

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

Wild Dunes, LLC, ) Civil Action No.: 2023-CP-10-\_\_\_\_\_

)  
)  
) Plaintiff, )

)  
) vs. )

**SUMMONS**

)  
) The City of Isle of Palms, )

(Jury Trial Requested)

)  
) Defendant. )  
)  
\_\_\_\_\_ )

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 6650 Rivers Avenue, N. Charleston, SC 29406, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ ROBERT H. BRUNSON \_\_\_\_\_

Robert H. Brunson (S.C. Bar No. 11987)  
E-Mail: robert.brunson@nelsonmullins.com  
Olesya V. Bracey (S.C. Bar No. 101409)  
E-Mail: olesya.bracey@nelsonmullins.com  
Gina R.I. Horseman (SC Bar No. 100947)  
E-Mail: gina.horseman@nelsonmullins.com  
Post Office Box 1806  
Charleston, SC (29402-1806)  
(843) 853-5200

*Attorneys for Plaintiff Wild Dunes, LLC*

Charleston, South Carolina  
January 12, 2023



## FACTUAL BACKGROUND

4. Wild Dunes is the owner of fifty-one (51) parcels of land on the northeastern tip of the City (hereinafter, the “Property”) located within the Wild Dunes Resort’s (hereinafter, the “Resort”) 1,537.4 acres of land, of which 956.4 acres are located above mean sea level and 581 acres are marsh.

5. Development of the Resort began in 1975. Designed as one of the first planned residential communities in South Carolina, it quickly became a world-class oceanfront resort.

6. On or around May 29, 1975, the City negotiated and approved a resolution creating a Planned Residential Development (“PRD”) zoning district for the development of a “recreational-oriented residential community offering a diversity of residential units complemented by a broad range of recreational opportunities and support activities to serve these residents” on the 956.4-acre tract of the Resort (hereinafter, the “Wild Dunes PRD Contract”), as described in the original application request for rezoning submitted by the Sea Pines Company of Hilton Head Island (“Sea Pines”), the then owner of the Resort. The area included within the Wild Dunes PRD Contract was the total 1,537.4 acres.

7. Referred to today as Planned Development Districts (“PDDs”), the purpose of PDDs is to “permit a mixture of different types of housing with compatible commercial uses, shopping centers, office parks and other mixed use developments.” Isle of Palms Code of Ordinances, Art. II, Sec. 5-4-39(1). “Flexibility in design, character and quality of development and preservation of natural and scenic features are made possible through the approval of a plan which describes the specific uses, densities, setbacks, and other requirements for a planned development.” *Id.*

8. On or around September 14, 1977, the City approved a Rezoning Application Addendum submitted by Isle of Palms Beach and Racquet Club Company, Inc., successor developer to Sea Pines, which modified portions of the zoning requirements made applicable to the property encompassed within the Wild Dunes PRD Contract.

9. The Wild Dunes PRD Contract remained untouched from 1977 until on or around February 23, 2016, when the City contracted with Lowe Wild Dunes Investors, LP, the successor developer of the Resort, in a cooperative effort to adopt Ordinance 2016-01, amending certain provisions of the Wild Dunes PRD Contract to, among other things, reduce the maximum number of dwelling units permitted in the PRD district from 2,500 to 2,449, rezone certain property to a new residential zoning district and preservation overlay district, and preserve the existing height limitations in the PRD.

10. Exhibit A to Ordinance 2016-01, titled the Amendment to the Wild Dunes Planned Development Zoning District PRD Contract (hereinafter, “2016 PRD Contract Amendment”), outlines the parties’ intent to amend the contractual obligations discussed in the Wild Dunes PRD Contract “in order to preserve the existing development rights of the Developer.” 2016 Amendment, p.1. Executed by the City and Lowe Wild Dunes Investors, LP on March 10, 2016, the 2016 PRD Contract Amendment acknowledges that all provisions of the Wild Dunes PRD Contract not discussed in Ordinance 2016-01 or the related 2016 PRD Contract Amendment “remain in full force and effect.” *Id.* at p. 2.

11. Before the City’s sudden passage of the ordinances at issue in this litigation on November 15, 2022, as outlined in detail below, Plaintiff had the right to develop the remaining 330 dwelling units and 53 inn units allowed under the Wild Dunes PRD Contract. The Wild Dunes PRD Contract does not and has never specified a completion date for development, and, thus,

Plaintiff has always relied on the Wild Dunes PRD Contract's allowance for the remaining dwelling units, lots, and inn units to be completed over time based upon real estate market conditions and other factors as the Resort's owners have done since 1975. Moreover, Plaintiff relied on the City's reaffirmance of its intent to preserve Plaintiff's development right as set forth in the 2016 PRD Contract Amendment. The City's hasty passage of the subject ordinances, however, took away this right without any regard to said reliance by Plaintiff.

