance on the federal version of Rule 54(d) and federal case law applying that rule is misplaced. In order for the federal rules to provide guidance, the federal counterpart to the state rule of civil procedure must be the same or, at a minimum, substantially similar. That is not the case with Rule 54(d).

For these reasons, the Defendant renews its request that the Court vacate the Order Awarding Plaintiff Attorney's Fees and Costs filed on January 11, 2021, which was issued in the absence of jurisdiction as a result of the pending appeal.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

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-and-

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Counsel for Defendant Town of Mount Pleasant

February 8, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Shem Creek Development, LLC,)
Plaintiff,)

Civil Action No. 2017-CP-10-5493

v.)

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND ORDER**

The Town of Mount Pleasant,)
South Carolina,)
Defendant.)

TO: THE HONORABLE MAITE MURPHY

E. BRANDON GASKINS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Town of Mount Pleasant will move before the Honorable Maite Murphy at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRPC, altering, amending, and reconsidering the Form Order filed on April 12, 2021.

The Defendant Town of Mount Pleasant's counsel received written notice of entry of the Form Order on April 12, 2021, and as a result, this motion is timely filed under Rule 59(e).

The Defendant Town of Mount Pleasant's motion is based on the following grounds:

By Form Order filed April 12, 2021, the Court, citing to Rule 54(d), SCRPC, *sua sponte* chose to defer ruling on the Defendant's Motion to Vacate or Otherwise Alter or Amend Order Awarding Plaintiff Attorney's Fees and Costs until after the pending appeal is fully adjudicated. The Defendant submits that the Court lacks the authority to defer ruling on a Rule 52(b) or Rule 59(e) motion *after* the judgment has already been entered and is thus accruing post-judgment

interest. The Public Index reflects that a judgment in the amount of \$298,965.22 in attorney's fees and costs was enrolled on January 11, 2021.

The Defendant has taken the position that that judgment was entered without the Court having subject matter jurisdiction because the judgment was entered several months after the Notice of Appeal was filed at which time the Circuit Court was divested of jurisdiction. Now the Court is deferring ruling on that issue while leaving the judgment in place and accruing post-judgment interest. The Defendant would have no objection to the Court deferring the *entire* question of attorney's fees and costs until the appeal resolves whether the Plaintiff is a "prevailing party" entitled to an award of attorney's fees and until jurisdiction is returned to the Circuit Court; however, for such a deferral to be proper, fair, and equitable, the current judgment must be vacated so that post-judgment interest is not accruing during the pendency of the appeal.

Contrary to the Form Order, Rule 54(d), SCRCP, does not grant the Court the authority to defer ruling on the Defendant's Motion to Vacate or Otherwise Alter or Amend Order filed January 21, 2021. Rule 54(d) states, in pertinent part:

Upon notice that the matter has been appealed, the clerk may delay the taxation of costs until the appeal is completed. A party who prevails for the first time on appeal may file a motion for costs, as provided herein, within 10 days of written notice of the entry of the final judgment after appeal. After an appeal, the clerk shall include the costs incurred in the appeal as taxable costs as provided in Rule 58(b). Costs may be taxed by the clerk on one day's notice. On motion served within 10 days after receipt of notice, the action of the clerk may be reviewed by the court.

Rule 54(d), SCRCP. (Emphasis added). By its explicit terms, Rule 54(d) authorizes the Clerk of Court – not the Court – to defer or delay the taxation of costs while an appeal is pending. Rule 54(d) does not bestow that same authority or discretion on the Court. In fact, under the process created by Rule 54(d), the Court does not even get involved in the process of awarding costs

except where by motion a party seeks the review of the Clerk's taxation of costs by the Court. Thus, if or when the Court is involved in the process, costs have already been awarded and the decision whether or not to delay or defer has already been made by the Clerk.

Moreover, as the Defendant has already argued to this Court, Rule 54(d), SCRCPP, has no application whatsoever to an award of attorney's fees under the circumstances presented by the case at bar. The South Carolina version of Rule 54(d) addresses "costs" and not "attorney's fees." South Carolina law has generally held that "costs and disbursements [under Rule 54(d)] do not, however, include attorney fees." *Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 433 S.E.2d 21, 24 (Ct. App. 1993). The original Rule 54, as adopted in 1985, did not include a subsection (e) or an equivalent provision setting forth a list of taxable costs. Instead, the original Rule 54 was intended to follow existing statutory law for determining eligible costs for taxation. That changed in 1993, when Rule 54 was amended to include, in part, subsection (e). However, subsection (e) only mentions attorney's fees awarded as a court-ordered sanction. Subsection (e) has no applicability to attorney's fees that are not awarded as a sanction or even on a statutory basis. *The attorney's fees awarded in the case at bar are pursuant to a contractual provision, and clearly that does not fall within the scope of "taxable costs" under Rule 54.* Therefore, for that additional reason, the Court may not defer a ruling on the Defendant's Motion to Vacate or Otherwise Alter or Amend Order filed January 21, 2021.

