STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
NINTH JUDICIAL CIRCUIT

City of North Charleston,	
Plaintiff	Case No.: 2011-CP-10 - 5550
vs.	**SUMMONS**
S.C. Ports Authority,	
S.C. Department of Commerce,	
S.C. Department of Commerce Division of Public Railways,	
State of South Carolina,	
Defendants.	

FILED
2011 AUG -5 PM 1:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Subscribers at PO Box 61896, North Charleston, South Carolina, 29419, within thirty (30) days from the date of service, exclusive of the day of such service, and if you fail to answer said Complaint within the time aforesaid, the Plaintiff herein will apply to the Court for the relief demanded in the Complaint.

Respectfully Submitted,

J. Brady Hair
Derk Van Raalte
Post Office Box 61896
North Charleston, SC 29419
(843) 572-8700
derk@bradyhair.com
brady@bradyhair.com

Francie Austin
Post Office Box 190016
North Charleston, SC 29419-9016
(843) 740-2550
faustin@northcharleston.org

Gedney M. Howe, III
Post Office Box 1034
Charleston, SC 29402-1034
(843) 722-8048
ghowe@gedneyhowe.com

Richard D. Bybee
Stan Barnett
Smith, Bundy, Bybee & Barnett
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623
rdb@s3blaw.com

Stephen A Spitz
Attorney at Law
1134 Clearspring Drive
Charleston, SC 29412
(843) 377-2154
sc.spitz@prodigy.net

Attorneys for the Plaintiff
City of North Charleston

Aug 5th, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
NINTH JUDICIAL CIRCUIT

City of North Charleston,	)	
	)	Case No.: 2011-CP-10-5358
Plaintiff	)	
	)	**COMPLAINT**
vs.	)	
	)	
S.C. Ports Authority,	)	
	)	
	)	Breach of Memorandum of Understanding
S.C. Department of Commerce,	)	Promissory Estoppel
	)	Substantial Performance
S.C. Department of Commerce Division of Public Railways,	)	Breach of Contract Accompanied by Fraudulent Act
	)	Estoppel by Deed
State of South Carolina,	)	Declaratory Relief (S.C. Code §15-53-10, et seq.)
	)	
Defendants.	)	
	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

After diligent inquiry, Plaintiff alleging and complaining of the Defendants named herein would respectfully show this Court:

Nature of the Action

1. This action is a challenge to acts by the Defendants taken toward the construction and establishment of an intermodal rail yard in addition to the 300 acre marine cargo terminal to be operated by the South Carolina State Ports Authority ("Ports Authority"). The proposed intermodal facility violates promises to the City of North Charleston (City). It would result in the Defendants building rail lines where such lines, by agreement, were never to run.

The Parties To This Litigation

2. The Plaintiff, the City of North Charleston (hereinafter "City"), is a municipal corporation, incorporated under the laws of the State of South Carolina, and located in Charleston, Dorchester and Berkeley Counties.

3. The South Carolina State Ports Authority (hereinafter "Ports Authority" or "SPA") is an instrumentality of, alter ego of, and an arm of the State of South Carolina both by virtue of state statutes (See S.C. Code 54-3-10, et seq., S.C. Code 54-3-110) and by repeatedly holding itself out as an agency and alter ego of the State.

4. The South Carolina Department of Commerce ("Department of Commerce") is an instrumentality of, alter ego of, and an arm of the State of South Carolina both by virtue of state law (S.C. Code Ann. 13-1-10(A)(Commerce is an administrative agency of the State) and by repeatedly holding itself out as an agency and alter ego of the State.

5. South Carolina Public Rails, (hereinafter, "SCPR" or "Public Rails"), technically known as the South Carolina Department of Commerce, Division of Public Railways, is a sub-entity of the Department of Commerce. See S.C. Code Ann. 13-3-1310 (Public Rails is a division of the Department of Commerce.) It is an alter ego, and an instrumentality of, and an arm of the State of South Carolina.

6. The State of South Carolina (hereinafter the State or South Carolina) is a body politic validly existing under both federal and state law.

Jurisdiction / Venue / Related Matters

7. This Court has jurisdiction over all parties hereto and over the subject matter hereof. The property at the center of this dispute is located in Charleston County and Charleston County is, and was, the primary location for performance of the agreement in question. Venue is proper in this Court.