12. Prior to the passage of the ordinances at issue in this case, the Wild Dunes PRD Contract allowed for a total of at least 2,449 dwelling units and platted lots and for the construction of up to 350 inn units.

13. When Lowe Enterprises, Inc. ("Lowe") acquired the Resort in or around 1992, the Resort required extensive repair and redevelopment after the damage it suffered from Hurricane Hugo. Lowe rehabilitated both golf courses, the tennis facility, conference facility, clubhouse, and restaurant, and has continued to expand and improve the Property over the past 30 years. Importantly, in 2008, Lowe joined the City in an extensive beach restoration project to replenish the naturally receding shoreline and has invested significantly in its ocean front golf course. Most recently, Lowe completed a three-year, \$10 million renovation of the Boardwalk Inn, golf course and clubhouse, retail shops, and event space within the Resort.

14. Development rights to the Property are currently held by Wild Dunes. This Wild Dunes entity was created specifically to facilitate significant renewed investment in the Property with the focus on developing the remaining dwelling units and inn units as expressly allowed by the Wild Dunes PRD Contract. In conjunction with this investment, Plaintiff undertook concrete steps toward the implementation of the development plans. After the investment, Plaintiff has initiated and maintained continued improvements on the Property, including the development of

the 153-room Sweetgrass Inn and a future intention to pave the gravel parking lot used by the Inn's employees.

15. Today, in accordance with the Wild Dunes PRD Contract, Plaintiff has plans to further develop the Property pursuant to its specific investment backed decision, enhancing it in a way that assures continuing value for homeowners within the Wild Dunes community, visitors to the Resort, the City, and all residents on the island.

16. Despite the nearly 50-year history of the Wild Dunes PRD Contract, on or about September 27, 2022, the Isle of Palms City Council ("City Council") tasked staff to prepare ordinances to (1) amend the conservation district detailed in Section 5-4-40 of the Isle of Palms Zoning Ordinance to include preservation of public and private recreation facilities through a new "conservation recreation" zoning district, and (2) limit development on the Property to its current level, including capping the density of the Wild Dunes PRD Contract to reflect current existing units and approved lots (hereinafter, the "Subject Ordinances"). In doing so, City Council engaged in a plan of rezoning to the detriment of Plaintiff, including, by way of example and without limitation, by reducing permitted density in the Wild Dunes PRD Contract to only existing development, disallowing additional structures to be built on the Property, and taking away previously permitted land uses. These actions interfere directly with Plaintiff's investments and plans.

17. On October 11, 2022, at a Special Council Meeting merely nine business days after first publicly suggesting the unprecedented zoning amendments, City Council held its first reading of the Subject Ordinances, described here in pertinent part:

- a. Ordinance 2022-08 amends the City's Code of Ordinances to provide for a new Conservation Recreation District ("CRD"). The CRD includes any golf courses

and tennis facilities located within the newly created district but does not allow residential or commercial development or any other economically beneficial use.

- b. Ordinance 2022-09 adopts amendments to the City's official zoning map to provide for the new CRD and to rezone certain properties from SR-1 (Single-Family Residential) and PDD districts to the new CRD as shown in the new zoning map.
- c. Ordinance 2022-10 amends the City's official zoning map to rezone certain properties from SR-1 and PDD zoning districts to the new CRD, including parcels making up the Wild Dunes PRD Contract.
- d. Ordinance 2022-11 amends the City's Code of Ordinances to provide clarification by correcting scrivener's errors and deleting provisions related to the Wild Dunes PRD Contract. The deleted provision, Section 5-4-39(4), provided: "The existing Wild Dunes PRD development is hereby recognized as a legal nonconforming PDD district under this chapter. Any future modification to the Wild Dunes PRD agreement shall be subject to the requirements of this section."
- e. Ordinance 2022-12 amends the City's zoning ordinance by amending certain provisions of the original Wild Dunes PRD Contract to exclude certain properties from the PRD, to reduce the maximum number of dwelling units permitted in the PRD from 2,449 units to 2,119 units, and to reduce the maximum number of inn units permitted in the PRD from 350 to 297.

