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May 4, 2022

Pam Orrell, CPA
Finance Officer
Town of Lewisville
PO Box 547
6510 Shallowford Rd.
Lewisville, NC 27023

RE: Insured: Town of Lewisville
Policy Nos: PL-P-91003-2021
Claimant: Solomon Development, LLC
File No.: 3210103482
Solomon Development, LLC v. Town of Lewisville, NC; Jeanne Marie Foster; Fred Franklin; Mike Horn; Melissa Hunt; Jane Welch; Joseph Hamby; Jessica Higgins; and Michael Sullivan, 22-CVS-_____ (Draft Complaint to be filed in Forsyth County Superior Court)

Dear Ms. Orrell:

This letter is in response to the receipt of a draft Complaint from Solomon Development, LLC (“Solomon”) asserting claims against the Town of Lewisville, Jeanne Marie Foster, Fred Franklin, Mike Horn, Melissa Hunt, Jane Welch, Joseph Hamby, Jessica Higgins, and Michael Sullivan. The North Carolina League of Municipalities (“NCLM”) has reviewed the Public Officials Liability policy issued to the Town to determine if it has a duty to defend or to provide coverage to the Town. Solomon’s claims arise from the Town’s failure to approve Solomon’s site plan for its senior facility, despite the site plan’s alleged compliance with the Town’s Uniform Development Ordinance and other regulations. Solomon asserts its claims against the Town and the Town Planning Board members: Joseph Hamby, Jessica Higgins, and Michael Sullivan. Solomon also asserts claims against Town Councilmembers: Marie Foster, Fred Franklin, Mike Horn, Melissa Hunt, and Jane Welch. This letter addresses only Solomon’s claims against the Town. NCLM is sending a separate letter to the individual defendants regarding its position on the claims made against them.

It appears that there may be both potentially covered and non-covered claims alleged against the Town in the draft Complaint. As such, we will provide a defense to the Town under a reservation of rights, as set forth below. We have retained attorney Andy Santaniello with the firm

of Pope, Aylward, Sweeney, and Santaniello, LLP, 6701 Carmel Road, Suite 105, Charlotte, NC 28226, to represent the Town. Our evaluation of the claims in the draft Complaint and the explanation of our Reservation of Rights is below.

Allegations of the Draft Complaint

Before discussing the relevant policy provisions and coverage issues, we summarize the allegations set forth against the Town in Solomon's draft Complaint. In providing our coverage analysis, we must do so based on the current allegations set forth by Solomon (as stated in the four corners of the draft Complaint), rather than as we view them ourselves. Therefore, we assure you that our coverage analysis is no indication that we give any credence to any of Solomon's allegations. We understand that the Town disagrees with certain allegations and feel that they can prove that some or all allegations are untrue, which is why NCLM will be defending the lawsuit. As the litigation continues, certain facts will come out and a jury may have to decide certain issues of fact, should the case reach a jury trial. We continually assess exposure and coverage as the case progresses, but at the onset, we have to review the terms of the policy against the current allegations.

The draft Complaint alleges that in March 2000, the Town approved a change in zoning classification for the real property at 145 Belnette Drive, one of the adjoining tracts of land at issue. This property was classified as pedestrian business under the Town's Unified Development Ordinance ("UDO"). In 2004, Solomon acquired this tract of land. The property at 145 Belnette Drive is in an area of the Town classified as "Downtown" and within the "Downtown Core Area," such that development of the property was required to comply with additional development standards. Those standards state that among their major objectives are: (1) to promote a sense of human scale; (2) encourage architecture that is compatible but not necessarily conforming; (3) create architectural transition; (4) to provide for an open environment; and (5) to develop tree-lined streets in Downtown areas. The standards indicated that a broad array of property uses was expected and would integrate shops, restaurants, services, workplaces, civic, educational, and religious facilities, single-family housing and higher-density housing in a compact, pedestrian-oriented environment. The draft Complaint states that Solomon determined that development of the property at 145 Belnette Drive as a senior facility would be the highest and best use of the property while fitting the stated goals of the Town. However, due to other restrictions for the Downtown area, such as the requirement of rear and street parking, Solomon decided in November 2018 to purchase another adjoining tract located at 200 North Street in the Town. The North Street property was adjacent to the Belnette Drive property and made development of the senior facility at the Belnette Drive property viable because the North Street property would be used for rear parking and stormwater control facilities.

