

STATE OF NEW YORK
SUPREME COURT : WESTCHESTER COUNTY

In the Matter of the Application of:

RC RECREATION DEVELOPMENT, LLC

Petitioner-Plaintiff,

**COMBINED VERIFIED
PETITION AND
COMPLAINT FOR
DECLARATORY
JUDGMENT**

for a Judgment pursuant to Article 78 of the
N.Y. *Civil Practice Law & Rules* and NYRPAPL § 853

Index No. _____

-against-

THE TOWN OF YORKTOWN, N.Y.;
MATTHEW J. SLATER, in his Official Capacity as
Supervisor of the Town of Yorktown, N.Y.;
SERGIO ESPOSITO, in his Official Capacity as a member
of the Town Board of the Town of Yorktown, N.Y;
and JOHN H. LANDI, in his Official Capacity as Building
Inspector for the Town of Yorktown, N.Y.

Respondents-Defendants.

PRELIMINARY STATEMENT

Petitioner-Plaintiff RC RECREATION DEVELOPMENT, LLC, by and through its undersigned attorneys, alleges and states as follows as and for its combined (i) Petition pursuant to Article 78 of the NY *Civil Practice Law & Rules* (“CPLR”); (ii) Complaint for declaratory relief pursuant to CPLR Article 30 and (iii) for injunctive relief and the appointment of a Receiver pursuant to CPLR Articles 63 and 64, respectively.

NATURE OF THE COMBINED PROCEEDING

1. RC Recreation Development, LLC (“RC”) has been the concessionaire under a

certain Concession Agreement between RC and the Town first dated September 19, 2014, and amended on May 24, 2018. As evidenced by its terms, the Concession Agreement's fundamental purpose was to establish a unique public-private-partnership, whereby RC, a private golf course developer, would rehabilitate, restore, and operate for a term, an Executive (9-hole) golf course on Town-owned land. Sensitive to the uncertainties of land development, the original Concession Agreement contained no deadline or date by which the golf course was required to commence operating. A true and correct copy of the Concession Agreement, as amended, is annexed hereto as **Exhibit A**.

2. RC's principal, and the driving force behind the PPP idea, Rocco Cambarari, passed away unexpectedly in April 2017 before meaningful rehabilitation work had progressed on the golf course site. A new management group took over, and agreed with the Town to amend the Concession Agreement in order to provide greater business certainty and predictability to RC (including its lenders and investors). Among other things, the 2018 First Amendment to the Concession Agreement (i) extended the term of the Concession Agreement until August of 2038; (ii) established a reimbursement formula in case the Town were to terminate the Concession Agreement without cause; (iii) stayed certain of RC's obligations under the Concession Agreement until the golf course's commercial operation date.

3. As with the original Concession Agreement, the First Amendment contained no deadline or date by which the golf course was required to commence commercial operation. Indeed, at no time during the relationship has RC ever agreed contractually to a deadline or commercial operation date.

4. In January of 2020, however, a new regime took office in Yorktown, led by new Town Supervisor Matthew Slater. Almost immediately, Slater began complaining publicly and

repeatedly about what he perceived to be long delays in the golf course development process. But without a contractual commercial operation date, and with most of the other operative requirements of the Concession Agreement having been stayed by the First Amendment, and faced with a contractual requirement to reimburse RC for “the unamortized portion of all fixed equipment installed by Licensee as part of the license and concession on a prorated basis, and reimbursement for all additional equipment not removed by Licensee,” (Ex. A, First Amendment, ¶ 6) the Town Supervisor decided on a new approach – force the project to come before the Town Planning Board, so that the Planning Board could impose additional conditions and deadlines on RC’s operations that the Town could not under the Concession Agreement and, when that effort failed, manufacturing a series of alleged building code violations, declaring those to be a “material breach” of the Concession Agreement, and ultimately but not surprisingly given Slater’s personal animus towards RC, purporting to terminate the Concession Agreement without compensation to RC for its eight year investment.

5. By this combined special proceeding/action, RC seeks a Judgment and Order annulling, vacating, and setting aside companion arbitrary and irrational determinations of the Town Board of the Town of Yorktown (“Town”) issued on September 6, 2022, which determinations (i) purported to declare RC in “material breach” of the Concession Agreement; and (ii) authorized Town issuance of a Request for Proposals seeking RC’s replacement, while the CA remained in full force and effect with more than two decades left on its term.

6. RC seeks a further Judgment and Order annulling, vacating, and setting aside the follow-on resolution of the Town Board dated November 15, 2022, erroneously and arbitrarily determining that the Concession Agreement, which has been in place since 2014 and has twenty years left in its term, was terminated by RC’s alleged failure to cure the alleged breaches identified

in the September 6, 2022, resolution. The November 15 determination to terminate the Concession Agreement also relied upon several new alleged violations, of which RC was provided no prior notice whatsoever, and no opportunity to cure.

7. As a result of the above defective, irrational, and arbitrary Town rulings and determinations, the Town, by and through a cadre of armed law enforcement agents and after forcefully cutting off RC's lock and violently entering the facility through closed gate, illegally and forcibly ousted RC from the golf course premises without cause or justification.

8. Now, the Town sits poised to capitalize on its arbitrary and irrational actions by announcing its intent to award, on December 19, 2022, a new concession contract under the prematurely issued RFP, with an effective date of January 1, 2023. If that were to occur, restoring RC to the premises upon annulment of the above-referenced resolutions will present impossible entanglements and will prejudice RC's ability to be compensated for the value of the fixtures and equipment currently present at the golf course facility.

PARTIES

10. RC Recreation Development, LLC is a New York limited liability company with a principal place of business located at 795 Route 6, Shrub Oak, Westchester County, New York, and is the contractual counterparty pursuant to that certain Concession Agreement by and between it and the Town of Yorktown, as amended, as more fully described *infra*.