18. All five of the Subject Ordinances passed this first reading by a vote of 8-1. Councilman Kevin Popson was the only “no” vote on the Subject Ordinances. He explained, “I cannot support these ordinances for two reasons. One is property rights . . . Property rights to me is the Holy Grail. Second reason is the approach we have taken [ ] to get here tonight. I thought or I would have hoped that we could have had some kind of conversation with the [developers] by trying to work something out and sit down with them. . . . instead of dropping the bomb like we have . . . . [I]t should have been at least an effort on our part instead of going this route.” Oct. 11, 2022, Special City Council Meeting Minutes, p. 5. These actions by the City are not consistent with the spirit of cooperation that Plaintiff has demonstrated as a good neighbor, bringing measured and positive growth to the City for decades.

19. Minimizing traffic and congestion on the island by reducing further development has been cited as a primary underlying motive for creating the Subject Ordinances. However, the significant increase of vacation rentals in the City, generated by other property owners and businesses unrelated to Wild Dunes, has contributed far more traffic and congestion to the island than any contributed by the Resort’s owners and visitors.

20. On October 12, 2022, the Isle of Palms Planning Commission (“Planning Commission”) held its regular meeting in Council Chambers of City Hall. There, Douglas Kerr, the Director of Building, Planning, and Zoning, thought it necessary to explain the current situation of the Wild Dunes PRD Contract, noting that the Planning Commission would be tasked with reviewing the suggested zoning changes through the lens of the City’s Comprehensive Plan (“Comprehensive Plan”) and making a recommendation to City Council. Oct. 12, 2022, Plan. Comm’n Meeting Minutes, p. 2. If passed, the Subject Ordinances, as reiterated by Director Kerr, would “forever lock in the golf courses and the tennis facilities as recreational space and



conservation space” with no future development being allowed in the new CRD and “lower[] the entitlements down to their current numbers as they sit today.” Oct. 12, 2022, Live Stream of Plan. Comm’n Meeting, at 1:00:41-1:01:12. Director Kerr stated at this meeting that it is City Council’s intent to negotiate with the Wild Dunes ownership at some point prior the adoption of the Subject Ordinances. Oct. 12, 2022, Plan. Comm’n Meeting Minutes, p. 2.

21. Also at this October 12, 2022, meeting, Planning Commission member Steven Corney admitted that the City is targeting Plaintiff. *See* Oct. 12, 2022, Live Stream of Plan. Comm’n Meeting, at 1:18:08-1:18:13. Planning Commission member Sandy Stone acknowledged that the renewed investment in the Property granted Plaintiff certain property rights. *See* Oct. 12, 2022, Live Stream of Plan. Comm’n Meeting, at 1:13:03-1:13:36.

22. On October 18, 2022, City Council held the first of two public hearings on the Subject Ordinances.

23. On November 1, 2022, City Council held the second public hearing on the Subject Ordinances.

24. Subsequent to both public hearings on the Subject Ordinances held by City Council, the Planning Commission held its regular meeting in Council Chambers of City Hall on November 9, 2022. The Planning Commission was charged with reviewing the Subject Ordinances and making a recommendation to City Council, with any failure to make a recommendation being considered a recommendation of approval. At no point prior to this November 9, 2022, meeting did the Planning Commission formally review the Subject Ordinances and make a recommendation to City Council as required by Section 5-4-39(3)(g)-(h) and (k).2 of the City’s Code of Ordinances.

25. During the November 9 meeting, not all members of the Planning Commission were in agreement that the Subject Ordinances should pass to a second reading. For example, Mr. Sandy Stone expressed concern that the Subject Ordinances have been “fast tracked” and “forced on [the Planning Commission] without a whole lot of presentation of facts and no discussion on the part of the parties involved.” Nov. 9, 2022, Plan. Comm’n Meeting Minutes, p. 2. Mr. Stone further inquired whether the City understood all the implications of the Subject Ordinances and suggested allowing more time for the City to speak with Plaintiff. “I don’t feel good about the way that this thing has moved, the speed at which it’s moved, and I don’t see the urgency or the need to make a snap decision to accept all of these right away . . . I don’t know the implications of all this and it concerns me. I’m suggesting we take some time, allow the City Council and the powers that be at Wild Dunes to meet and talk and work this thing through. What’s the harm?” *Id.*

26. Despite Mr. Stone’s concerns, the Planning Commission ultimately agreed to send the Subject Ordinances back to City Council to proceed with its second reading and move forward with approval.

27. On November 15, 2022, at a Special Council Meeting, City Council held its second and final reading of the Subject Ordinances.