The draft Complaint alleges that because the proposed senior facility is a permitted use, there was no requirement of rezoning to develop the two-tract site. Solomon moved forward with site plans for review by the Town Planning Board and Town Council. Solomon alleges that the Planning Board merely was required to review the size, scope, and design of the senior facility plans and to ensure that the plans comported with the architectural character standards and

Downtown development standards of the Town. Solomon alleges the plans did, in fact, comport with all applicable standards.

In May 2020, Solomon's first proposed site plan was finalized for review by the Town Planning Board. At a Town Planning Board meeting in late May, Defendant Hamby, Vice Chair of the Planning Board, stated that a public hearing on the site plan would be held in June 2020. However, after the May meeting, Defendant Hamby actively began working to undermine public support for Solomon's site plan. Defendant Hamby made comments about his opposition to the senior facility project. Defendant Hamby advised citizens on the best ways to oppose the project, including posting in an online forum that "public comments are most effective if they communicate how the plan does not conform with Lewisville plan or mission/vision." (Draft Complaint ¶ 29.) On June 1, 2020, Solomon, through its principal, Jeff Zenger, gave a written notice to Defendant Hamby of his improper activities. Mr. Zenger also spoke with Defendant-Councilmember Horn to ask that Horn instruct Hamby to cease from his active opposition to the project since Hamby was the Vice Chair of the Planning Board – a deciding body that was supposed to be impartial. However, Horn failed to give such an instruction.

At the June 2020 Town Planning Board meeting, a number of speakers voiced opposition to Solomon's senior facility site plan. The Town Planning Board rejected the site plan by a 6-to-1 vote. No Town Planning Board members recused themselves, including Defendant Hamby. In July 2020, the Town Council responded to the Planning Board vote by passing a resolution to convene a public hearing in August 2020 about Solomon's site plan for development of the senior facility. However, prior to the August hearing, Solomon revised the site plan to take into account overlooked height restrictions. As such, the Town Council sent the matter back to the Town Planning Board to review the corrected design for compliance with height requirements, among other applicable standards. At the September 2020 Town Planning Board meeting, Defendant Hamby vowed to delay review of Solomon's senior facility plans. Thereafter, Defendant Hamby and Defendant Foster began to scheme for pretextual ways to deny Solomon's plan. Along with Defendants Hamby and Foster, Defendants Franklin, Higgins, Welch and Sullivan had resolved to oppose the senior facility site plan, regardless of whether the plans complied with the applicable development standards.

Solomon alleges that Defendants Foster and Hamby sent communications to further their conspiracy to vote against the Solomon senior facility site plan. At a Town Council briefing, the Town's attorney counseled that the initial public hearing on the site plan was improper and the Town Council's review was for compliance with the development standards for the area alone. However, at the September 2020 Town Planning Board meeting, the Town Planning Board again voted 6 to 1 against the senior facility. The disapproval vote was allegedly orchestrated by Defendant Hamby. The next day, on September 10, 2020, the Town Council met to determine whether the Solomon site plan complied with the UDO and other applicable development standards. The Town Council improperly allowed public comments during a portion of the meeting. Prior to the Town Council meeting, Defendant Hamby improperly sent messages to the Town Council members in opposition to the site plan. Solomon alleges that Defendant Hamby was the Vice Chair of the Planning Board and used the position to interject his personal opinion

on the development of the site plan. At a subsequent meeting on September 21, 2020, the Town Council voted to disapprove Solomon's site plan. The Town Council referenced the four-story height of the senior facility as a basis for not approving the plan, even though the total height did not exceed the 48-foot standard for the zoned area.

After the non-approval vote by the Town Council, Solomon sought guidance from the Town about what was needed to obtain approvals. Solomon alleges that the Town Council review was supposed to be a review for compliance with the UDO and relevant standards for the Downtown area – not a zoning case. Zoning for the real property at issue had already been completed. The Town did not respond until November 2020, when it referred Solomon back to the Town Planning Board for an informal meeting regarding the site plan. Solomon asked if the site would be approved if the plan was redesigned to be both two-stories and under 48 feet in height. Two Planning Board members stated that they would never vote in favor of the senior facility site plan.