General Background Facts

8. A 2002 Memorandum of Understanding and Agreement was signed by the City and the Ports Authority at the direction of the South Carolina General Assembly and expressly ratified at the very highest levels of this State by the South Carolina Budget and Control Board.

9. The 2002 MOU was formally executed on October 25, 2002.

10. The 2002 MOU is a binding agreement between the City and the State of South Carolina (acting through its instrumentality and alter ego, the Ports Authority) governing the terms and conditions under which Navy Base land would be divided as directed by the South Carolina General Assembly and pursuant to which the State and the Ports Authority would conduct shipping / terminal operations on the Navy Base.

11. The 2002 MOU is fully binding and operative on all parts of State Government, including the named Defendants, as a legally binding agreement.

12. In 2002, the General Assembly directed the Ports Authority to cease plans to create a port terminal on Daniel Island and instead locate a new shipping terminal on the former Navy Base in North Charleston.

13. On or about May 28, 2002, the General Assembly ratified Bill No. 4879 requiring conveyance of various properties on the former Naval Base to the City and the Ports Authority, but requiring as a precondition to such conveyance that the City and the Ports Authority enter into a Memorandum of Understanding for the operation of container terminal, rail, and docks.

14. Bill 4879 reads in pertinent part:

> **"Property transfer; continuation of benefits, revenues, and funding**
>
> SECTION 15. **Notwithstanding any other provision of law** the Charleston Naval Complex Redevelopment Authority (RDA), upon receiving ownership from the United States of America, shall convey certain parcels of real property to the City of North Charleston as per the **mutual agreement** described hereafter. These parcels shall be delineated through a **mutual agreement between the City of North Charleston and the South Carolina State Ports Authority that takes into account the respective needs of each entity in the property south of Necessary Street**. All conveyances shall be at no consideration once the City of North Charleston and the South Carolina State Ports Authority have entered into a **memorandum of understanding and agreement for the operation of breakbulk, roll on roll off, and container terminals and dock operations on appropriate properties that are subject to the oversight or control of the Charleston Naval Complex Redevelopment Authority**. The City of North Charleston shall honor all existing leases as negotiated by the Charleston Naval Complex Redevelopment Authority prior to the effective date of this section. Furthermore, all properties conveyed shall retain any Tax Increment Finance District status, any state or federal grants applied to the area, and any state revenues currently directed to the Charleston Redevelopment Authority on a per acre basis for the relative properties conveyed to the City of North Charleston. In addition, any revenues received from the State under the Rural Development Act relating to the number of federal employees at the naval complex shall be shared pursuant to the location of the jobs on the complex." **Emphasis Added.**

The 2002 Memorandum of Understanding

15. The above-described MOU at Paragraphs 1 and 2 states that the agreement is binding and was being executed at the express direction of the General Assembly.

16. Bill 4879 also specifically required that the 2002 MOU go beyond merely setting forth a dividing boundary line between operations of the contracting parties and required that the MOU comprehensively address "the respective needs of each entity [SPA and City] in the property south of Necessary Street" and that, in addition to setting a dividing line, it also address "the operation of ...terminals and dock operations...."

17. Pursuant to Bill 4879, the City and Ports Authority included a number of terms governing operation of the future Ports Authority terminal, among other things, concerning the following areas:

a Zoning issues (MOU at 4.11)

b Traffic issues (including the requirement for access roads and overpasses) (MOU at 4.8), and

c Rail issues (MOU at 4.8).

The MOU also expressly dealt with the manner in which lands provided to the City as a result of the MOU might later be converted to Port use. (MOU at 4.3).

18. The Ports Authority, formally agreed that it would not be permitted to operate the facility if certain infrastructure were not in place. As stated in the MOU, the "SPA acknowledges that the City requires that certain minimum infrastructure be in place before the SPA commences container operations. This minimum infrastructure includes a truck access road leading directly from the Port Facility Area to I-26 and three rail overpasses...." Further, the "SPA acknowledges that the City does not want the SPA to utilize rail access from the north end of the Property, and the SPA will use rail access exclusively from the south end of the Property." See 2002 MOU at Para 4.8.

Formal Ratification of the MOU by Budget & Control Board

19. The RDA, a state agency, informed both the City and the Ports Authority, that it did not have the authority to dispossess State (RDA) owned real property absent specific approval of the State Budget and Control Board as evidenced by a vote of that body.