28. Terri Haack, a representative for Wild Dunes, spoke at the final meeting on November 15, 2022, requesting City Council pause the vote until a deeper conversation between City Council and Wild Dunes could occur. “Wild Dunes Resort is asking for an opportunity to have a meaningful discussion with the City regarding the five ordinances that fundamentally alter our property’s rights that we’ve had since 1976. We have always wanted a pathway to compromise. We are requesting the City to take time to engage with Wild Dunes Resort and work together to improve the City’s plan for benefit of all of the parties.” Nov. 15, 2022, Live Stream of City

Council Meeting, at 20:54-21:48. She continued, “The City intentionally rushed to pass the first reading of the five ordinances expressly to avoid any discussion with Wild Dunes Resort.” *Id.* at 22:51-23:03.

29. At the November 15, 2022 meeting, City Council voted to pass all five Subject Ordinances. Again, the only City Council member to vote against the Subject Ordinances was Councilman Kevin Popson.

30. The CRD created by Ordinance 2022-08 permits only the following uses on the property that is now within this newly created district:

- a. “Outdoor recreational uses including swimming, fishing, beach-going, boat ramps, docks, piers, lifeguard stations, golf courses, tennis courts, and natural preserves.
- b. Public utility lines.
- c. A use conducted pursuant to a franchise granted by the City Council.
- d. A use conducted pursuant to a City-sponsored activity or event.
- e. Beach renourishment.”

31. Importantly, use variances are strictly prohibited by the City in Section 5-4-5(b) of the City’s Code of Ordinances. As a result, there are no administrative remedies available to Plaintiff.

32. Even if any administrative remedy existed and were available to Plaintiff, the City made clear it would not grant any variance requested by Wild Dunes because the City’s whole goal in passing the Subject Ordinances has been to decrease development by Plaintiff on the island. Thus, Plaintiff’s pursuit of any administrative remedies would be futile and in vain.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment for Violation of Right to Procedural Due Process)**

33. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

34. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-33-10 to 15-53-140, a declaratory judgment action may be brought to establish legal rights and duties, including Plaintiff's property rights as affected by the Subject Ordinances.

35. The South Carolina Constitution under Article I, Section 3 guarantees procedural due process rights.

36. Local government land use decisions must further be handled in accordance with the procedural requirements of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 ("Enabling Act") and consistent with local ordinances, including, without limitation, Sections 5-4-11 and 5-4-39 of the Code of Ordinances of the City of Isle of Palms. Failure to comply with such requirements leaves a land use decision subject to challenge on the grounds that it is a violation of procedural due process.

37. Section 5-4-39(k).2 of the City's Code of Ordinances provides that changes "which alter district boundaries or which materially affect the characteristics of the PDD shall be submitted under normal zoning amendment procedures applicable to establishment of the PDD." *See also* Enabling Act, Section 6-29-740 (stating that amendments to a PDD "constitute zoning ordinance amendments and must follow prescribed procedures for the amendments").

38. In turn, the "normal zoning amendment procedures applicable to establishment of the PDD" include the requirement under Section 5-4-39(h), which provides that "[u]pon receipt of the Planning Commission recommendation, City Council shall conduct a public hearing as

required for zoning amendments, and may approve, approve with modifications accepted by applicant, or disapprove the proposed amendment.”

39. Thus, the procedure set forth in the City’s Code of Ordinances requires the Planning Commission to first review the Subject Ordinances and offer a recommendation to City Council before City Council conducts a public hearing on the Subject Ordinances.

40. Section 6-29-760(A) of the Enabling Act articulates the same requirement, that no change in or departure from a zoning regulation or map may be made pursuant to a hearing “unless the change or departure be first submitted to the planning commission for review and recommendation.”

41. Here, the Subject Ordinances altered the district boundaries and materially affected the characteristics of the Wild Dunes PRD Contract and, thus, the City was required to comply with the requisite procedure set forth above.

42. Instead, the City failed to comply with the requisite procedure. As detailed above, the Planning Commission reviewed and recommended the Subject Ordinances on or around November 9, 2022, which was after the public hearings on the Subject Ordinances had already been held on October 18 and November 1, 2022. Thus, the City violated the procedural requirements of Section 5-4-39 of the City’s Code for amending PDD zoning districts.

43. As a result, the City violated Plaintiff’s procedural due process rights by failing to comply with the requirements of the City’s Code of Ordinances.

44. Unless the Court enjoins the Subject Ordinances, Plaintiff will suffer continuing deprivation of its property rights and liberty interests in violation of its right to procedural due process.