In November 2020, Solomon redesigned the site plan to feature a two-story building. Solomon then submitted the plan to the Town's planning staff for an initial review. The staff determined that it complied with the applicable standards. In February 2021, the Town Planning Board voted 4 to 3 to approve the new site plan. Defendants Hamby, Sullivan, and Higgins were the "no" votes. The Town Council set a review hearing on the redesigned site plan in April 2021. However, prior to the hearing, Town Councilmember Horn called Solomon to inquire whether there was anything the Town could offer Solomon to halt the senior facility project. Solomon submitted several alternatives, and the Town considered them in closed session. The Town failed to make a formal proposal to Solomon. In May 2021, the Town Council voted not to approve the senior facility plan. The Town Council reiterated that the plan was over the height requirement and that the site plan failed to have off-site parking. Solomon contended that the plan met both requirements because the site plan was for a two-story building, was under 48 feet in height, and had rear parking via the North Street property. Solomon alleged that the Town's proffered reasons show that the Town Council arbitrarily voted to not approve the site plan. Solomon alleges that text messages show that Defendant-Councilmembers Franklin and Foster interacted about how to vote "no" on the Solomon site plan, despite having no valid reason to do so.

Solomon sets forth the following claims in the draft Complaint: (1) *Ultra Vires* Conduct by the Town in Violation of Enabling Legislation; (2) Denial of Due Process/Taking by Town in Violation of the N.C. and U.S. Constitutions; (3) Denial of Equal Protection/Taking by the Town under the Fourteenth Amendment to the United States Constitution/42 U.S.C. § 1983; (4) Civil Conspiracy as to Defendants Hamby, Foster, Horn and Franklin in their individual capacities; (5) Negligence as to the Town; (6) Recovery of Attorney's Fees from the Town; and (7) Punitive Damages as to Defendants Hamby, Foster, Franklin, and Horn in their individual capacities.

Solomon requests relief as follows: (1) a declaration that the actions of the Town with respect to Solomon's site plans were *ultra vires* and illegal; (2) compensatory damages against the Town; (3) compensatory damages as to Defendants Hamby, Foster, Horn and Franklin; (4) attorney's fees under N.C. Gen. Stat. § 6-21.7 and 42 U.S.C. § 1988 against all Defendants;

(5) punitive damages against Defendants Hamby, Foster, Horn and Franklin; and (6) an order mandating that the Town officials undergo training on land use procedures. Solomon requests a jury trial as well.

Policy Provisions and Explanation of Coverage

The Town is the named insured under Policy Number PL-P-91003-2021, for the policy period of July 1, 2021 to July 1, 2022. The Public Officials Liability coverage form is written on a claims-made basis and provides coverage of \$5,000,000 per claim with a \$5,000,000 annual aggregate limit (“POL Policy”). The retroactive coverage date is July 1, 1988. There is a \$10,000.00 deductible per claim. We have reviewed the POL Policy to determine if it may provide a defense and/or coverage for Solomon’s claims.

NCLM will provide a defense to the Town under a reservation of rights. As discussed below, certain exclusions may apply to disclaim indemnity coverage, including but not limited to, exclusions for willful violations of statutes, claims seeking declaratory or injunctive relief, or claims related to a governmental “taking” of Solomon’s property. Further, there is no coverage for any award of attorneys’ fees.

The applicable POL Policy provisions and explanations of their effect on coverage appear below.

The POL coverage provisions state:

I. SECTION I – PUBLIC OFFICIALS LIABILITY COVERAGE

1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages resulting from “claims”, to which this insurance applies, against the insured by reason of “public official(s) wrongful act(s)” rendered in discharging duties on behalf of the public entity named in the Declarations. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS. This insurance does not apply to “public official(s) wrongful act(s)” which occurred in whole or in part prior to the Retroactive Date or which occur after the policy period. If no retroactive date is shown in the declarations, the retroactive date will be the effective date of this coverage part. We may, at our discretion, investigate and settle any “claim” or “suit”. We will have the right and duty to defend any “suit” seeking those damages.
But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

(POL-02 (07/2019), page 1 of 15).

