

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Nathan Bluestein, Ettaleah Bluestein, Theodore)	C/A No. 10-CP-10-5449
Albenesius and Karen Albenesius)	
)	
<i>Plaintiffs,</i>)	ORDER AMENDING SETTLEMENT
)	
Versus)	
)	
Town of Sullivan’s Island and Sullivan’s)	
Island Town Council,)	
)	
<u>Defendants.</u>)	

WHEREAS, this Court previously entered a Consent Order approving settlement of the above-captioned litigation based upon terms and conditions jointly agreed upon by the Parties; and

WHEREAS, the execution of the terms of that settlement Order required the Parties to obtain various permits and authorizations from State and/or Federal regulatory agencies; and

WHEREAS, based on field conditions encountered during the preparation of regulatory applications, all Parties agree that amendment of the Settlement terms and conditions would be mutually beneficial in order to properly address anticipated third-party regulatory concerns; and

WHEREAS, based on the above, it appears that relief under Rule 60(b)(5) is appropriate because it would not be equitable or desirable for the parties to further seek to implement the settlement as originally written and the Parties are in agreement that the revised terms attached hereto further the spirit of the original settlement agreement and allow the flexibility needed to conform with guidance from third-party regulatory agencies.

IT FURTHER APPEARING in the discretion of this Court that such settlement, as amended, is proper and in the best interest of all Parties, it is

ORDERED, ADJUDGED AND DECREED that this Court's Prior Order be Amended as follows:

1. The Work Plan attached hereto as Exhibit A shall replace the scope of work described in the original Settlement Order. Should third-party regulatory feedback or guidance be received suggesting further work plan changes the Parties may jointly agree to further modify this plan to address such feedback or guidance. Should one Party decline a modification suggested based on third-party regulatory feedback or guidance the other Party shall not be deemed at-fault or held responsible if permitting fails on that basis. The Town shall not unreasonably withhold consent to a proposed modification so long as the proposed modification would not result in cutting/trimming/pruning that is more aggressive than that detailed on the subject in the Settlement Agreement and Order originally executed in this case.
2. The twelve (12) month period referenced on page 6 of the Original Settlement Agreement, which originally commenced as of the date of original settlement, shall now commence on the date the Town receives necessary regulatory approvals to allow the proposed scope of work to proceed.
3. For the purpose of clarification, tree measurements referenced in this document and the Settlement Agreement refer to the size of specific trees as reported in geothinQ by the name "Sullivan's Island Tree Survey, 2015."
4. The Parties' statements of general intent, goals, and desire to balance various interests as described in the original Settlement Agreement remain valid.

5. As a guiding principle, it is generally intended that trees and other vegetation designated for removal under the original settlement plan that will now be retained under this work plan will be trimmed / pruned by TOSI in a manner to promote adequate views and breezes, provided a Town arborist opines that the proposed extent of such trimming / pruning will not likely endanger the long-term survival of the plant.

ELECTRONIC SIGNATURE PAGE TO FOLLOW.

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Albenesius and Karen Albenesius)	
)	
<i>Plaintiffs,</i>)	
)	JOINT MOTION TO AMEND
Versus)	SETTLEMENT ORDER BY CONSENT
)	PURSUANT TO RULE 60(B)(5).
)	
Town of Sullivan’s Island and Sullivan’s)	
Island Town Council,)	
)	
<i>Defendants.</i>)	

The Parties in October of 2020 received approval from this Court of a Settlement Agreement to end litigation over conditions on the “Accreted Land” of Sullivan’s Island pursuant to certain mediated terms and conditions. Implementation of the terms of that settlement necessitated field surveys, consultation with third-party state and federal regulators, and ultimately will require approval from such regulators. Newly discovered field conditions and related consultation with the regulatory agency personnel revealed areas in which the work plan contemplated in the settlement should be revised in order to stand the best chance of securing regulatory approval and to be properly respectful of all Parties’ interest in the land. The Parties have conferred and developed a revised work plan they believe may secure regulatory approval. As this revised work plan differs in some regards from the work detailed in the prior Settlement Agreement and Order the Parties request that this Court issue an amended Order to conform to the updated work plan and to permit flexibility, where mutually agreed upon, to make further changes needed to address any third-party regulatory requests that may need to be accommodated in the future. The Parties believe that entry of an Amended Order is permissible here under Rule 60(b)(5)

because it would not be equitable or desirable for the parties to further seek to implement the settlement as originally written in light of recently discovered field conditions.

The Parties jointly request that this Court issue an Amended Order substantially in the form shown as Exhibit A.

Respectfully Submitted:

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Plaintiffs' Counsel

This __ day of ____, 2021.