45. Plaintiff, therefore, is entitled to a declaratory judgment finding that the Subject Ordinances are unconstitutional, invalid, and ineffective, that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract before the adoption of the Subject Ordinances, and that Plaintiff is entitled to all the uses of the Property as permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

**FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment for Violation of Right to Substantive Due Process)**

46. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

47. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-33-10 to 15-53-140, a declaratory judgment action may be brought to establish legal rights and duties, including Plaintiff's property rights as affected by the Subject Ordinances.

48. The South Carolina Constitution under Article I, Section 3 guarantees substantive due process rights.

49. The City's conduct has created an unreasonable and extreme hardship on Plaintiff without advancing the public health, safety, and general welfare, and has no reasonable relationship to any legitimate interest of the government.

50. The actions taken by the City to downzone Plaintiff's Property were arbitrary, unreasonable, without rational basis, have no substantial relationship to either state law or the City's Comprehensive Plan, and capriciously deprived Plaintiff of its cognizable property interests.

51. Under any scenario, the majority of the allowable dwelling units, lots, and inn units under the Wild Dunes PRD Contract have already been built out prior to the City's passage of the Subject Ordinances. As a result, eliminating Plaintiff's right to develop the remaining dwelling units and inn units would have no significant effect on traffic on the island. Moreover, the City,

having approved the Wild Dunes PRD Contract and cooperatively amended it with the Plaintiff's predecessor in title in 2016, could have planned for the traffic expected at build out of the Resort instead of taking the Plaintiff's final development rights away to solve this perceived problem. Thus, the Subject Ordinances bear no rational or substantial relationship to solving the City's traffic concerns, and the City's arbitrary removal of 50 years of longstanding property rights, which were reconfirmed by the City in 2016, is an egregious and arbitrary act without merit or any rational basis.

52. Moreover, the Comprehensive Plan expressly recognizes that the Wild Dunes PRD Contract allows a maximum of 350 inn units. This is in direct contrast to the Subject Ordinances that instead reduce the maximum number of inn units permitted in the Wild Dunes PRD Contract to 297.

53. The Comprehensive Plan further states that its objective is "to preserve the existing land use relationships" and that the "primary land use activity [on the island] has been and should continue to be low and medium density residential uses." Comprehensive Plan, at p. 49-50. The Subject Ordinances, however, contradict these stated objectives of the City's Comprehensive Plan because they drastically change the existing land use relationship with respect to the Wild Dunes PRD Contract, and they seek to halt the further development of residential uses on the island.

54. Unless the Court enjoins the Subject Ordinances, Plaintiff will suffer continuing deprivation of its property rights and liberty interests in violation of its right to substantive due process.

55. Plaintiff, therefore, is entitled to a declaratory judgment finding that the Subject Ordinances are unconstitutional, invalid, and ineffective, that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract before the adoption of the Subject Ordinances, and

that Plaintiff is entitled to all the uses of the Property as permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

**FOR A THIRD CAUSE OF ACTION**  
**(Regulatory Taking/Inverse Condemnation)**

56. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

57. The South Carolina Constitution states that if the government takes private property, it must compensate the owner for the value of the property taken. *See* S.C. Const. art. I, § 13.

58. The City has effected a compensable regulatory taking of Plaintiff's Property through its affirmative conduct and aggressive actions, including, by way of example and without limitation, the passage of the five Subject Ordinances detailed above, resulting in negative economic impacts to the Property, including by frustrating and interfering with Plaintiff's reasonable investment-backed expectations and depriving Plaintiff of the economically viable and productive uses of its Property.

59. For example, but without limitation, as a direct result of the zoning changes, including limiting the use of the Property to conservation only, Plaintiff can no longer move forward with paving the gravel parking lot adjacent to the existing tennis courts which is used by employees of The Sweetgrass Inn, a plan which Plaintiff first sought to implement before the passage of the Subject Ordinances, and which the City has already acknowledged is allowed and for which state environmental permitting has almost been completed. Plaintiff has already incurred substantial costs in preparing for the development of this project.

60. Moreover, at all times since 2018, when the significant renewed investment was made in the Property with the focus on developing the remaining dwelling units and inn units as



expressly allowed by the Wild Dunes PRD Contract and reaffirmed by the City in the 2016 PRD Contract Amendment, Plaintiff has had plans to further develop the Property, incurring costs along the way, and to enhance the Property in a way that assures continuing value for homeowners within the Wild Dunes PRD Contract, visitors to the Resort, the City, and all residents on the island.