To reiterate, the Defendant would have no objection to a deferral of an award of attorney's fees until the appeal is complete and subject matter jurisdiction is returned to the Circuit Court by the issuance of a remittitur; however, that *must* include a vacatur of the existing judgment in the amount of \$298,965.22 in attorney's fees and costs was enrolled on January 11, 2021. That would be an appropriate ruling because the Plaintiff's status as a "prevailing party" is

being adjudicated on appeal, and hence, it also serves judicial economy to wait for the results of that appeal before entering an award of attorney's fees and costs. But, in the absence of a deferral of the *entire* question of attorney's fees, which must include the vacatur of the existing judgment as enrolled, the Defendant will be compelled to appeal from the judgment already enrolled on the jurisdictional bases previously raised.

The Defendant Town of Mount Pleasant's motion is based upon the pleadings filed in this case; the Form Order filed April 12, 2021; the Order Awarding Plaintiff Attorney's Fees and Costs filed January 11, 2021; the Defendant's Opposition to Attorney's Fee Award and Objections to Plaintiff's Attorney Fee Affidavit filed August 24, 2020; the Defendant's Motion to Vacate or Otherwise Alter or Amend Order filed January 21, 2021; the Defendant's Reply Memorandum in Support of Motion to Vacate or Otherwise Alter or Amend Order filed February 9, 2021; the rules of court; and such other matters as may be properly presented to the Court.

LINDEMANN & DAVIS, P.A.

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Counsel for Defendant Town of Mount Pleasant

April 22, 2021

ORIGINAL



PARKING LICENSE AGREEMENT
BY AND BETWEEN
SHEM CREEK DEVELOPMENT GROUP LLC
AND
TOWN OF MOUNT PLEASANT

**PLAINTIFF'S
EXHIBIT**

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SCDG0002376

Article I.

BASIC LICENSE PROVISIONS

Section 1.01 Effective Date. The Effective Date of this License shall be October 17, 2013.

Section 1.02 Licensor, Shem Creek Development Group LLC ("SCDG")

Section 1.03 Notice Addresses.

Address of Licensor: 400 Hibben Street, Suite 200
Mount Pleasant, SC 29464

With a copy to: Buist Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Attn: Gray B. Taylor Esq.

Licensee/Town: Town of Mount Pleasant ("Town")

Address of Licensee: Town of Mount Pleasant Municipal Complex
100 Ann Edwards Lane
Mount Pleasant, SC 29464

With a copy to: Town of Mount Pleasant Legal Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

Section 1.04 Property. The real property and improvements to be constructed thereon situated in the Town of Mount Pleasant, South Carolina, as more fully described on the attached Exhibit "A" (the "Property").

Section 1.05 Project. The Project consists of a multi-level structured parking garage, comprised of 276 total parking spaces, and a proposed office complex. A conceptual rendering of the Project is attached hereto as Exhibit "A"

Section 1.06 Premises. That portion of the Property comprising 132 of the 276 total parking spaces planned for the Project (the "Public Spaces"; the remaining 144 spaces are referred to herein as the "Reserved Spaces", and the Public Spaces and Reserved Spaces are collectively herein the "Parking Spaces"). The Parking Spaces, along with the parking garage building in which they are located, and all ancillary and/or associated structures, shall comprise the "Parking Garage", as more particularly described and identified on Exhibit "A".

Section 1.07 Rent.

- (a) **Fixed Minimum Rent:** During the first fifteen years of the License Term (the "Rent Period,") Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, the Fixed Minimum Rent, subject only to the adjustments set forth herein. During each year of the Rent Period, Fixed Minimum Rent shall be One Hundred Eighty-five Thousand and no/100 (\$185,000.00) Dollars. Fixed Minimum Rent for each License Year of the Rent Period shall be paid on or before the commencement of each License Year during the Rent Period. Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by Licensor, with payment being released from escrow upon the Rent Commencement Date. Following the Rent Period and for all remaining years of the License Term, Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior

demand and without any deduction or setoff whatsoever, Fixed Minimum Rent in the amount of One Dollar per year.

- (b) Rent Reduction based Upon Financial Performance of the Parking Garage: If at any time during the Rent Period of this License, should the operation of the Parking Garage result in an annual net operating profit, Licensee shall be entitled to reduce its Fixed Minimum Rent Payment for the following License Year of the Term by its pro rata share, based upon the percentage of the Parking Spaces comprising the Public Spaces.

- (i) For the purpose of this Agreement, "Net Operating Profit" shall be defined as gross revenue generated by the Parking Spaces during any License Year, less all expenses related to operation, maintenance and repair of the Parking Garage (including reasonable reserves for repair and replacements), including but not limited to the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Should the calculation of Net Operating Profit for any License Year result in a negative number (a "Net Operating Loss"), the Net Operating Profit for the following License Year shall be reduced by the Net Operating Loss from the preceeding License Year.

- (ii) By way of example, should the Parking Garage result in an annual net operating profit of \$10,000, Licensee's Fixed Minimum rent for the final License Year of the Term shall be reduced by \$4,782.61 (e.g., $\$10,000 \times 132/276 = \$4,782.61$).

Section 1.08 Operating Expense Payment. Licensor, as its sole and exclusive obligation, shall pay all expenses associated with the operation of the Parking Garage.

Section 1.09 License Year. A License Year shall be each successive period of twelve (12) calendar months commencing on the Rental Commencement Date.