11. The Town of Yorktown, New York, is a political subdivision of the State of New York with its principal offices located at 363 Underhill Avenue, Yorktown Heights, Westchester County, State of New York and is the contractual counterparty to RC pursuant to that certain Concession Agreement by and between it and the Town of Yorktown, as amended, as more fully described *infra*.

12. Matthew J. Slater is the duly elected Supervisor of the Town of Yorktown, assuming that office as of January 1, 2020, with a principal place of business located at 363 Underhill Avenue, Yorktown Heights, Westchester County, State of New York. Based on his direction of and personal involvement in the unlawful and unconstitutional transactions and occurrences described, *infra*, Slater is being sued herein in his official and individual capacities.

13. Sergio Esposito is a member of the Yorktown Town Board, assuming that position on January 1, 2022, with a principal place of business located at 363 Underhill Avenue, Yorktown Heights, Westchester County, State of New York. Based on his direction of and personal involvement in the unlawful and unconstitutional transactions and occurrences described, *infra*, Esposito is being sued herein in his official capacity.

14. John H. Landi is the appointed Building Inspector of the Town of Yorktown, with final decision-making authority over enforcement of the Town Zoning and Building Code, with a principal place of business located at 363 Underhill Avenue, Yorktown Heights, Westchester County, State of New York. Based on his direction of and personal involvement in the unlawful and unconstitutional transactions and occurrences described, *infra*, Landi is being sued herein in his official capacity.

STATEMENT OF FACTS

15. In September 2014, RC and the Town established a public-private-partnership whereby RC agreed to redevelop, and the Town agreed to cooperate in the redevelopment of, a new, state-of-the-art executive (Par 3) golf course to be known as “Valley Fields Golf Course.” Valley Fields was to be a public, daily-fee golf course constructed on a parcel of Town-owned land which was the location of a former, partially-developed and by 2014, fully dilapidated former golf course.

16. On September 19, 2014, RC and the Town entered into a written “Concession Agreement,” which set forth the initial terms and conditions governing the public-private-partnership, *i.e.*, in exchange for payment of an annual license fee, “The Town hereby grants to Licensee, and Licensee hereby accepts from the Town, a License to enter onto, use and occupy the premises at Valley Fields Park to operate a golf recreational facility concession for the public (referred to hereinafter as the “Golf Concession”) and to operate a food concession for the accommodation of the public using the Park, in accordance with the terms and conditions contained herein.” (Ex. A, ¶ 1)

17. The public-private-partnership concept behind the Concession Agreement was intended to facilitate the golf course redevelopment by leveraging private dollars in that effort, with the golf course ultimately being turned over to the Town for no charge at the end of the license term.

18. In the Concession Agreement, the parties agreed:

Licensee, as an independent Licensee, shall have the sole and exclusive right to perform all tasks required to operate and maintain the [golf course]. The Town and Licensee agree that they shall cooperate reasonably with each other to permit Licensee to fulfill its obligations under this Agreement. Licensee shall oversee, coordinate, organize, manage, direct, and facilitate the maintenance of the [golf course] in a manner so as to maintain the [golf course] in a condition substantially better than the condition of the premises at the commencement of this License . . . Licensee shall operate the Licensed Premises in an efficient and business-like manner comparable to that of other quality daily-fee golf courses and food concessions in public parks in Westchester Count and the Lower Hudson Valley.

(*Id.* ¶ 2(c))

19. Paragraph 6 of the Concession Agreement set forth “Licensee’s obligations, including as to “Fixtures” (Ex. A ¶ 6(b)); the “Restaurant” (*id.*); and the “Golf Course.” (*Id.*) All these provisions were later tolled pending the golf course opening.

20. Paragraph 6 of the Concession Agreement also states:

The Superintendent and any member of the Town Board, or their authorized representatives, shall be entitled to enter any space assigned to the Licensee hereunder for the purpose of inspecting, observing and monitoring any aspect of Licensee's operations. The Licensee shall also permit inspection of same by any federal, state, county, Board of Health or municipal officer having jurisdiction. The Licensee, at its sole cost and expense, shall promptly remedy any and all violations, for which it is responsible, issued as a result of such inspection.

(Ex. A ¶ 6(b)(vii); *see also* Ex. A ¶ 6(b)(viii))

21. The Concession Agreement had an initial, ten-year term (subject to renewal), but did not contain any development milestones or a required commercial operation date.

22. Paragraph 11 of the Concession Agreement governed "Assignment:" "Licensee shall not assign, sublet, subcontract or otherwise dispose of this License, or any right, duty or interest herein, without the prior written consent of the Town Board, nor shall this License be transferred by operation of law." (*Id.* ¶ 11)

23. In reliance on and in accordance with the Concession Agreement, RC promptly commenced clearing and redeveloping the golf course.

24. In or about early-2018, one of RC's principals, Rocco Cambareri, died unexpectedly. In May of 2018, RC's remaining principal, and the Town entered into the "First Amendment to Concession Agreement."

25. In pertinent part, the First Amendment (i) extended the initial lease term to August 31, 2028; (ii) established that any license fees payable to the Town were not due until "four months from the date that the golf course opens to the public;" (iii) deleted Section 4(c)(ii) of the Concession Agreement, relative to certain costs and charges; (iv) clarified that the "Town's approval of an assignment, sublet or subcontract" of RC's rights under the Concession Agreement "shall not be unreasonably withheld;" and (v) extended the cure

period and otherwise modified the Concession Agreement's termination provisions. A true and correct copy of the First Amendment to Concession Agreement is annexed hereto as **Exhibit B**.

26. As to the entirety of Section 6 of the Concession Agreement, the First Amendment states, "The Licensee's obligations set forth in Section 6 shall commence as of the park opening date and shall not be effective during the construction and build-out phase of the park and restaurant facilities." (*Id.* ¶ 7)

27. The First Amendment did the same delayed activation relative to "[t]he requirements of Section 16, Insurance." (*Id.* ¶ 9)

28. These provisions establish that none of the obligations and/or rights established under Section 6 or 16 of the Concession Agreement would become binding or effective until "the park opening date."