61. The City's affirmative conduct, including the passage of the five Subject Ordinances, also resulted in denying Plaintiff all economically beneficial or productive use of its Property. The permitted uses under the Subject Ordinances are so restrictive as to effectively prevent all such use. For example and without limitation, under the newly created CRD, parking is not a permitted use, and Plaintiff cannot operate a golf clubhouse, golf course, tennis court, or any other recreational use permitted by the CRD without adding parking.

62. The City reasonably knew that, by its actions, it would damage and diminish the value of the Property and take away all practical or beneficial and economical use of it, the result of which is a taking of Plaintiff's Property.

63. The City has hastily undertaken this effort to unilaterally change the Wild Dunes PRD Contract zoning and density with zero real dialogue with Plaintiff and no consideration of any feasible alternatives to address its concerns.

64. Plaintiff has received no just compensation from the City for the Property taken by the City.

65. The uncompensated taking of Plaintiff's Property by the City was undertaken for various public uses, including, without limitation, to provide for public recreation activities and open space.

66. The City has made no attempt to take Plaintiff's Property through an exercise of its eminent domain powers in a manner compliant with South Carolina law and the South Carolina State Constitution.

67. Plaintiff has no administrative remedy available because a variance request would be futile. First, and by way of example, a use variance is not permitted under the City's Code of Ordinances. Further, even if an administrative remedy were allowed, the City made clear it would not grant it because the City's goal behind the Subject Ordinances is to decrease development by Plaintiff on the island.

68. As a direct and proximate result of the uncompensated taking of Plaintiff's Property by the City, Plaintiff has been and will continue to be damaged and is entitled to recover just compensation for the diminished value of the Property in the amount to be determined at trial, including, without limitation, the loss of future appreciation and revenue Plaintiff would otherwise have obtained from the Property's development, and the profits Plaintiff could have derived from the Property's development, which amount Plaintiff estimates to be in the millions of dollars, plus prejudgment interest and the costs of this action, including reasonable attorneys' fees.

**FOR A FOURTH CAUSE OF ACTION**  
**(Declaratory Judgment for Invalid Zoning Ordinances)**

69. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

70. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-33-10 to 15-53-140, a declaratory judgment action may be brought to establish legal rights and duties, including Plaintiff's property rights as affected by the Subject Ordinances.

71. Pursuant to S.C. Code Ann. § 6-29-720(B), all zoning ordinances must follow and promote the purposes set forth in the City's Comprehensive Plan.

72. The stated objective of the City's Comprehensive Plan is to preserve the existing land use relationship. The Comprehensive Plan further states that the primary land use activity on the island has been and should continue to be low and medium density residential uses. The Subject Ordinances, however, contradict these stated objectives of the City's Comprehensive Plan because they drastically change the existing land use relationship with respect to the Wild Dunes PRD Contract, and they seek to halt the further development of residential uses.

73. Moreover, the Comprehensive Plan expressly recognizes that the Wild Dunes PRD Contract allows a maximum of 350 inn units. This is in direct contrast to the Subject Ordinances which reduce the maximum number of inn units permitted in the Wild Dunes PRD Contract to 297.

74. The City cannot amend its Comprehensive Plan through hastily enacted ordinances. Instead, any changes or amendments to the City's Comprehensive Plan must be taken in accord with the procedures set forth in the Enabling Act, which the City has not done here.

75. As a result, the Subject Ordinances do not follow and are inconsistent with the City's Comprehensive Plan, and they are, therefore, invalid and in violation of the Enabling Act.

76. In addition, all five Subject Ordinances are invalid because they are arbitrary, unreasonable, and in obvious abuse of the City's discretion as they bear no rational connection to the City's reasoning behind adopting them – to reduce traffic. In actuality, Wild Dunes only accounts for a minor percentage of traffic on the island.

77. Further, the Subject Ordinances are also invalid because the City held public hearings on the Subject Ordinances on October 18, 2022 and November 1, 2022, which was before the Planning Commission reviewed and recommended the Subject Ordinances on or about

November 9, 2022, which is in violation of the requirements of Section 5-4-39 of the City's Code for amending PDD zoning districts.

78. Therefore, Plaintiff is entitled to a declaratory judgment that the Subject Ordinances are invalid and ineffective, that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract before the adoption of the Subject Ordinances, and that Plaintiff is entitled to all the uses of the Property permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

**FOR A FIFTH CAUSE OF ACTION**  
**(Declaratory Judgment for Violation of the Equal Protection Clause)**

79. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

80. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-33-10 to 15-53-140, a declaratory judgment action may be brought to establish legal rights and duties, including Plaintiff's property rights as affected by the Subject Ordinances.