20. As a consequence, the RDA, the City, and the Ports Authority agreed to present the 2002 MOU to the State Budget and Control Board to obtain the State's necessary formal permission and consent, pursuant to the 2002 MOU, for the transfer of the Navy Base property to the City and Ports Authority. The parties thus sought formal ratification by the State on behalf of all of its agencies, alter egos, and instrumentalities of the 2002 MOU.

21. On or about December 2, 2002, the State Budget and Control Board reviewed the Naval Base property transfer request predicated on the 2002 MOU and formally approved transferring title from the State to the City of North Charleston and the Ports Authority, thus ratifying the 2002 MOU.

22. Subsequently, on or about February or March of 2003, the RDA transferred the first installment of property to the City pursuant to the 2002 MOU terms. Subsequent land transfers followed.

23. In the years that followed the formal Budget and Control approval, there were innumerable instances of good faith detrimental reliance upon the validity and binding effect of the 2002 MOU, by the City, the Ports Authority, the State, other governmental agencies, and the public at large, acting in reliance that the 2002 MOU was valid, binding, and fully operative.

24. In order to proceed with the terminal, the State (acting through the Ports Authority) was required to secure authorization from the Corps in the form of a permit.

25. The Corps considered and relied on the MOU and its "rail clause" as it processed and issued the State's (Ports Authority's) application and permit.

Actual Case and Controversy

26. As set forth herein, there exists an actual, real, ripe, concrete dispute as to the enforceability of the MOU with regard to rail not been used in certain areas of the City.[1]

27. The MOU is binding upon the defendants. The City is entitled to a declaration that the defendants (collectively and individually) lack the authority, directly or indirectly, to use other agencies of the State (including agencies that are true alter egos and arms of the State itself) to do indirectly what the State has bound itself by solemn agreement and promise expressly not to do under the MOU.

28. There are also other causes of action, including promissory estoppel, substantial performance, breach of contract accompanied by a fraudulent act, state due process, public policy, and estoppel by deed, all of which independently mandate that the State not go back on its word, promises, and actions with regard to the Plaintiff.

29. In or about 2009, the General Assembly of South Carolina adopted the "State Rail Plan" which provided for options for direct rail access to and service of the marine cargo terminal to be constructed by the State on the southern end of the Former Naval Base property. After further

[1] The exposition of the problem set forth in this complaint is sufficiently complete and all-encompassing as to present a real, ripe and concrete dispute on which this Court can provide guidance meaningful to the parties. This is in contrast to the issue as defined by the State in its Petition for Original Jurisdiction.

refinement, the S.C. Department of Commerce and its subsidiary agency, the S.C. Public Railways, proceeded with efforts to establish an intermodal rail yard on 326 acres a short distance to the north of the new marine cargo terminal. This rail facility was / is designed so as to provide direct rail service to the new marine cargo terminal by rail across the northern section of the Former Naval Base property in violation of the MOU.

30. The concept plan developed for the intermodal rail yard included a single use road linking the intermodal rail yard directly to the marine terminal for the purpose of transporting cargo between the two facilities and effectively making the two facilities a single transportation facility.

31. The Department of Commerce and the S.C. Public Railways in December 2010 filed and served landowners Notices of Condemnation for certain properties in the City of North Charleston, including properties owned by the City, for the express purpose of constructing the proposed intermodal rail yard adjacent to the marine cargo terminal permitted by the Corps of Engineers. The City instituted Challenge actions to the taking of its properties in the Charleston County Court of Common Pleas as authorized and required by South Carolina law.

FOR A FIRST CAUSE OF ACTION
(BREACH OF MEMORANDUM OF UNDERSTANDING)

32. The allegations of all prior paragraphs are incorporated herein by reference as if set forth herein verbatim.

33. The MOU referenced herein is enforceable, among other ways, as a contract. Each of the Defendants, in concert or otherwise, has knowingly and repeatedly engaged in conduct

fundamentally inconsistent with, and deliberately in breach of the rights, obligations, and duties set forth within the MOU.