29. As to termination, the parties to the First Amendment substituted the one-sided termination provision of the original Concession Agreement for an elaborate and prescriptive termination process:

Prior to the expiration date of this License, the Town has the absolute right to terminate this License at will by providing written notice of such intention to terminate the license at least sixty (60) days prior to the commencement of the golf season on April 1 each year. In the event of a material breach of the License by the Licensee, the Town may immediately terminate this License if the Licensee does not cure the condition giving rise to the material breach, to the extent curable, within thirty (30) days of such written notice by the Town identifying a material breach.

If the Town terminates the license without there being a material breach of this Agreement that has not been cured within thirty (30) days of the receipt of notice of such breach, or is not curable, then in such event, the Town shall reimburse the Licensee for the unamortized portion of all fixed equipment installed by the Licensee as part of this license and concession on a prorated basis, and reimbursement for all additional equipment not removed by Licensee. In the event of a dispute as to the value of the work rendered by the Licensee, both the Town

and Licensee agree to a third-party appraiser, to be mutually chosen by the parties, to determine the value of such work prior to the termination of this agreement.

(Ex. B ¶ 6)

30. The First Amendment also contains an indemnification clause “to provide for indemnification by the Town in the event that the Licensee is harmed because of the negligence or willful misconduct of the Town or its employees, officers, or agents, unless the claim involves passive or concurrent action by the Licensee.” (*Id.* ¶ 8)

31. Both the Concession Agreement and the First Amendment to Concession Agreement were signed by both parties, and entered into for due consideration: in addition to the License Fee and public service to be provided, the Town would succeed to ownership of the golf course at the end of the Agreement’s term.

32. From the date of the First Amendment until January 1, 2020, development of the golf course continued to proceed apace in accordance with the Concession Agreement, as amended. This development was a monumental effort given the dilapidated condition of the long-abandoned golf course parcel.







33. Indeed, less than a year before this filing, in December 2021, the Town's Planning Director had concluded that "The construction to date has largely followed this general plan. The building has been renovated under building permits issued by the Town's building department. Earthwork has been ongoing at the entirety of the course. Work on the fairways has been predominately maintenance and refurbishment activity, while the trees and greens have seen more extensive work in shaping, elevation, and size while largely remaining in existing locations."

34. The same report continued, "The site work associated with the fairways, tees and greens, has been designed and has been commencing in a manner that appears to have satisfied the concerns of the Planning Board during review." It also established that, without RC's consent or approval, "the Town Board requested that the Planning Board conduct a site plan review and

approve a comprehensive plan of development to serve as a guide and record of the work satisfactory to the Town.”

35. RC never consented to, and the Concession Agreement contains no provisions authorizing referral to the Town Planning Board or a Town-imposed “comprehensive plan of development” of the golf course RC had been contracted with to develop itself.

36. Notwithstanding repeated inquiries, moreover, the Town has failed to produce any proof of the necessary referral to the Planning Board required pursuant to NY *Town Law* § 241. Upon information and belief, that is so because there is no such referral – Slater took it upon himself to conscript the Planning Board into his scheme to eject RC unlawfully based on Slater’s personal view that the development had taken too long.

37. In January 2020, RC accordingly found that its development project, which had been underway at that time without Town intervention for six years, had been referred “at the behest of the Town Board” to the Planning Board for some unspecified review process. But under the Concession Agreement, it was RC, not the Town, who was responsible for “procur[ing]” and “maintain[ing]” “all permits, licenses and approvals from all applicable governmental authorities.” RC objected to this unlawful referral, but the COVID-19 pandemic hit a short time later, effectively shutting down the golf course development for more than a year.

The Town Unreasonably Conditions its Consent to Assignment of the Concession Agreement

37. In or about June 2021, while it was objecting to the baseless Planning Board referral, RC requested the Town’s consent to an assignment of the Concession Agreement to an established and experienced corporate entity controlled by the same principles, Food Bridge Associates, LLC.

38. Under Paragraph 5 of the First Amendment, the Town agreed that its approval to

an assignment “shall not be unreasonably withheld.”

39. In August 2021, the Town unreasonably withheld its consent to the assignment, demanding the following contract amendments as “a condition of the assignment”:

- a. Prompt cooperation with all Town employees and departments, including the Planning, Engineering and Building Departments;
- b. At [RC’s] cost and expense, hire a project manager to liaise with and promptly provide all information requested by the Town;
- c. Pursue Town Planning Board approval of the pending site plan, stormwater pollution plan permit, tree removal and mitigation plan permit, and wetlands permit applications with commercially reasonable diligence (“Planning Board Approvals”);
- d. Final completion of the rehabilitation of the park and facilities no later than 6 months after the issuance of the Planning Board Approvals (“Final Completion Deadline”);
- e. Apply for final Town Building Department, Engineering Department and Planning Department inspections to approve the commencement of operations at the site, within 6 months of the issuance of the Planning Board Approvals (“Final Inspection Deadline”)

40. The Town also made clear its intent in proposing these new, draconian contract terms as a condition to its agreement to a mere assignment: “Failure to meet the Final Completion Deadline or Final Inspection Deadline will constitute a material breach, and ***result in immediate termination of the Concession Agreement, without reimbursement.***” (Emphasis supplied).

41. In other words, the Town sought to condition its consent to an assignment on the wholesale rewrite of the Concession Agreement, including imposition of a commercial operation deadline, the consequences of failure to reach would be to allow the Town to obtain the fruits of RC’s development efforts for free.

42. By this point, RC realized it was being set up by the Town, which appeared committed to ousting RC from the Concession Agreement and the premises without compensation and by any means available.

43. In October of 2021, RC attempted to work through these issues with the Town by

writing directly to Slater:

Matt, in my opinion, Yorktown has been and is in breach of my contract in a number of areas. AS you are aware, we have a convenience clause in our first addendum which gives us reciprocal rights. Specifically, Yorktown can request to end this contract without cause and reimburse me for all the expenses to date (approximately 6 Million Dollars) or if there is a breach on the part of Yorktown (which exists in my opinion, not corrected in a reasonable time) I can request use of the convenience clause to my benefit.