Definitions applicable to this analysis are:

SECTION VI – DEFINITIONS

5. “Claim” means a demand received by the insured for money damages, non monetary damages as provided in the SUPPLEMENTARY PAYMENTS, filing and or service of “suit” papers or arbitration proceedings filed against the insured arising out of “public official(s) wrongful act(s)” to which this insurance applies.

...

11. “Public official(s) wrongful act(s)” means any alleged or actual breach of duty, or violation of any federal, state or local civil rights, by an insured while acting within the scope of his/her duties as a public official for the public entity named in the Declarations. “Public official(s) wrongful act(s)” does not include any “employment wrongful act(s)”.
12. “Suit” means a civil proceeding in which damages because of “public official(s) wrongful acts(s)” to which this insurance applies are alleged. “Suit” includes an arbitration proceeding or any other alternative dispute resolution proceeding alleging such damages to which you must submit or submit with our consent.”

(POL-02 (07/2019), pages 14-15 of 15).

II. SECTION II – WHO IS AN INSURED

Each of the following is an insured:

- a. The public entity named in the Declarations.
- b. Your lawfully elected, appointed or employed officials, past, present and future, but only for acts within the course and scope of their duties.
- c. Your lawfully appointed members of the commissions, boards or other units operated and controlled by you that are under your jurisdiction and within an allocation of your total operating budget, but only with respect to their duties as your lawfully appointed member. However, none of the above are insureds with respect to operations involving schools, hospitals, nursing homes, port authorities, or gas utility companies.

- d. Your employees, but only for their acts in the course and scope of their employment.

(POL-02 (07/2019), page 9 of 15).

The Town is the named insured listed in the declarations pages. Any coverage available under the Policy will extend to the Town.

Solomon's draft Complaint is a "claim", as it constitutes a demand for monetary damages against the Town. The draft Complaint also alleges certain claims that appear to qualify as "public officials wrongful act(s)" as long as the Town acting in the scope of discharging its public duties. If it is determined that the Town was not acting in the scope of discharging its public duties, then there is no "public officials wrongful act(s)", and therefore, no coverage under the Policy.

Assuming that a "public officials wrongful act" is alleged, the POL Policy still contains several exclusions that are applicable to Solomon's claims. Each of these exclusions, along with an analysis regarding their applicability to the claims pled in the draft Complaint, is discussed below.

2. Exclusions.

This insurance does not apply to any "claim" made against the insured:

...

- c. For any damage arising out of the willful violation of any federal, state, or local statute, ordinance, rule or regulation committed by or with the knowledge and consent of any insured. Nor shall we have any obligation to indemnify the insured for any loss, cost, civil fine, penalty or expense against any insured arising from any complaint or enforcement action from any federal, state or local governmental regulatory agency.

(POL-02 (07/2019), page 2 of 15).

The draft Complaint alleges that the Town willfully violated Solomon's due process and equal protection rights under the Fourteenth Amendment of the U.S. Constitution and the North Carolina Constitution. In addition, the draft Complaint alleges willful violations of the Town's enabling legislation. The factual allegations associated with these claims indicate willful and intentional conduct by the Town for which there is no coverage under exclusion c. NCLM will defend the Town, but reserves its right to disclaim coverage for any claims arising from the willful violation of Solomon's constitutional or statutory rights.

2. Exclusions.

This insurance does not apply to any "claim" made against the insured:

...

- k. For “claims” or “suits” seeking relief or redress in any form other than compensatory damages. Nor shall we have any obligation to indemnify the insured for any costs, fees including attorneys fees, or expenses which the insured shall become obligated to pay as a result of an adverse judgment for injunctive or declaratory relief; however, we will afford defense to the insured for such “claims” or “suits”, if not otherwise excluded, where compensatory damages are requested. However, IRFFNC will afford defense to the insured for such “claims” as provided in Section I – Supplementary Payments.

(POL-02 (07/2019), page 2 of 15).

The draft Complaint seeks non-monetary relief against the Town in the form of: (1) a declaration that the actions of the Town with respect to Solomon’s site plan were *ultra vires* and illegal; and (2) injunctive relief via an order mandating that the Town implement a program to require its elected and appointed representatives to undergo training concerning proper land use review procedures and practices to protect the constitutional rights of property owners seeking approvals from the Town. (Draft Complaint, Prayer for Relief, ¶¶ 1, 7.) Exclusion k. applies because these claims seek declaratory and injunctive relief or redress.