Section 1.10 License Term; Rental Commencement Date. The term of the License (the "License Term") shall begin on the Rent Commencement Date, and shall end upon the earlier of (i) thirty (30) License Years thereafter or (ii) a Major Capital Event (as defined hereinafter), unless extended or sooner terminated in accordance with the terms and provisions of this License. The rental commencement date ("Rental Commencement Date") shall be date of issuance of certificate of occupancy by the Town.

Section 1.11 Permitted Use. The sole Permitted Use of the Public Spaces shall be for vehicular parking spaces for the general public at rental rates comparable to market rates for similarly situated parking facilities.

Article II. LICENSE OF PREMISES AND QUIET ENJOYMENT

Section 2.01 Description of Premises.

- (a) Licensor currently Leases (or has the ability to lease) the land shown on Exhibit "A", together with the existing buildings and improvements thereon depicted, all of which constitute the Property, pursuant to the

terms and conditions of that certain Real Property License by and between Snowmill, LLC, as Licensor thereunder, and Lowcountry Capital, LLC, as Licensee thereunder, dated April 1, 2006, as amended and thereafter assigned from Lowcountry Capital, LLC to Lucasville Investments, LLC (the "Prime Lease"). In consideration of the rents, covenants and agreements reserved and contained in this License, Licensor hereby grants an exclusive Licenses over the Premises to Licensee and Licensee accepts same, subject only to the terms and conditions herein contained, and all applicable liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Property.

- (b) The Premises shall include only the Public Spaces and necessary appurtenances specifically granted in this License, and shall not include any adjacent buildings, docks, or surface parking areas.

Section 2.02 Licensor's Work. Licensor, at its sole cost and expense, shall construct the proposed Project, in a form substantially similar to the conception drawings attached hereto as Exhibit "B".

Section 2.03 Licensor's Contingency. Licensor's obligations under this License Agreement, including but not limited to the obligation to construct the Project, are contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity. Licensor, in its sole and absolute discretion, may elect to terminate this License Agreement at any time prior to the earlier of (i) twenty-four (24) months from the Effective Date, or (ii) Licensor's commencement of construction of the Parking Garage.

Section 2.04 Possession/Alterations. Licensor and Licensee hereby agree that the Town's issuance of a certificate of occupancy for the Parking Garage shall be deemed conclusive evidence of Licensee's acceptance of the Premises in satisfactory condition and in full compliance with all covenants and obligations of Licensor related to construction of the Parking Garage. Licensee agrees that except as otherwise expressly set forth in this License, no representations or inducements respecting the condition of the Premises have been made to Licensee by Licensor or its authorized representatives. The Licensee shall notify the Licensor of any accident, defect, damage or deficiency in any part of the Premises or improvements which comes to the attention of the Licensee, its employees or contractors notwithstanding that the Licensor may have no obligation in respect thereof.

Section 2.05 Quiet Enjoyment. Licensor covenants that Licensee, upon paying all sums due from Licensee to Licensor and performing and observing all of Licensee's obligations under this License, shall peacefully and quietly have, hold and enjoy the Premises and the appurtenances throughout the License Term without interference by the Licensor, subject, nevertheless, to the other terms and provisions of this License.

Section 2.06 Excuse of Performance. Anything in this License to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of a party, that party shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this License if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulation or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Licensor; provided, however, that nothing herein shall delay or excuse payment of rent or any other sum due under this License.

**Article III.
OPERATING COVENANTS**

Section 3.01 Management of the Project. Licensee acknowledges and agrees that the sole and exclusive control and responsibility for management of the Project shall be with the Licensor. In furtherance of such management, Licensor shall make such decisions regarding staffing, the hiring of employee, operational standards, maintenance, parking fees, rules and regulations for use of the Project, and other decisions related to the management and operation of the Project. Notwithstanding the foregoing, Licensor has agreed to certain standards and criteria for operation of the Parking Garage, as set forth herein.

Section 3.02 Operating Covenants. In consideration of this Agreement, Licensor hereby agrees to the following management guidelines and operational standards for the Premises and the Project:

- (a) The Public Spaces subject to this License Agreement are intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek waterfront, and to provide parking for existing local businesses. In order to achieve these objectives, the Public Spaces shall be available for public use, 365 days per year, 24 hours per day.
- (b) The Reserved Spaces shall be reserved for separate allocation by Lessor Monday through Friday, 6:00 a.m. until 7:00 p.m. During all other times the Reserved Spaces shall be available for public use, on a first-come first-served basis.
- (c) The Premises shall be operational 365 days per year, 24 hours per day. Licensor reserves the right to establish, charge and collect reasonable fees for use of the Public Spaces and for the Reserved Spaces for such times as the Reserved Spaces are available for use by the general public. Parking fees shall be at rental rates comparable to market rates for similarly situated parking facilities. Following the termination of this License Agreement, Licensor shall be free to set parking fees in its sole discretion.

Section 3.03 Operating Costs. Licensor shall be solely responsible for the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon).

Section 3.04 Licensor's Work. Licensee has inspected the Licensor's conceptual plans for the Project, and agrees to accept the Premises if constructed in a substantially similar manner, and that no other Licensor work shall be required.