Matt, I am not interested in getting involved in a lengthy and expensive legal entanglement. I am interested in working these matters out and getting back on track with the original plans of this 3P and giving me an opportunity to earn a return on my investment and recoup the sunk costs during the life of the lease.

I look forward to hearing from you to amicably resolve these matters.

44. By November 2021, RC had developed its own “wish list” of items to be included in any Second Amendment to the Concession Agreement. Among other things, RC requested further extension of the Concession Agreement’s term to extend 10 years from commercial operation, with two 10-year extensions. RC conveyed this list to James Martorano, Superintendent of the Town Parks and Recreation Commission, an independent agency within the Town of Yorktown. Extended negotiations between RC, on the one hand, and Martorano, on the other, then ensued.

45. On December 6, 2021, the Planning Board granted the requisite approvals and issued its “Resolution Approving Site Plan, Stormwater Pollution Prevention Plan, Wetland Permit and Tree Permit for the Town of Yorktown Par 3 Golf Course AKA Valley Fields Golf Course.” A true and correct copy of the December 6, 2021, Resolution is annexed hereto as **Exhibit C**.

46. But in February 2022, the Town doubled-down on its demands for additional concessions from RC before it would consent to assignment of the Concession Agreement. According to the Town Attorney, “The Town would like to know if we can make progress on the open issues. If your client is no longer seeking an amendment to the Concession Agreement, and

is merely seeking the assignment, please advise whether the following conditions are acceptable:

(1) Foodbridge must provide proof of consent to assignment from RC to Foodbridge; (2) Foodbridge agrees to defend and indemnify the Town for any claim related to the assignment; (3) Foodbridge pays the outstanding DEC fines; (4) Foodbridge agrees to abide by the Planning Board resolution; (5) Foodbridge obtains all necessary insurance (e.g., CGL, workers comp, etc) naming the Town as additional insured; (6) Foodbridge will use its best efforts to commence operation of the golf course and restaurant by July 4, 2022; and (7) Town proposes legislation to allow the sale of alcohol on the premises; Town will also grant authority to sell alcohol on the premises in the Concession Agreement, subject to applicable law, which is not currently authorized.”

47. RC rejected these terms outright, given that the Town was seeking to fundamentally rewrite the Concession Agreement as a prerequisite to consenting to a simple corporate assignment.

48. On May 22, 2022, the Town sent a formal delegation to the golf course to meet with RC’s representative Frank DiPeri to work out the terms of the Second Amendment the parties had been discussing for the previous several months. The Town delegation included Matt Talbert, a commissioner on the Yorktown Parks and Recreation Commission, the Deputy Town Supervisor and Town Board member Tom Diana, Town Clerk Diana Quast, the Town’s golf course consultant Joe Falcone, and James Martorano, the Town’s Superintendent of the Parks and Recreation Commission. This Town contingent came to the golf course with Slater’s knowledge, acquiescence, and permission for the explicit purpose of working out the terms of the Second Amendment to the Concession Agreement.

49. Upon information and belief, each of the above individuals was present at the May 22, 2022, meeting with Slater and the Town Board’s express permission and authorization and at

their behest, and with full authorization and authority to negotiate a Second Amendment on the Town's behalf, to be submitted to the Town Board for approval at its next regularly scheduled meeting.

50. On May 23, 2022, RC received the following communication from Martorano:

From: James Martorano <jmartorano@yorktownny.org>
Sent: Monday, May 23, 2022 9:55 AM
To: Larry Nussbaum <larrynussbaum1@gmail.com>
Cc: Frank DiPeri <finaltouch845@hotmail.com>; Matt Talbert <mattfire56@yahoo.com>; Diana Quast <dquast@yorktownny.org>; Tom Diana <diesel9401@optonline.net>; Joe Falcone <jfalc1057@yahoo.com>
Subject: FW: Second Amendment to Agreement

Larry,

As I'm sure you are aware, we met on location with Frank to discuss the 2nd Amended agreement, we are all looking to get done. We had representation from your organization (Frank), the parks department, the Rec Commission, and the Town Board, to keep all parties on the same page.

After our meeting, the attached document is what we all agreed on.

Please review and let us know if this agreement works for you, since ultimately we'll need your signature on it.

Hope to hear from you soon.

Sincerely,

James J. Martorano Jr.
Yorktown Parks & Recreation
Superintendent
Cell: 845-803-2875
Office: 914-245-4650

Fax: 914-245-1608

51. Martorano then tendered to RC for execution a fully integrated written document titled "Second Amendment to Concession Agreement." This document recited (among other things) "WHEREAS, due to unforeseen circumstances, the completion of the rehabilitation of the

park and facility has been delayed,” and contained the agreed-upon amended terms, *i.e.*, (i) extending the lease expiration date to June 30, 2032; (ii) amending the renewal options to permit renewals out to June of 2042; and (iii) clarifying that the initial 20-year lease term would commence, and license fees would become payable as of July 1, 2022. A true and correct copy of this Second Amendment proffered by Martorano is annexed hereto as **Exhibit D**.

52. RC signed the Second Amendment as proposed and returned the signed document to the Town on June 4, 2022. At that time, however, RC learned that Slater had objected to the agreed-upon terms of the Second Amendment, and that the Town was poised to adopt on June 7 a resolution authorizing a Second Amendment, but on far different terms which, for the Town, were much more favorable. For example, the Town’s version of the Second Amendment would have had RC releasing the Town for all prior liabilities, which RC never agreed to.

53. RC then on June 5, 2022, petitioned Slater and the Town Board (among others) not to adopt this defective resolution and/or approve its competing contractual terms:

Good Afternoon

RC Recreation Development LLC urges each council member to vote NO on passing the Par 3 Resolution scheduled for Tuesday, June 7, 2022.