81. The South Carolina State Constitution under Article I, Section 3 guarantees equal protection and the right to be treated equally under the law.

82. The City has singled out Plaintiff by enacting the Subject Ordinances that treat Plaintiff differently from other similarly situated property owners, amending provisions of the existing Wild Dunes PRD Contract to eliminate previously permitted development, including the addition of parking, without any rational basis and for reasons wholly unrelated to any legitimate state objective or objective of the City. For example, but without limitation, the City, through the Subject Ordinances, has actively chosen not to restrict or cap development on other parcels of land on the island outside of Plaintiff's Property, including vacant lots whose development could reasonably contribute to added congestion and minimize conservation space.

83. The City's purported reason for the Subject Ordinances is to reduce traffic by reducing or eliminating future development. However, Wild Dunes accounts only for a minor percentage of the traffic on the island. The majority of City traffic arises from other property owners, guests, developers, workers, and the City itself, which provides extensive parking throughout the island and operates a parking lot in the middle of the downtown business district, drawing in thousands of tourists when traffic is heaviest. Many homeowners are replacing older homes with larger homes with more bedrooms or enlarging them to accommodate more guests. Yet, neither the City nor any other business or property owner, other than Plaintiff, is impacted by the Subject Ordinances in this manner.

84. Moreover, in keeping with the City's desire to create a new conservation-driven zoning district supposedly to preserve open, green space, the City should have applied the new CRD to other properties outside the Resort, as suggested by the members of the Planning Commission at their October 12, 2022, meeting, including, by way of example and without limitation, the Isle of Palms Recreation Center (the "Recreation Center"), which, upon information and belief, is currently zoned residential. *See* Oct. 12, 2022, Live Stream of Plan. Comm'n Meeting, at 1:17:13-1:18:15 (Planning Commission discussion after member David Cohen suggests rezoning the Recreation Center to the new CRD "so that things are consistent, and it doesn't look like you're targeting"). If the City were truly concerned about maintaining recreational and conservation spaces, then the City should have rezoned the Recreation Center and other properties from residential to the new CRD zoning district. On the contrary, the City has not been consistent in applying its new conservation-driven zoning. Instead, the City unfairly and unequally singled out only Plaintiff's Property for this purported conservation purpose.

85. The City's unequal treatment of Plaintiff under the Subject Ordinances is in violation of Plaintiff's constitutional right to equal protection under the law. Plaintiff, therefore, is entitled to a declaratory judgment that the Subject Ordinances are unconstitutional, invalid, and ineffective, that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract before the adoption of the Subject Ordinances, and that Plaintiff is entitled to all the uses of the Property as permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

**FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Contract)**

86. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

87. On or around May 28, 1975, the City entered into a valid, binding contract with Plaintiff's predecessor when it negotiated and adopted the Wild Dunes PRD Contract as the applicable zoning and development standards for the Wild Dunes Resort.

88. At all times since 1975, the City has treated the Wild Dunes PRD as a contract, including, by way of example and without limitation, obligating Plaintiff to limit development of the Property to the restrictions contained within the Wild Dunes PRD Contract. The City even refers to it as the "Wild Dunes Planned Development PRD Contract" throughout the 2016 PRD Contract Amendment, which the City itself drafted.

89. On or around February 23, 2016, the City entered into a valid, binding 2016 PRD Contract Amendment with Plaintiff's predecessor in title, which expresses the parties' intent to "preserve the existing development rights of the Developer." The 2016 PRD Contract Amendment further expressly recognizes that all other provisions of the Wild Dunes PRD Contract "remain in full force and effect."

90. The City materially breached the terms of the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment, including any and all subsequent addendums and amendments, by passing the Subject Ordinances, which alter the district boundaries and affect the characteristics of the Wild Dunes PRD Contract, including by way of example and without limitation, reducing permitted density in the Wild Dunes PRD Contract to only existing development, disallowing additional structures to be built on the Property, taking away previously permitted land uses, and depriving Plaintiff of its right to develop the remaining 330 dwelling units and 53 inn rooms permitted under the Wild Dunes PRD Contract.

91. Further, the City's above-described actions, including, by way of example but without limitation, its failure to follow normal zoning amendment procedures or to have a meaningful discussion with Plaintiff prior to passing the Subject Ordinances and instead fast-tracking their passage, constitute a violation the implied covenant of good faith and fair dealing.