34. Specifically, the City alleges and submits that in or about 2009, the State of South Carolina (directly and / or indirectly and / or with the tacit understanding and approval of each of the other Defendants named herein) issued a "State Rail Plain" (Hereinafter the "Rail Plan") showing rail service to the Port in direct contravention of the MOU requirements and agreement, and in direct contravention of representations to public, and private entities, including the Corps, and countless innocent landowners and homeowners, all in direct violation of the MOU Agreement.

35. Upon information and belief, the Defendants had actual knowledge of the MOU, had actual knowledge of the reasonable good faith reliance by the City on the MOU, and knew that the proposed rail plan directly and indirectly violated one of the fundamental core rights found in the MOU.

36. The Defendants were fully aware of the 2002 MOU and set out - in agreement with each other and in agreement among themselves - to deliberately breach that agreement and the Plaintiff has suffered damages as a direct and proximate result as to which there is no adequate remedy at law. By reason of the breach of said MOU by the Defendants, the Plaintiff is entitled to have this Court declare that there has been a deliberate breach of the MOU and to an Order enjoining the Defendants to immediately cease all activities in furtherance of such breach.

FOR A SECOND CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

37. The allegations of all prior paragraphs are incorporated herein by reference as if

set forth verbatim.

38. The Defendants are subject to a valid claim of promissory estoppel. Among the explicit and unambiguous promises made in the 2002 MOU was that the City of North Charleston and the S.C. Ports Authority mutually agreed in **Section 4.8 of the 2002 MOU (which promise was deliberately not modified in the Amended MOU 2005)** to the following terms, conditions, and promises, including but not limited to:

> The SPA acknowledges that the City does not want The SPA to utilize rail access from the north end of the Property, and the SPA will use rail access exclusively from the south end of the Property. The SPA will encourage all trucks delivering or picking up cargo in the ordinary course of business to use designated truck routes after the SPA commences operation. **Emphasis Added. Section 4.8, MOU.**

39. The City reasonably relied on Section 4.8 and the Ports Authority was fully aware of such reliance that "SPA will use rail access exclusively from the south end of the Property." This reliance includes, but is necessarily limited to, the following:

A. The construction of a multi million dollar public park to provide the Citizens of North Charleston with their first access to the Cooper River. This public development was financed with Tax Increment Finance District Bonds. The desirability of such a family-friendly park would be markedly reduced, if not virtually eliminated, by the installation and utilization of rail facilities in area of the City and is utterly inconsistent with the Ports Authority's own solemn promise of **exclusive use** and access solely from the "south end of the Property"

B. The rezoning of certain properties consistent with and dependent upon the promise of the Ports Authority that it

would make "exclusive use" rail access from the "south end of the Property."

C. The purchase of various properties to make land available for port-related services while at the very same time protecting North Charleston citizens from the potential adverse impacts of various port operations.

D. The investment of millions of dollars into the revitalization of the Olde North Charleston district to complement the planned development of the Navy Base which took place in reliance upon of the promise by the Ports Authority to exclusively use only the south end of the Property.

E. The donation of substantial acreage to Clemson University for the establishment of a Restoration Institute that would complement the City's "sustainable development" projects and job creation goals for the development of this sensitive area which was done in direct reasonable reliance upon the exclusive promise made by the Ports Authority. Now, this donation may well be made worthless by the State's proposed rail activity since the rail yard is planned to lie on top of the land donated by the City for the campus.

40. The City's reliance was expected, foreseeable, and known or should have been known to the Defendant Ports Authority, and the other Defendants, and was done in utter good faith.

41. Moreover, not only did the City had every reason to reasonably rely upon this critical promise in the 2002 MOU Agreement, which has never been changed, modified, or been waived or released, the City and the Defendant Ports Authority, and the other Defendants, have all known for years that this was one of the significant bargaining points in the MOU.

42. The Defendants, including but not limited to the Ports Authority, directly and / or indirectly, have deliberately breached this promise and as a direct, proximate result, the City has been and will become severely prejudiced and irreparably injured if the Defendant, Ports Authority, and the other Defendants in active concert with the Ports Authority, are permitted to continue to proceed forward with a deliberate breach of the MOU and break the promise of "exclusive" "use" and "access" only via the southern end of the property.