**Article IV.
INSURANCE**

Section 4.01 Licensor's Coverage. Licensor shall maintain at its sole expense during the term hereof:

- (a) public liability insurance covering the Premises in an amount of \$2,000,000 for injury and/or death to one person. The Town of Mount Pleasant shall be named as an additional insured; and

- (b) Earthquake, flood, fire and extended casualty, windstorm and hail coverage in an amount not less than 100% of the replacement value of the buildings and improvements now or hereafter located on the Premises (but in no case less than \$5,000,000) with companies satisfactory to Licensors; and

Article V. CASUALTY AND CONDEMNATION

Section 5.01 Fire, Explosion or Other Casualty. In the event the Premises are damaged by fire, explosion or any other casualty to an extent which is less than fifty (50%) percent of the cost of replacement of the Premises, the damage shall promptly be repaired by Licensor at Licensor's expense, but without abatement of Rent. In the event of any such damage and (a) the Premises shall be damaged to the extent of fifty (50%) percent or more of the cost of replacement, Licensor shall repair or rebuild the Premises or the building or buildings, with an abatement of the Fixed Minimum Rent during the time reasonably required to repair or rebuild and a tolling of the License Term for the time required to repair or rebuild.

Section 5.02 Major Capital Event. Following the 15th year of the Rent Term should uninsured capital improvements or repairs costing in excess of \$750,000 be required in any single License Year Licensor may elect to terminate this License upon written notice to Licensee and consultation with Licensee's representatives.

Section 5.03 Condemnation. If the whole of the Premises, or so much thereof as to render the balance unusable by Licensee for more than 6 months, shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, or if any part of the Property is taken and its continued operation is not, in Licensor's sole opinion, economical, this License shall automatically terminate as of the date possession is taken by the condemning authority, for so long as the Town of Mount Pleasant is not the condemning authority. No award for any total or partial taking shall be apportioned, and Licensee hereby unconditionally assigns to Licensor any award which may be made in such taking, or condemnation. In the event of a partial taking which does not result in the termination of this License, Fixed Minimum Rent shall be apportioned according to the part of the Premises remaining usable by Licensee.

Section 5.04 Condemnation Award. All compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Premises or Property, shall be the property of Licensor, whether such damages shall be awarded as compensation for diminution in the value of the License or to the fee of the Premises or otherwise, and Licensee hereby assigns to Licensor all of the Licensee's right, title and interest in and to any and all such compensation.

Article VI. DEFAULTS AND REMEDIES

Section 6.01 Definitions. In the event that Licensee (a) fails to pay all or any portion of any Rent or other sum due from Licensee hereunder or pursuant to any exhibit hereto within ten (10) days following written notice; (b) fails to comply with any other obligation of Licensee under this License within 30 days after written notice; or (c) becomes bankrupt, insolvent or files any insolvency or similar bankruptcy, debtor proceeding; then Licensee shall be in default hereunder and Licensor may, at its option and without further notice to Licensee, (i) terminate Licensee's right to use of the Premises, (ii) without terminating this License, re-enter and resume exclusive possession of the Premises, or (iii) declare this License terminated, and may thereupon in either event remove all persons and property from the Premises in any manner permitted by South Carolina law. In addition, Licensor shall be entitled to bring an action for specific performance or breach of contract against Licensee, but agrees that its sole and exclusive remedy shall be the Rent Payments due under this Agreement. Both parties waive any claims that either may have to any consequential or punitive damages, and agree that the prevailing party in any dispute shall be entitled to an award of costs and attorney's fees, including the cost of trial and any appeals.

Section 6.02 Rights and Remedies. The various rights and remedies herein granted to Licensor shall be cumulative and in addition to any others to which Licensor may be entitled by law or in equity, and the exercise of

one or more rights or remedies shall not impair Licensor's right to exercise any other right or remedy. In all events, Licensor shall have the right, upon notice to Licensee, to cure any breach by Licensee at Licensee's sole cost and expense, and Licensee shall reimburse Licensor for such expense upon demand.

Section 6.03 Bankruptcy. If Licensor shall not be permitted to terminate this License as hereinabove provided because of the provisions of Title 11 of the United States Code relating to insolvency, reorganization or bankruptcy, as amended ("Bankruptcy Code"), then Licensee as a debtor-in-possession or any trustee for Licensee agrees promptly, within no more than fifteen (15) days upon request by Licensor to the applicable bankruptcy court, to assume or reject this License, and Licensee on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this License by Licensor with such court. In such event, Licensee may only assume this License if (a) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder, (b) it compensates or provides adequate assurance that Licensee will promptly compensate Licensor for any actual pecuniary loss to Licensor resulting from Licensee's defaults, and (c) it provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this License to be performed by Licensee. In no event after the assumption of this License shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this License as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, and (2) the assumption of this License will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Licensor shall have no obligation to provide Licensee with any utilities or other services as herein required, unless Licensee shall have paid and be current in all payments of Operating Costs, utilities or other charges therefor.

Article VII.

SUCCESSION TO LICENSOR'S INTEREST

Section 7.01 Assignment and Attornment. Licensor, in its sole discretion, may assign its rights under this License Agreement at any time during the License Term, and Licensee shall attorn and be bound to any of Licensor's successors or assigns under all the terms, covenants and conditions of this License for the balance of its remaining term.

Section 7.02 Subordination. Licensee agrees that it shall, within 10 days after receipt of Licensor's request, subordinate this License to any mortgage held by an institutional lender which encumbers any portion of the Premises (each is a "Mortgagee"), pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement (an "SNDA"). Upon request of Licensee, Licensor shall use reasonable diligence to obtain an SNDA from the Mortgagee.