However, an exception to the exclusion states that NCLM will provide a defense if a claim also requests compensatory damages. Because the draft Complaint also contains claims for compensatory damages against the Town based on negligence and violation of constitutional rights, NCLM will defend the Town under a reservation of rights. However, the Town will be responsible for complying with any declaratory judgment or injunctive relief that may be entered and for satisfying any associated award of attorney’s fees.

2. Exclusions.

This insurance does not apply to any “claim” made against the insured:

...

1. For any damages arising out of or in any way connected with the operation of the principles of eminent domain, adverse possession, dedication by adverse use, inverse condemnation or condemnation proceedings, by whatever name used.

(POL-02 (07/2019), page 2 of 15).

The draft Complaint alleges claims under the United States and North Carolina Constitutions for the Town’s unlawful temporary taking of a compensable interest in the property

owned by Solomon. Solomon's draft Complaint states that the Town's handling of the site plan review has prevented Solomon from realizing investment-backed expectations concerning the development of the senior facility and that the Town has deprived it of the full rights and benefits as the owner of the real property at issue. Further, Solomon alleges that it has incurred damages in the form of "delay and loss of developmental profits, interest, and increased costs ..." (Draft Complaint ¶ 94.) These allegations are claims for a "taking" of the property and damages in the form of loss of use and/or diminished value of the property, based on the Town's rejection of the site plans. Thus, the draft Complaint alleges claims and damages that fall within exclusion l., as they are connected with the operations of governmental takings of real property interests. NCLM will defend the Town, subject to a reservation of rights to disclaim coverage for any damages arising from the principles of a governmental taking of property.

2. Exclusions.

This insurance does not apply to any "claim" made against the insured:

...

- ff. For any damages which result from a wrongful act committed intentionally with knowledge of wrong-doing; however, the Fund will provide a defense to the Named Insured for "suits" containing such allegations, but only if such allegations are not otherwise excluded from coverage.

(POL-02 (07/2019), page 7 of 15).

The draft Complaint asserts that the Town acted intentionally to disapprove the site plan for the senior facility and acted intentionally to cultivate adverse attitudes toward the site plan. The draft Complaint states that the Town intentionally treated Solomon differently and violated its equal protection rights. Exclusion ff. excludes such claims from coverage.

However, an exception to the exclusion states that NCLM will defend such claims if they are not "otherwise excluded from coverage." As noted above, other exclusions may apply to disclaim coverage for some or all of Solomon's claims against the Town. However, at this point, NCLM will defend the Town, subject to a reservation of rights to disclaim coverage for any damages resulting from the Town's wrongful act committed intentionally with knowledge of wrongdoing.

The Supplementary Payments portion of the Policy further limits coverage for any claims that may potentially be covered. It states:

SUPPLEMENTARY PAYMENTS

We will pay, with respect to any "claim" or "suit" we defend:

1. All expenses we incur.
2. The cost of bonds to release attachments and appeal bonds required in any "suit" we defend, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$100 a day because of time off from work. Such expenses, do not include salaries of officials or employees of the public entity.
4. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
5. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

These payments under #1 through #6 will not reduce the Limits of Insurance.

(POL-02 (07/2019), page 8 of 15).

Solomon seeks its costs and expenses, together with reasonable attorneys' fees under N.C. Gen. Stat. § 6-21.7 and 42 U.S.C. §§ 1943 and 1988 against all defendants, including the Town. The Supplementary Payments provision expressly excludes from coverage "attorneys' fees or attorneys' expenses taxed against the insured." (POL-02 (07/2019), page 8 of 15.) Thus, there is no coverage for any attorneys' fees that may be awarded.

Furthermore, Solomon's claim for attorneys' fees and costs under N.C. Gen. Stat. § 6-21.7 would be outside the scope of coverage for the additional reason that application of the statute requires a finding that the Town acted outside the scope of its municipal legal authority. The statute provides:

In any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority, the court may award reasonable attorneys' fees and costs to the party who successfully challenged the city's or the county's action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees.