43. As a result of the City's reliance and the deliberate breaches, both directly and indirectly, by all the Defendants, the City finds itself injured by devaluation of its projects, community investments, assets and revenues and facing a highly uncertain future in which it is uncertain about the value of projects under way and already completed, uncertain of its future obligations, and uncertain of what to say to its innocent citizens. All these injuries are beyond the scope of any plain, adequate, legal remedy to compensate and recompense the City. The City's injuries, actual and future, are utterly foreseeable by the Defendants, and each of them, and each is directly contrary to the explicit terms, promises, and conditions of the 2002 MOU.

44. Wherefore, having no adequate legal remedy at law, suffering and facing utterly irreparable injuries that are wrongful as a matter of law, and based upon the equities of the entire matter, the City prays that the Court stay, stop, enjoin and otherwise employ all of its vast inherent equitable powers (including the powers found in the famous South

Carolina case of Ex Parte Dibble, 279 S.C. 592, 310 S.E.2d 440 (S.C.App. 1983) (Courts have the inherent power to do all things reasonably necessary to reach a full and just result).

FOR A THIRD CAUSE OF ACTION
(SUBSTANTIAL PERFORMANCE)

45. The allegations of all prior paragraphs are incorporated herein by reference as if set forth verbatim.

46. The 2002 MOU, and the 2005 Modification of the MOU, were entered into by the City and the Defendant Ports Authority in good faith. As part of this valid and comprehensive agreement the parties entered into a large number of interrelated promises, agreements, and understandings, all interconnected in scope – dealing with the:

> "division of property, infrastructure issues, highway and rail access issues, waterfront access issues, environmental issues, public safety issues, and other related issues having to do with the development by the SPA of facilities on the south part of the Charleston Naval Complex and the development by the City of the Noisette Project on the north part of the Charleston Naval Complex." **Emphasis Added; Part of Section 2.0 of the 2002 MOU, Pages. 2 & 3.**

47. Among the many promises and agreements made between the City, and the Defendant, State Ports Authority, was the promise of a specific division of lands between the Defendant Ports Authority and the Plaintiff City, between the "north area" and the "south area" based on a very specific line. See 2002 MOU, Sections 4.1 and 4.2.

48. As a comprehensive part of this Agreement, the City and the Defendant Ports Authority further agreed that each side would do a large number of highly important, interrelated, tasks and undertake highly important and critically relevant obligations; among the promises made by the City[2]:

A. The City agreed to vacate various buildings in the southern area which were going to be handed over to the Ports Authority (See MOU Section 4.4)

B. The City promised to use its best efforts to assist the Defendant Ports Authority in various specific matters (See MOU Section 4.5)

C. The City agreed to assist the Defendant Ports Authority in rezoning various properties (See MOU Section 4.7) and supporting Ports Authority efforts to obtain various environmental permits (See MOU Section 4.6)

D. The City and the Ports Authority agreed to approach jointly the South Carolina General Assembly with regard to highway and rail infrastructure needed to provide access to and from the City and the Ports Authority properties. (See MOU Section 4.8)

E. The City promised to the Ports Authority significant land use restrictions in various areas and further agreed not to rezone in the future any property within a specific area for residential purposes. (See MOU,

[2] The following is not intended as an exhaustive list.

Pg.8) This promise was given in substantial part because both the City and the Ports Authority fully recognized that rail lines and rail facilities were going to be incompatible with the contemplated southern end rail access promises made in the MOU.

F. The City further promised to the Ports Authority that it would agree to finance certain redevelopment project costs on the Port Facility Area by the issuance of bonds secured by special tax allocations (See MOU, Section 4.12, Page 8).

49. Similarly, the Defendant(s) made a number of very specific, concrete promises, including:

A The Defendant(s) agreed to abide by certain minimum buffering requirements prior to commencing port operations. (See MOU Section 4.85, Pg. 7)

B. The Defendant(s) agreed to lease to the City for purpose of providing public access to the Cooper River. See MOU Section 4.9.

C. The Defendant Ports Authority made specific promises regarding vehicular access. (See MOU, Section 4.8).

D. The Defendant(s) agreed to a specific set of rules by which City lands could later be transferred to Port related use. See MOU Section 4.3.