Section 7.03 Mortgagee's Approval. If any mortgagee of the Property requires any modification of the terms and provisions of this License as a condition to such financing as Licensor may desire, then Licensor shall have the right to cancel this License if Licensee fails or refuses to approve and execute such modifications, within thirty (30) days after Licensor's request therefor. Upon such cancellation by Licensor, this License shall be null and void and neither party shall have any liability either for damages or otherwise to the other by reason of such cancellation. In no event, however, shall Licensee be required to agree, and Licensor shall not have any right of cancellation for Licensee's refusal to agree, to any modification of the provisions of this License relating to: the amount of rent or other charges reserved herein; the size and/or location of the Premises; or the duration of the License Term and/or Rental Commencement Date of the term.

Section 7.04 Estoppel Certificate. Within ten (10) days after request therefor by either party from time to time, the other party agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to the other party, certifying that this License is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed), and the dates to which Fixed Minimum Rent and Additional Rent have been paid.

Article VIII. MISCELLANEOUS

Section 8.01 Assignment and Subletting. Licensee shall not directly or indirectly assign or in any manner transfer, mortgage, pledge, encumber or dispose of this License or any interest therein, or sublet or license the Premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone with, through or under it (each of the foregoing transactions is called a "Transfer"), without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

Section 8.02 Waiver. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Licensor shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant or condition of this License, other than the failure of Licensee to pay the particular rental so accepted, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such rent, and no covenant, term or condition of this License shall be deemed to have been waived by Licensor, unless such waiver be in writing by Licensor.

Section 8.03 Accord and Satisfaction. No payment by Licensee or receipt by Licensor of a lesser amount than the then due Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such rent or pursue any other remedy in this License provided.

Section 8.04 Entire Agreement. This License and the Exhibits and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Licensor and Licensee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this License shall be binding upon Licensor or Licensee unless reduced to writing and signed by them.

Section 8.05 No Partnership. By execution or performance of this License or any related agreement, Licensor does not, in any way or for any purpose, become a partner of Licensee in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with Licensee.

Section 8.06 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, insurrection, war or other causes beyond its reasonable control, then it shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided that nothing in this Section shall excuse or delay payment of Rent or any other sum.

Section 8.07 Notices. Any notice, demand, request or other instrument which may be or are required to be given under this License shall be delivered personally or sent by either United States certified mail postage prepaid or widely recognized commercial courier service requiring a signed receipt (such as Federal Express), and shall be addressed (a) if to Licensor at the address provided in Section 1.1 for Licensor or at such other address as Licensor may designate by written notice, and (b) if to Licensee at the address provided in Section 1.103 for Licensee or at such other address as Licensee shall designate by written notice. Notices shall be effective upon delivery, unless delivery is refused or cannot be made, in which event notice shall be effective as of attempted delivery, as indicated by written report or receipt of the postal service or commercial courier.

Section 8.08 Captions and Section Numbers; Interpretation. The captions, section numbers, article numbers, and index appearing in this License are inserted only as a matter of convenience and in no way define limit, construe, or describe the scope or intent of such section or articles of this License nor in any way affect this License.

There shall be no interpretation or construing of this License favorable or unfavorable to either party by virtue of its preparation by Licensor.

Section 8.09 Licensee Defined, Use of Pronouns. The word "Licensee" shall be deemed and taken to mean each and every person or party mentioned as a Licensee herein, be the same one or more; and if there shall be more than one Licensee, any notice required or permitted by the terms of this License may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Licensor or Licensee shall be deemed a proper reference even though Licensor or Licensee may be an individual, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this License apply in the plural sense where there is more than one Licensor or Licensee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

Section 8.10 Broker's Commission. Licensor and Licensee each represent and warrant to the other that no broker or real estate agent was involved in this transaction, and Licensor and Licensee each agree to indemnify and hold harmless the other from and against any and all claims, demands, liability, cost or expense (including attorney's fees) incurred by the other arising out of any claim for a brokerage commission or fee asserted due to the acts of the indemnifying party in connection with this License.

Section 8.11 Partial Invalidity. If any term, covenant or condition of this License or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this License shall be valid and be enforced to the fullest extent permitted by law.

Section 8.12 Execution of License and Municipal Authority. The submission of this License for examination does not constitute a reservation of or option for the Premises and this License becomes effective as a License only upon execution and delivery thereof by Licensor and Licensee. Licensee represents to Licensor that all necessary action has been undertaken to authorize this contractual obligation of the Licensee, and that the payments due under this License Agreement represent an ongoing obligation of the Town of Mount Pleasant. The Licensee may make this license contract beyond the term of the governing members of the municipal corporation entering into the License, since the subject matter of this License is an exercise of the Licensee's business and proprietary powers, and does not involve the exercise of a legislative function or the governmental power of the Licensee. Licensee has obtained the legal opinion of its Town Attorney confirming the provisions of this representation.

Section 8.13 Recording. Licensee agrees not to record this License nor any memorandum thereof, and upon any such recordation this License shall be voidable at Licensor's option. Said memorandum or short form of this License shall describe the parties, the Premises and the License Term and shall incorporate this License by reference. Licensor may record a notice prohibiting attachment of construction liens to its interest in the Premises and Property.