N.C. Gen. Stat. § 6-21.7. Solomon alleges that the Town committed acts that were unlawful and beyond its legal authority, which serve as the basis for attorneys' fees under the statute. However, the POL Policy limits coverage to acts "rendered in discharging duties on behalf of the public entity named in the Declarations." (POL-02 (07/2019), page 15 of 15.)

If a court finds that the Town, through its employees or officials, committed certain acts *ultra vires* or outside the scope of their lawful duties, then the POL Policy will not cover those damages, including any attorneys' fees and costs awarded based on such claims.

The POL Policy sets certain limits on the amount of coverage available when multiple claims are involved. It states:

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. "Claims" made or "suits" brought; or
 - c. Persons or organizations making "claims" or bringing "suits".
2. The Annual Aggregate Limit is the most we will pay for all damages.
3. Subject to 2. above, the Each Claim Limit is the most we will pay for all loss arising out of any "public official(s) wrongful act(s)" covered by this policy. "Claims" based on and arising out of the same act or related acts of one or more insureds shall be considered to be a single "claim".

The Limits of Insurance of this coverage part applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance

(POL-02 (07/2019), page 9 of 15).

The draft Complaint alleges multiple claims against the Town, but that does not increase the amount of available coverage. Pursuant to the "Limits of Insurance" clause, the per-claim limit of \$5 million is the maximum coverage available to the Town for all covered claims.

The declarations page shows a \$10,000.00 deductible for each claim. (POL Coverage Part Declarations, Limits of Insurance, Deductible, printed on June 25, 2021.) The Policy explains how the deductible shall be applied:

8. Deductible

- a. Our obligation under Section I of this policy to pay damages on behalf of the insured applies only to the amount of damages in excess of any deductible amount stated in the Declarations.
- b. The deductible amount stated in the Declarations, if any, applies to all damages sustained by any person or organization as the result of any one "claim". "Claims" based on or arising out of the same act or related acts of one or more insureds shall be considered a single "claim".
- c. The deductible amount stated in the Declarations applies to each "claim" and includes loss payments and adjustment, investigative and legal fees and costs, whether or not loss payment is involved.
- d. The terms of this insurance, including those with respect to (1) our right and duty to defend any "suits" seeking damages, and (2) your duties in the event of potential or actual "claim" or "suit" apply irrespective of the application of the deductible amount.
- e. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

(POL-02 (07/2019), pages 11-12 of 15).

The Town's deductible has been triggered by investigative and legal costs following the Town's submission of the draft Complaint to NCLM. Even though a payment has not been made to Solomon to resolve any claims, the deductible is still owed. NCLM will send an invoice for the deductible under separate cover once legal fees and expenses reach that threshold.

Disclaimer of Indemnity Coverage for Certain Claims and Damages

NCLM will provide a defense for the Town, under a reservation of rights, against all of the claims in the draft Complaint. NCLM reserves the right to deny coverage to the Town based on the Policy exclusions cited above. In addition, there is no coverage for any attorneys' fees and costs that may be awarded to Plaintiff. The Town may wish to retain its own counsel, at its own expense, to appear alongside NCLM's appointed counsel.

Conclusion and Contact Information

NCLM will provide a defense for the Town against all of Plaintiff's claims in the draft Complaint, subject to this reservation of rights and the Town's applicable POL liability coverage limit and deductible, but without providing coverage or indemnification for any non-covered claims. NCLM has retained attorney Andy Santaniello with the firm of Pope, Aylward, Sweeney, and Santaniello, LLP, 6701 Carmel Road, Suite 105, Charlotte, NC 28226. Mr. Santaniello may be contacted at 704-374-1600.

NCLM's coverage position is based on the information presently available to us. This letter is not and should not be construed as a waiver of any terms, conditions, exclusions or other provisions of the NCLM policies. NCLM expressly reserves all of its rights under the NCLM policies, including the right to assert additional defenses to coverage for the lawsuit, if appropriate.

If you have any additional information that you feel would cause us to review our coverage position or if the draft Complaint is amended in any way, please provide us with that information as soon as possible. Also, if you have any questions or comments regarding this matter, please feel free to contact me at (919) 715-0490.

Very truly yours,

NORTH CAROLINA LEAGUE OF MUNICIPALITIES

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cc: Andrew J. Santaniello, Esq.

Bowen Houff, Esq.