50. In short, this was a very carefully thought out, complex, interconnected agreement, entered into by both sides, and was acknowledged in the MOU itself, "all parties have participated in the preparation of this Agreement, and have received advice of legal counsel; consequently this Agreement shall not be construed against either party based on the identity of the drafter of this Agreement" (See MOU, Section 5.3, Pg. 14)

51. The City has faithfully complied with the terms, conditions, and promises of this Agreement over many years. It has fully complied, or substantially performed, virtually every single promise that it made. It transferred the lands, it rezoned properties, it performed its obligations. The Defendants have received all or substantially all that they bargained to receive.

52. This was fully intended by both sides to be a contract that was kept and that its promises would be kept. The Defendant Ports Authority was fully and totally aware that the City was and had been fully performing its side of the equation and it was fully aware (as are all the Defendants acting in directly concert with each other) of the promises made by the Ports Authority, none of which was more important than the promise previously quoted in Section 4.8 that the

> "SPA acknowledges that the City does not want the SPA to utilize rail access from the north end of the Property, and the SPA will use rail access exclusively from the south end of the Property." 2002 MOU, Section 4.8, Pg.7

53. This promise is specific and it is very clear: The Ports Authority will not "utilize"

rail "access" from the north end of the Property and will only use rail access **exclusively from the south end of the Property.**

54. This is a binding contract entered into by the parties and performed in whole or certainly in substantial part by the City and there is no express term of the MOU making strict compliance essential.

55. The Defendant Ports Authority, in active concert with the other Defendants, is in the process of a deliberate breach and unjustifiable failure to continue to perform this contract.

56. There is no plain, adequate, legal remedy for the City and the City will suffer grave irreparable harm and injury if the Defendants are permitted to breach this contract.

57. Wherefore, the City prays for appropriate equitable relief to stop, enjoin, and prevent the Defendants and each of them, having accepted the substantial performance of the City's many promises under the contract, to deliberately elect not to keep their own promises in return.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)

58. The allegations of all prior paragraphs are incorporated herein by reference as if set forth verbatim.

59. The breach described in the last several causes of action was accompanied by the Defendants actively working together in a deliberate and intentional attempt to have the

Defendant Ports Authority, through fraud, do indirectly what it absolutely knew it was contractually forbidden to do directly.

60. The fraudulent acts that accompany this breach includes deception, misleading denials, breach accompanied by actual bad faith, and the deliberate enlisting of others to indirectly do what the Ports Authority was surely fully aware that it was forbidden to do directly.

61. If the Court should agree that this breach of contract was accompanied by a fraudulent act, then actual and punitive damages should be awarded as a jury may determine.

FOR A FIFTH CAUSE OF ACTION
(ESTOPPEL BY DEED)

62. The allegations of all prior paragraphs are incorporated herein by reference as if set forth herein verbatim.

63. In a series of deeds, including but not limited to a December 21, 2004, Deed by the RDA (as an agent of and on behalf of the Defendants) to the City, all done pursuant to a Transfer Agreement, wherein the City and RDA (as an agent of and on behalf of the Defendants) agreed to enter into a transfer of various tracts, directly pursuant to various "whereas clauses" and other mutually agreed upon terms, which included:

> a. Whereas, the South Carolina General Assembly has by Act No. 356, 114th Session South Carolina General Assembly 2001 - 2002 determined that this property, and all other property which the United States will in the future convey to the RDA will, on

receipt by the RDA, be transferred to the City and to the South Carolina State Ports Authority (SCSPA) and

b. Whereas, it is appropriate for the parties to have an **understanding regarding the leases, contracts, revenues, and other privileges and obligations which may transfer with the conveyances** of mutually agreed upon portions of the property by RDA to the City. **(Emphasis Added)**

64. The RDA (as an agent of and on behalf of the Defendants) and the City agreed upon a wide variety of matters, including various rail access to existing tenants and all of these actions, agreements, contracts, and transfers, were all done directly pursuant to State Legislation and were all done with the express approval, ratification, and explicit direction of the State Budget and Control Board, and State law, and by solemn act and deed these various transfers took place, and it is alleged upon information and belief that the Defendants, and each of them, particularly the State of South Carolina itself, are now estopped by formal deeds and transfer agreement itself, and by matters of public record, to deny the truth of the matters set forth in such records.

65. Accordingly, the Defendants, and each of them, cannot deny the validity of the very laws under which they willingly acted, willingly ratified, willingly directed, large tracts of lands, existing leases, various tax increment financing districts, and countless other matters, all of which were formally agreed to, accepted, ratified, and incorporated into the very deeds now on record in the public records of Charleston County.