Section 8.14 Applicable Law. The Laws of the State of South Carolina shall govern the validity performance and enforcement of this License.

Section 8.15 Time is of the Essence. Time is of the essence of this Agreement.

Section 8.16 Successors and Assigns. Except as otherwise provided herein this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs personal representatives, executors, successors and assigns. Nothing herein shall authorize any transfer of this License, any interest in this License, or any interest in Licensee.

Section 8.17 Survival of Obligations. The provisions of this License with respect to any obligation of Licensee to pay any sum owing or to perform any act after expiration or other termination of this License shall survive the expiration or other termination of this License.

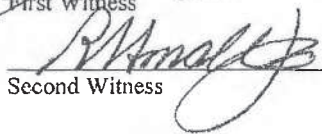
Section 8.18 Jury Trial. **LICENSEE AND LICENSOR BOTH WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS LICENSE OR ANY OF ITS PROVISIONS, AND THEIR RELATIONSHIP AS LICENSOR AND LICENSEE.**

Section 8.19 Representations. Licensee acknowledges that neither Licensor nor Licensor's agents, employees or contractors have made any representations or promises with respect to the Premises, the Property or this License except as expressly set forth herein.

Section 8.20 Licensor's Liability. Notwithstanding anything to the contrary herein contained, Licensee agrees that Licensor (and, in case Licensor is a joint venture, partnership, tenancy in common, association or other form of joint ownership, the individual partners, members and employees of any such joint venture, partnership, tenancy-in-common, association or other form of joint ownership) shall have absolutely no personal liability with respect to any of the provisions of this License, or any obligation or liability arising therefrom or in connection therewith. Licensee shall look solely to Licensor's equity in the Premises for the satisfaction of any remedies of Licensee against Licensor including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Licensor in the event of any default or breach by Licensor with respect to any of the terms and provisions of this License to be observed and/or performed by Licensor, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises, and no other assets of Licensor or any principal or partner of Licensor shall be subject to levy, execution or other judicial process for the satisfaction of Licensee's claim, and in the event Licensee obtains a judgment against Licensor, the judgment docket shall be so noted. This exculpation of liability shall be absolute and without exception whatsoever. This section shall inure to the benefit of Licensor's successors and assigns and their respective principals.

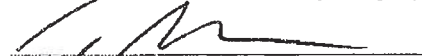
[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this License this day and year first above written.


First Witness

Second Witness

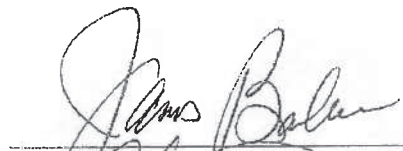
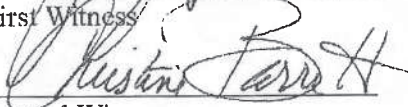
LICENSOR:

Shem Creek Development Group LLC,
a South Carolina limited liability company


By: Tyler N. Flesch
Its: Manager

LICENSEE:

Town of Mount Pleasant


First Witness

Second Witness

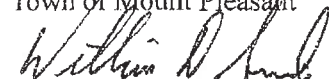
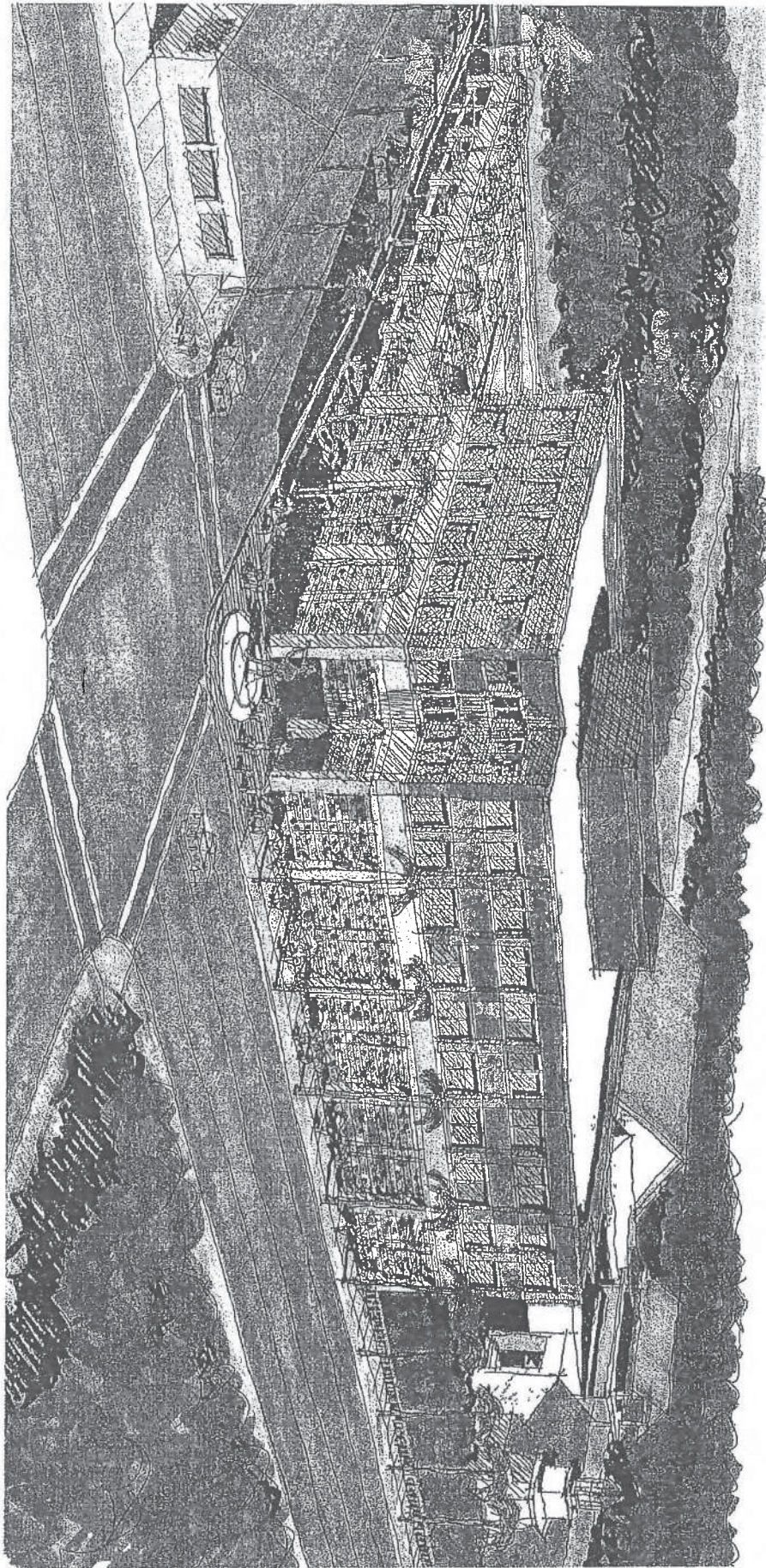