I have attached an article explaining in detail that resolutions passed by a municipality in NYS do not create a legal obligation to the parties, namely RC Recreation Development LLC and Yorktown, NY, the parties to this proposed resolution.

I urge each council member to continue with finalizing the agreed to, by all parties, to a 2nd Amendment, discussed on Sunday May 22, 2022.

A 2nd Amendment creates an express contract, legally binding. As you are aware, the town board is required, by resolution, to then authorize the actual contract for signature.

I would like to take this opportunity to remind everyone that this 3 Par Golf Course is a Public Private Partnership with all the common obligations to both the Public and Private parties to this Partnership. (Perhaps, we can set up a time, when we can discuss these obligations together)

RC Recreation Development LLC has built, which will be a 3 Par Golf Course

nationally recognized with a perfectly designed Club House, sparing no expense and well over the original budget. The purpose, as Frank DiPeri repeatedly expressed, is to have a legally binding contract in order to answer our financing issue. We need the ability to increase our mortgage leasehold interest.

Lenders and investors matter, too.

I urge the Town Board to vote NO on the resolution and to meet with us to discuss the full Yorktown public/political buy-in for this "YORKTOWN DESTINATION FACILITY" for Yorktown residents and their guests.

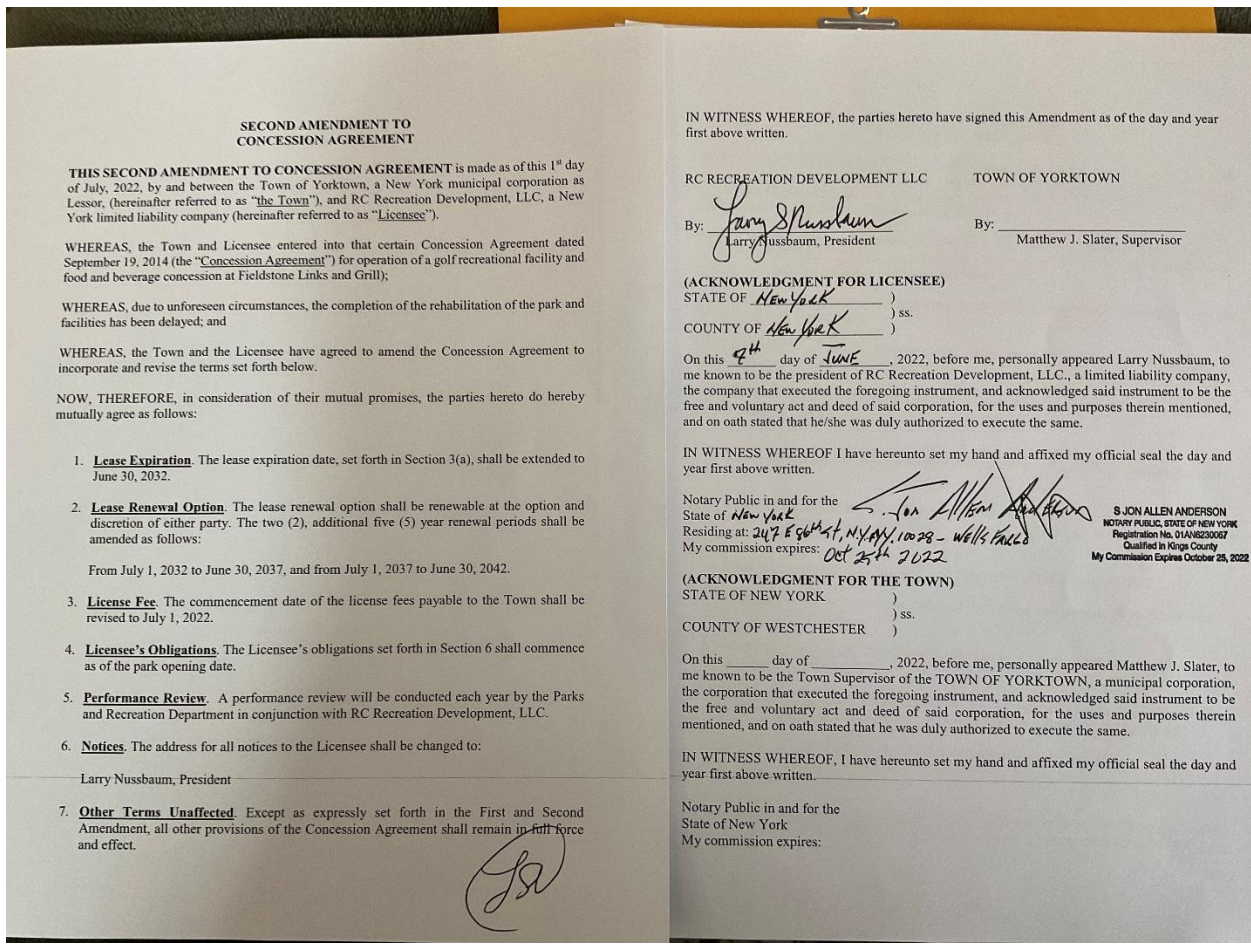
Thank you for consideration
Regards
Larry Nussbaum
Frank DiPeri

54. On June 7, 2022, RC again reiterated its objections to the Town Board taking up contract terms different from those RC had agreed to with the Town's agents and employees just days before:

From: Larry Nussbaum <larrynussbaum1@gmail.com>
Sent: Tuesday, June 7, 2022 12:15 PM
To: Thomas Diana <tdiana@yorktownny.org>; Sergio Esposito <sesposito@yorktownny.org>; Luciana Haughwout <lhaughwout@yorktownny.org>; Ed lachterman <elachterman@yorktownny.org>; Matthew Slater <m Slater@yorktownny.org>
Cc: James Martorano <jmartorano@yorktownny.org>; Frankqpf. Zoq DiPeri <finaltouch845@hotmail.com>; Larry Nussbaum <larrynussbaum1@gmail.com>
Subject: Executed Second Amendment to Concession Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,
I have attached a duly executed Second Amendment to Concession Agreement negotiated and agreed to between the parties on Sunday, May 22. This agreement was drafted by Yorktown, NY and forwarded to me to execute.
This Second Amendment is a binding agreement between the parties. A Town Board Resolution, as previously explained in an earlier email, is problematic for both Yorktown, NY and RC Recreation Development LLC.
Thank you for your consideration
Regards
Larry Nussbaum



55. Slater then took it upon himself to respond to RC, repeatedly claiming that the Second Amendment was invalid since it was never adopted by Town Board resolution. Several months later, Slater went so far as to impugn his fellow Town Board members, the Town Clerk, and Superintendent Martorano, stating, in sum and substance, that they were reengages who were never authorized to negotiate with RC on the Town’s behalf and who would be “brought to justice” or similar.