FOR A SIXTH CAUSE OF ACTION (DECLARATORY RELIEF)

66. The allegations of all prior paragraphs are incorporated herein by reference as if set forth herein verbatim.

67. The South Carolina Declaratory Judgment Act expressly permits Courts of Record, including this Court, to specifically interpret and determine the validity of contracts. S.C. Code Ann. 15-53-20 and 15-53-30.

68. There is a pressing public need to comprehensively determine the validity and binding effect of the 2002 MOU under State law based upon on the reliance by the City, the Federal Government, and other public and private entities.

69. The need to determine the validity of the MOU is evidenced by the Defendants taking affirmative aggressive acts that are irreconcilable with the MOU, including but not limited to:

a. Planning for a rail yard and making projections incidental thereto;
b. Obtaining state approvals for the project;
c. Expending State funding to acquire land and otherwise further the project;
d. Beginning hostile land acquisition through eminent domain.

70. Accordingly, the City of North Charleston respectfully asks this Court to:

1. Issue a declaration that the MOU is legal, binding, and operative on all agencies and instrumentalities of the State of South Carolina under the law of South Carolina;

2. Issue a declaration that as a matter of law, pursuant to the MOU, the State "not utilize" rail access from the north end of the property and must use rail access exclusively from the south end of the property;

3. Issue a declaration that the title ownership and / or operation of a Navy Base rail yard by an entity other than the Ports Authority (such as Commerce, the State, SC Public Rails, or a private rail company) does not relieve the Ports Authority of its commitment not to "utilize" rail access from the north end of the property.

4. Issue a declaration that "access" to rail as described in the MOU pertains to rail facilities both on-site and off-site.

5. Issue a declaration that neither Commerce nor the Ports Authority are "separate sovereigns" independent of the State of South Carolina. Ports Authority and Commerce "are the State" and the State "is Commerce and the Ports Authority."

6. Issue a declaration that it would be a violation of the obligations of the State and Ports Authority under the agreement if containers offloaded by the Ports Authority were drayed to the State's proposed rail yard even if the driver conducting the dray was not a state or Ports Authority employee.

7. Issue a declaration that the use of eminent domain by the State (directly or indirectly through the Ports Authority, Commerce, or others) to acquire, for purposes of installing rail or other infrastructure supporting the SPA, lands attributed to the City in the MOU ("City lands") violates the provisions of Para. 4.3, 4.22, and 5.3 that provide the mechanism by which City lands may be converted to uses supporting the Ports Authority.

8. Order such further, additional or other declaratory relief that may be necessary or desirable to settle fully and completely all the continued, active, real controversies between the Plaintiff and each of the Defendants.

NOW THEREFORE, Plaintiff prays that this Court inquire into the matters set forth herein and issue an Order providing:

1. A Declaration as alleged above of the rights and responsibilities of the parties with respect to the 2002 MOU between the State of South Carolina and the City of North Charleston (as modified in 2005);

2. A permanent injunction prohibiting the State from taking any action to establish or construct the intermodal rail yard addition to the marine cargo terminal as such action violates the 2002 MOU (as modified in 2005) and as the State is equitably estopped to take such action and estopped by deeds of record from taking such action;

3. Monetary damages as this Court deems appropriate;

4. Reimbursement to Plaintiff of all attorney's fees and costs incurred in the pursuit of this action;

5. Such other relief as this Court may deem just and proper.

Respectfully Submitted,

J. Brady Hair
Derk Van Raalte
Post Office Box 61896
North Charleston, SC 29419
(843) 572-8700
derk@bradyhair.com
brady@bradyhair.com

Francie Austin
Post Office Box 190016
North Charleston, SC 29419-9016
(843) 740-2550
faustin@northcharleston.org

Gedney M. Howe, III
Post Office Box 1034
Charleston, SC 29402-1034
(843) 722-8048
ghowe@gedneyhowe.com

Richard D. Bybee
Stan Barnett
Smith, Bundy, Bybee & Barnett
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623
rdb@s3blaw.com

Stephen A Spitz
Attorney at Law
1134 Clearspring Drive
Charleston, SC 29412
(843) 377-2154
sc.spitz@prodigy.net

Attorneys for the Plaintiff
City of North Charleston

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