92. The City's breach of the contract and unreasonable, bad faith conduct has directly and proximately caused Plaintiff to suffer damages.

93. Plaintiff, therefore, is entitled to recover damages, including, by way of example but without limitation, for the diminished value of the Property in the amount to be determined at trial, including, without limitation, the loss of future appreciation and revenue Plaintiff would otherwise have obtained from the Property's development, and the profits Plaintiff could have derived from the Property's development, which amount Plaintiff estimates to be in the millions of dollars.

94. Plaintiff further requests that the Court invalidate the Subject Ordinances and find that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract and in the 2016 PRD Contract Amendment before the adoption of the Subject Ordinances, and that Plaintiff

is entitled to all the uses of the Property as permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Promissory Estoppel)**

95. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

96. In the alternative to Plaintiff's claim for breach of contract, Plaintiff asserts that in reasonable reliance upon the unambiguous promises contained within the Wild Dunes PRD Contract, the 2016 PRD Contract Amendment, and related negotiations with the City, including the authorization of development of up to 2,449 dwelling units and platted lots and up to 350 inn units, the significant renewed investment was made in the Property in 2018, which the Wild Dunes entity was created specifically to facilitate, with the focus on developing the remaining dwelling units and inn units. Further, Plaintiff expended significant time, energy, and money in developing the Property and planning future development for the remaining 330 dwelling units and 53 inn units allowed under the existing Wild Dunes PRD Contract and the 2016 PRD Contract Amendment. Such actions were taken with full knowledge of the City and, thus, Plaintiff's reliance was expected and foreseeable by the City.

97. As a result, the City should be estopped from proceeding with or enforcing the Subject Ordinances as it was reasonable and foreseeable that Plaintiff would rely on the City's promises to permit Plaintiff's development of the remaining 330 dwelling units and 53 inn units.

98. Plaintiff, therefore, requests that the Court invalidate the Subject Ordinances and find that the zoning of Plaintiff's Property is as set forth in the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment before the adoption of the Subject Ordinances, and that Plaintiff



is entitled to all the uses of the Property as permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment.

99. Plaintiff is further entitled to recover damages, including, by way of example but without limitation, for the diminished value of the Property in the amount to be determined at trial, including, without limitation, the loss of future appreciation and revenue Plaintiff would otherwise have obtained from the Property's development, and the profits Plaintiff could have derived from the Property's development, which amount Plaintiff estimates to be in the millions of dollars.

WHEREFORE, having set out the foregoing Complaint against the City, Plaintiff respectfully requests this Court grant the following relief to Plaintiff:

- (a) Judgment against the City on all of Plaintiff's causes of action in an amount to be determined by the trier of fact;
- (b) Just compensation for the diminished value of Plaintiff's Property in the amount to be determined at trial;
- (c) Actual damages in the amount to be determined at trial;
- (d) Other actual and consequential damages in the amount to be determined at trial, including, without limitation, the diminished value of Plaintiff's Property, the loss of future appreciation and revenue Plaintiff would otherwise have obtained from the Property's development, and the profits Plaintiff could have derived from the Property's development, which amount Plaintiff estimates to be in the millions of dollars, to be proven at trial;
- (e) Declaratory adjudication that the Subject Ordinances are unconstitutional, invalid, and ineffective, that the zoning of the Property is as set forth in the Wild Dunes PRD Contract before the adoption of the Subject Ordinances, and that

- Plaintiff is entitled to all the uses of the Property permitted as a matter of right under the Wild Dunes PRD Contract and the 2016 PRD Contract Amendment;
- (f) Reasonable attorneys' fees and costs in pursuing this action pursuant to S.C. Code Ann. § 28-11-30(3) and any other common law or constitutional right or other basis;
  - (g) Prejudgment interest on all damages awarded; and
  - (h) Such other and further legal and equitable relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ ROBERT H. BRUNSON \_\_\_\_\_

Robert H. Brunson (S.C. Bar No. 11987)  
E-Mail: robert.brunson@nelsonmullins.com  
Olesya V. Bracey (S.C. Bar No. 101409)  
E-Mail: olesya.bracey@nelsonmullins.com  
Gina R.I. Horseman (SC Bar No. 100947)  
E-Mail: gina.horseman@nelsonmullins.com  
Post Office Box 1806  
Charleston, SC (29402-1806)  
(843) 853-5200

*Attorneys for Plaintiff Wild Dunes, LLC*

Charleston, South Carolina  
January 12, 2023