56. Needless to state, that never happened: Ms. Quast remains Town Clerk. One of the Town Board members who negotiated the Second Amendment is poised to take over as Town Supervisor. The other remains an active member of the Town Board. Martorano remains as Superintendent of the Town Parks and Recreation Commission. Slater was lying.

57. Undeterred, the Town entered the defective resolution authorizing the Parks and Recreation Commission to enter into an agreement that materially differed from the one Martorano proffered to RC on May 23, 2002, at its June 7, 2022, regular meeting, but not before again complaining vehemently about the length of time it had taken to get the project to commercial operation, a matter over which the Town had no contractual control. RC never consented to these new terms. A true and correct copy of the Town Board's June 7, 2022, resolution is annexed hereto as **Exhibit E**.

58. The June 7 resolution accompanying the Town Board's version of the Second Amendment cites no construction safety, building code, or other concerns relative to the golf course.

59. The June 7 resolution accompanying the Town Board's version of the Second Amendment recites an alleged "representation" by Petitioner to "commence operation of the golf course and restaurant by July 4, 2022," although that alleged "representation" is not reflected in the actual "Resolved" portion, which are the terms sought to be imposed on Petitioner.

60. Thereafter, Martorano, who had negotiated, drafted, and proffered an entirely different Second Amendment to RC two weeks prior, had the gall to proffer the Town Board version to RC for execution without explanation. RC, which had already executed the Second Amendment drafted on consent on May 22, refused to execute the Town Board's version of the same.

The Town Retaliates Against RC by Manufacturing a Pretextual Reason to Terminate the Concession Agreement Without Compensation

61. By correspondence dated June 17, 2022, RC indicated its expectation that the Town abide by the fully negotiated Second Amendment it had signed on June 4, 2022, and not the attempted amendments the Town Board voted on at its June 7, 2022, meeting. RC indicated that if the Town desired further amendments to the Concession Agreement, it should propose a Third Amendment. A true and correct copy of RC's June 17, 2022, letter to Martorano is annexed hereto as **Exhibit F**.

62. Slater then took it upon himself to reply to RC's counsel, stating in conclusory terms that RC's allegations were inaccurate.

63. On July 4, 2022, Slater, Esposito, and others, made an unannounced visit to the golf course under the guise of wanting to play a round of golf. On that date, Slater knew that the golf course was not yet in commercial operation. His July 4 visit was later admitted to be nothing more than a cheap political stunt and warrantless inspection, as Slater shared his observations and experiences on July 4 with the Town Board at its July 5, 2022, meeting titled "Work Session, Par 3 Golf Course." Apart from that granted to the public at large, RC received no notice of this agenda item or what it was intended to consist of.

64. The official meeting minutes of the July 5, 2022, work session reveal that it was Slater who directed the Town building department to issue a stop work order to RC and declare it in material breach of the Concession Agreement, thus commencing the process of terminating the Concession Agreement without compensation to RC.

65. For example, when this agenda item was called, Slater set forth a series of unfounded complaints about the golf course development project, mostly centered on the length

of time he perceived the development to be taking, several times stating his view that it “had gone on too long” and expressing similar statements.

66. At several points, Slater indicated his desire to replace, immediately, RC with another concessionaire, and directed the Board to consider issuing a request for proposals seeking just such a substitution. *Slater did so while the Concession Agreement, as amended, remained in full force and effect.*

67. In fact, Town Board member Esposito was clear in his intentions: “I’m tired of the double talk and the double speak,” said Councilman Sergio Esposito. “We want the project to move forward, but it’s not happening. It’s too much at this point. I just don’t think they can do the job. We want this open for our residents.”¹

68. Without any evidence supporting it, “Supervisor Matt Slater . . . criticized RC Recreation for “blatantly” refusing to meet with the Town Board when invited.”

69. As if on cue, Town Board member Sergio Esposito called upon Building Inspector John Landi to make a formal presentation to the Board at the July 5, 2022, meeting relative to the status of the golf course development project. Mr. Landi and his colleagues also complained largely as to the length of time the project was taking, and produced a list of “punch list” items that must be completed before the golf course restaurant could be issued a certificate of occupancy. A true and correct copy of this punch list is annexed hereto as **Exhibit G**.

70. But of course, being only partially constructed, RC had not requested any such certificate of occupancy, but instead would only do so, as customary once the project was completed. All of Landi’s punch list items were premature.

¹ [Yorktown Officials Issue Stop Work Order to Golf Course \(theexaminernews.com\)](https://www.theexaminernews.com) (last visited July 14, 2022)

71. At several points, Slater engaged in various histrionics and other seemingly feigned and over-the-top expressions of frustration and exasperation with RC and/or the project and on multiple occasions stated that he wanted RC to be replaced forthwith. Board member Esposito did the same.

72. Again, as if on cue, Board member Esposito raised to Landi the prospect of a stop work order being issued by the Building Inspector. Slater enthusiastically joined in this line of questioning in support of the Stop Work Order concept. In response, Building Inspector Landi indicated that the only alleged violation he could make at this time was a broad allegation that some of the work (all of which was being performed by licensed professionals) was somehow not “workmanlike” and actionable under the NYS Property Maintenance Code.