By: William D. Swails
Its: Mayor

EXHIBIT "A"

Legal Description and Site Plan for
Property, marked to show Premises



MOUNT PLEASANT COMMERCIAL DEVELOPMENT
AVTEX COMMERCIAL PROPERTIES

B Betsch Associates

EXHIBIT "B"

Fixed Minimum Rent

Year	Total
1	\$185,000.00
2	\$185,000.00
3	\$185,000.00
4	\$185,000.00
5	\$185,000.00
6	\$185,000.00
7	\$185,000.00
8	\$185,000.00
9	\$185,000.00
10	\$185,000.00
11	\$185,000.00
12	\$185,000.00
13	\$185,000.00
14	\$185,000.00
15	\$185,000.00

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Case No. 2017-CP-10-5493

Shem Creek Development Group, LLC, ... Respondent,

v.

The Town of Mount Pleasant, South Carolina, ... Appellant.

NOTICE OF APPEAL

The Appellant Town of Mount Pleasant, South Carolina hereby appeals the judgment entered on July 13, 2020 and the following Orders issued by the Honorable Maite Murphy, in addition to all pre-trial and trial rulings made during the trial held on February 3-6, 2020:

- (1) Order filed July 13, 2020;
- (2) Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, filed September 17, 2020;

- (3) Order Denying Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC, filed January 22, 2020; and
- (4) Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness, filed January 8, 2020.

The Appellant's counsel received written notice of entry of the Order filed September 17, 2020, on that same date.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

DAVID PAGLIARINI #8850
Corporation Counsel
Town of Mount Pleasant
100 Ann Edwards Lane
Mount Pleasant, South Carolina 29465
(843) 849-2020

CLAUDIUS O. TACKETT, II #72988
CLAUDE TACKETT LAW FIRM, LLC
Post Office Box 429
Mount Pleasant, South Carolina 29465
(843) 800-1126

Counsel for Appellant
Town of Mount Pleasant, South Carolina

October 16, 2020

Other Counsel of Record:

E. BRANDON GASKINS
SC Bar #73274
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
Post Office Box 22828
Charleston, South Carolina 29401
(843) 579-7000

Counsel for Respondent
Shem Creek Development Group, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Case No. 2017-CP-10-5493

Shem Creek Development Group, LLC, ... Respondent,

v.

The Town of Mount Pleasant, South Carolina, ... Appellant.

NOTICE OF APPEAL

The Appellant Town of Mount Pleasant, South Carolina hereby appeals the following orders issued by Circuit Court Judge Maite Murphy:

- (1) Order Awarding Plaintiff Attorney Fees and Costs filed January 11, 2021
- (2) Form 4 Order filed April 12, 2021

The Appellant's counsel received written notice of entry of the Form 4 Order filed April 12, 2021, on that same date.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

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CLAUDIUS O. TACKETT, II #72988
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Post Office Box 429
Mount Pleasant, South Carolina 29465
(843) 800-1126

Counsel for Appellant
Town of Mount Pleasant, South Carolina

May 12, 2021

Other Counsel of Record:

E. BRANDON GASKINS
SC Bar #73274
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
Post Office Box 22828
Charleston, South Carolina 29401
(843) 579-7000

Counsel for Respondent
Shem Creek Development Group, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2017-CP-10-05493
	)	
Shem Creek Development Group, LLC,	)	
	)	
Plaintiff,	)	ORDER AWARDING PLAINTIFF
	)	ATTORNEY FEES AND COSTS
vs.	)	
	)	
The Town of Mount Pleasant, South	)	
Carolina,	)	
	)	
Defendant.	)	

This matter comes before the Court upon the submission of affidavits of counsel in support of Plaintiff Shem Creek Development Group, LLC’s (“SCDG”) requests for an award of attorneys’ fees and costs in this action. After careful consideration of the law and evidence presented in the above-mentioned affidavits, this Court hereby GRANTS SCDG’s request for attorneys’ fees and costs based on the following findings:

1. SCDG and the Town of Mount Pleasant were parties to the parking license agreement, which was the subject of this litigation. Section 6.01 of the parking license agreement provides that “the prevailing party in any dispute shall be entitled to an award of costs and attorney’s fees, including the costs of trial and any appeals.”

2. On July 13, 2020, this Court issued an order awarding judgment in favor of SCDG on its claim of breach of contract arising under the parking license agreement. In Paragraph 104 of the order, the Court ruled that SCDG, as the prevailing party in this action, was entitled to an award of all costs and attorneys’ fees associated with this dispute, including the cost of trial. Thus, SCDG was instructed to submit an affidavit of costs and attorneys’ fees it sought to be awarded in this action.

3. On August 11, 2020, SCDG's counsel, Brandon Gaskins, submitted an affidavit of attorneys' fees and costs, which was supplemented on September 17, 2020 by a supplemental affidavit of Mr. Gaskins and an affidavit of Hamlin O'Kelley of the law firm of Buist Byars & Taylor. Based on these affidavits, the total amount of fees and costs sought by SCDG equals Two Hundred Ninety-Eight Thousand Nine Hundred Sixty-Five and 22/100 Dollars (\$298,965.22).

4. Under *Baron Data Systems, Inc. v. Loter*, 297 SC 382, 377 S.E.2d 296 (1989), and *Blumberg v. Nealco*, 310 SC 482, 427 S.E.2d 659 (Ct. App. 1993), there are six factors to be considered in determining the reasonableness of a fee: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) the fee customarily charged in the location for similar services; and (6) the beneficial results obtained.

5. Upon the analysis of the fees and costs sought by SCDG in this case under the above factors and based on upon my knowledge of and experience with the case, the Court concludes that SCDG's requested costs and fees are reasonable for the following reasons: (1) the matter was highly disputed and involved complex issues of contract and municipal law, a significant amount in controversy, a large volume of documents produced during discovery, and multiple discovery disputes; (2) the matter was litigated through trial and post-trial motions for nearly three years; (3) SCDG's counsel are lawyers in good standing with the South Carolina Bar, have never been involved any disciplinary proceedings, and have good reputations among other lawyers in the area who practice commercial litigation and transactions; (4) the matter was not based on a contingency arrangement, but the amount billed is less than what would be payable under a typical contingency fee arrangement of 33.3% or 40% of the award; (5) the hourly rates of the relevant lawyers were within the range of hourly rates customarily charged by attorneys of

similar experience who practice in the Charleston area; and (6) SCDG obtained the beneficial result of a recovery in the full amount sought at trial.

IS THEREFORE ORDERED that SCDG is awarded attorneys' fees and costs in the amount of Two Hundred Ninety-Eight Thousand Nine Hundred Sixty-Five and 22/100 Dollars (\$298,965.22).

AND IT IS SO ORDERED.

The Honorable Maite Murphy

January _____, 2021

_____, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-05493

Shem Creek Development Group, LLC

The Town of Mount Pleasant, South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: E. Brandon Gaskins

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), 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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Shem Creek Development Group, LLC	The Town of Mount Pleasant, South Carolina	\$298,965.22
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
----------------------------	-------------------	-------------

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

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

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

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

It is ordered that Plaintiff Shem Creek Development Group, LLC is awarded actual damages in the amount of \$2,604,316.00 and attorneys' fees and costs in the amount of \$298,965.22. Total judgment amount is \$2,903,281.22.

This judgment is effective as of July 13, 2020.

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

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

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

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

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



Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South
Carolina Town of The
Case Number: 2017CP1005493
Type: Order/Judgment and Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2021-01-07 17:42:49 page 9 of 9

EEIEGOTRONICALLYFILED-2022May 14 2130PM-CHARLESTON-COMMONPLEAS-CAS#2017CP1005493

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1005493

Shem Creek Development Group LLC
PLAINTIFF(S)

Mount Pleasant South Carolina Town of The 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure, this Court defers ruling on the Defendant's Motion to Vacate or Otherwise Alter or Amend the Court's January 11, 2021, Order Awarding Plaintiff Attorney's Fees, until the appeal of this case is complete.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/12/2021 .

Mount Pleasant Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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Charleston Common Pleas

Case Caption: Shem Creek Development Group LLC VS Mount Pleasant South
Carolina Town of The
Case Number: 2017CP1005493
Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2021-04-12 14:28:43 page 3 of 3

EEHED FROUNICALLY FILED - 2022 APR 12 3120 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1005493

RECEIVED

Nov 23 2021

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
LINDEMANN & DAVIS, P.A.
5 Calendar Court, Suite 202
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(843) 800-1126

*Counsel for Appellant
Town of Mount Pleasant*

November 3, 2021

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Town of Mount Pleasant certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

BY: s/ Andrew F. Lindemann

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