73. Slater’s control over this colloquy and directive to Landi was clear and unmistakable:

Supervisor Slater said his thought was to issue a Stop Work Order and put out an RFP. Mr. Rodriguez said the Town could put out an RFP whenever it wants; a Stop Work Order could be done as long as the Building Inspector feels it is appropriate. ***Supervisor Slater asked Mr. Landi if he thought a Stop Work Order was necessary at this point*** and Mr. Landi said until he got proof that they are going to start doing things the right way, yes, because everything they are doing would have to be pulled out. Supervisor Slater asked Commissioner Talbert his opinion on the Stop Work Order and Commissioner Talbert he would follow Mr. Landi’s lead. Supervisor Slater asked Superintendent Martorano his thoughts and he also said he would follow the Building Inspector’s recommendation. Mr. Landi said there are provisions in the State Code that allow him to take action based upon workmanship. He said the workmanship at the bar area and in the seating area was done beautifully; however, it is the work behind the scenes where it is most important for a restaurant that is a disaster (the kitchen). Mr. Landi said if this is going to be listed as a restaurant, he would stop the work until it was looked at professionally. He said he also wants to find out who did the electrical inspections because he does not agree with the issuing of the certificates and would override their issuance.

Supervisor Slater directed Superintendent Martorano to begin an RFP, assisted by the Town Attorney. Councilman Diana suggested giving the contractor until July 23 to see if anything gets done. Supervisor Slater disagreed. Superintendent

Martorano said most likely only the driving range could open. *Supervisor Slater said the Stop Work Order should be issued and that this is a tremendous disappointment to the Town.* He said the Town departments have bent over backwards to help in this project and this is no fault of theirs. Commissioner Talbert stated that he did not believe the principals were taking advantage of the Town; he said he believed they were in over their heads. He said an astronomical amount of money has been spent, and they did not spend that money to fail. *Supervisor Slater directed Mr. Landi to issue a Stop Work Order and the trailers would be removed.*²

74. On June 28, 2022, the Town conducted its *first ever* ostensible building and safety inspection of the Golf Course. Under the Town Code, such inspections are only conducted at the request of the landowner, when it is prepared to apply for a final certificate of occupancy. RC never requested any such inspection, as it was not prepared to apply for a final certificate of occupancy. The inspection was warrantless and illegal.

75. At approximately 9:30 a.m. on July 6, 2022, Landi, accompanied by an armed Yorktown police officer, appeared at the golf course, and affixed a Stop Work Order to the clubhouse and restaurant complex. The sole statement of alleged reasons for issuance was “workmanship not in accordance with NYS Building Code.”

76. The Stop Work Order failed to specify which “workmanship” it referred to, failed to cite any violation of any specific local law or ordinance, and failed even to specify the authority upon which it was being issued. Nor did the Stop Work Order specify the steps necessary to cure the alleged violation(s) upon which it was based. A true and correct copy of the Stop Work Order is annexed hereto as **Exhibit H**.

²These discussions and decisions begin at 1:19 of the attached video of the July 5, 2022, Town Board meeting: https://yorktownny.granicus.com/MediaPlayer.php?view_id=1&clip_id=1468

77. In other words, the Town issued a vague Stop Work Order for allegedly inadequate workmanship somewhere on the construction site, then both failed to identify those areas with any specificity and prevented RC from accessing the property to cure any such issues.

78. By contrast to the vague and ambiguous Stop Work Order issued on July 6, 2022, the Town Code requires that “Stop-work orders shall be in writing, be dated and signed by the Building Inspector, state the reason or reasons for issuance, and, if applicable, state the conditions which must be satisfied before work will be permitted to resume.” *See* Town Code §15-6(B). A true and correct copy of Section 15-6 of the Town Code, titled “Stop-Work Orders,” is annexed hereto as **Exhibit I**.

79. By correspondence dated July 7, 2022, RC objected to the Stop Work Order, and Slater’s oppressive conduct, on a variety of different grounds. A true and correct copy of RC’s July 7, 2022, letter to Landi is annexed hereto as **Exhibit J**.

80. On the same date, RC served a Notice of Claim on the Town pursuant to N.Y. *Town Law* § 65(3). A true and correct copy of RC’s Notice of Claim is annexed hereto as **Exhibit K**.

81. On July 11, 2022, and, upon information and belief, at Slater and/or Esposito’s specific demand and in direct retaliation against (i) RC’s June 17, 2022, objections relative to the Town’s unlawful refusal to execute the Second Amendment; (ii) RC’s July 7, 2022, objections to the unlawful Stop Work Order and Slater’s dominance of the Town Board; (iii) RC’s Notice of Claim, a large crew from the Town water department came on the site *en masse* again with armed Yorktown police officers in tow and modified the water supply system to meter water use at the golf course property for the first time since the Town moved the supply piping to a point behind the meter.

82. During the July 11, 2022, search, the law enforcement officials present, which included two patrol officers and a Sergeant called to the site by Landi or at his specific direction, threatened RC's agents and employees with criminal prosecution for felony theft of services, although it was the Town which had altered the water supply line at issue. This caused RC's agents and employees to suffer fear and intimidation and caused some contractors to walk off the job rather than be subjected to threats of criminal prosecution.

83. A formal police report was filed, and a criminal investigation ensued. On July 14, 2022, the case was deemed "inactive."

84. It was only after this search and threat of criminal liability that the Town Attorney replied to RC's July 7, 2022, correspondence by letter dated July 12, 2022. In its July 12, 2022, correspondence, the Town Attorney confirmed that the Town was repudiating in all respects the Second Amendment to Concession Agreement, ostensibly on the ground that the Town Board had not authorized it and the Town Supervisor (Slater) had not signed it, essentially ignoring the confirming resolution of June 7. A true and correct copy of the Town Attorney's July 12, 2022, correspondence is annexed hereto as Exhibit L.

85. Next, the Town Attorney attempted to rely on Paragraph 6 of the Concession Agreement as authorization for the entry and issuance of the Stop Work Order, in disregard of the First Amendment to Concession Agreement *which tolled all the rights and obligations set forth in Paragraph 6* until "the park opening date and shall not be effective during the construction and build out phase of the park and restaurant facilities." (Second Amendment ¶ 7)

86. Third, the Town Attorney pointed to the expiration of the applicable Building and related Plumbing and other Permits, even though the *Town* was the holder of at least one of those permits and would therefore *itself* be responsible for its renewal, and even though renewing those

permits is a mere ministerial matter, given that the Town has waived any requirement of paying a fee therefor in the context of this public-private-partnership. They are available to be renewed as of right.

87. Fourth, the Town Attorney set forth a series of alleged “code violations” never before disclosed to RC but which, in any event, were the usual and customary conditions at an incomplete construction project, such as exposed wiring and incomplete infrastructure. These alleged “violations” were wholly without basis given the incomplete status of the project.

88. Fifth, the Town Attorney claimed that RC was responsible for an allegedly “illegal” water connection, when it was the *Town itself* that made the water supply line alterations being complained about. In other words, the Town moved the point of supply behind the meter several years ago, and now claims that such a move was not only “illegal,” but is attributable to RC, who had nothing to do with it in the first place, except to complain about inadequate water pressure and reliability. The Town moved the supply line to resolve this issue.

89. The Town Attorney, foreshadowing the Town’s real intent to terminate the Concession Agreement at any cost, attempted to deem this condition a “material breach” of the Concession Agreement, as amended.

90. The Town Attorney also noted the July 11, 2022, raid of the golf course by law enforcement and the Town’s water department, and that the Town had “taken it upon itself” to move the water supply line again, and indicating that the Town would now, for the first time eight years after inception of the partnership, begin metering the water use.

91. The Town Attorney then listed under the heading of “items [that] are not complete, and must be completed before the commercial operation of the Park is possible,” the same list of

punch-list items produced by Landi at the July 5, 2022, Town Board meeting and upon which Slater and the Board exclusively relied in directing issuance of the vague Stop Work Order.

92. In other words, none of the alleged “code violations” listed in the Town Attorney’s July 12, 2022, correspondence were presented to the Town Board on July 5 when it directed Landi to issue the defective Stop Work Order, and none of the items on Landi’s list presented to the Board rise to the level of code violations.

93. On July 15, 2022, Petitioner-Plaintiff’s counsel sent an unfiled copy of a draft Petition-Complaint to the Town Attorney, requesting that he accept service on the Town and individual Defendants’ behalf. The Town Attorney acknowledged receipt of the pleading on that date.

94. On July 18, 2022, the first business day after the Town Attorney received a copy of the draft pleading asserting various claims against the Town and others, Landi made another unannounced and warrantless inspection of the golf course facilities.

95. On July 19, 2022, in the context of yet another warrantless search, Landi then posted a “Memorandum of Violations” at the golf course, in a transparent attempt to cure some of the legal defects in the Stop Work Order that Petitioner-Plaintiff had identified in the draft pleading sent to the Town Attorney on July 15, 2022.

96. In further retaliation against Petitioner-Plaintiff, this time for his commencement of a legal proceeding, Slater, Landi, and/or Esposito, directed local law enforcement to re-open the investigation into the water supply issue. That effort also failed; eventually, the Yorktown police closed their investigation due to conflicting testimony of the Town’s employees as to who relocated the water line and when, finding explicitly “no probable cause” for an arrest.

97. Still undeterred, the Town, again at Slater's behest, filed a civil enforcement case against RC in Yorktown Town Court. A true and correct copy of the Information Filings in that civil enforcement case are annexed hereto as **Exhibit M**.

98. At its September 6, 2022, regular meeting, the Town Board doubled-down on the vague and bogus alleged violations, entering a resolution stating, "RC's failure, for over four years, to commence full operation of the Park, also constitutes a material breach of the Concession Agreement and, if RC does not complete/achieve all of the Outstanding Items and commence full operation of the Park by November 15, 2022, the Town will terminate the Concession Agreement."

99. The Concession Agreement referred to in the September 6, 2022, resolution has no deadline or commercial operation date requirement. RC has never agreed to any deadline or commercial operation date requirement.

100. This September 6, 2022, resolution reiterated the alleged basis of the Town's complaints [6 items to be listed here]. A true and correct copy of the September 6, 2022, resolution is annexed hereto as **Exhibit N**.

101. In the meantime, RC set out to "cure" the alleged code violations ostensibly supporting the stop work order and civil enforcement proceeding. The Town then interfered with, delayed, and impeded RC's ability to do so. The Town Building Department refused to review plans for fire suppression and other equipment, much less approve them within the thirty days allotted to RC.

102. Upon information and belief, Slater, Landi, and others exercised undue influence over RC's contractors, using intimidation and threats to withhold future Town contracts as leverage to force those contractors to abandon RC.

103. Also in September 2022, the Town did something else it had never done over the prior eight years: it attempted to bill RC for water use at the facility. The Town did so even after its employees had given sworn statements and backup documentation to the Yorktown Police Department indicating that the water bills had in fact been paid for the same term covered by the September water bill.

104. Finally, Slater, apparently perturbed by RC's continued public petitioning of his government for redress of its grievances, retained personal legal counsel to transmit a cease-and-desist letter to RC and a local newspaper, threatening them with a libel lawsuit. A true and correct copy of Slater's November 3, 2022, lawyer's letter threatening same is annexed hereto as **Exhibit Q**.

105. RC promptly replied to Slater's threat, pointing out the obvious, *i.e.*, that any such lawsuit would, in addition to raising serious free speech concerns under the First Amendment, qualify as a prohibited Strategic Lawsuit Against Public Participation, subject to the procedures and fee-shifting rules set forth at NY *Civil Rights Law* § 70-A. A true and correct copy of RC's November 4, 2022, response to Slater's threat of a libel lawsuit is annexed hereto as **Exhibit P**.

106. At the same time, the Town is presumably receiving bids ostensibly responding to the RFP for RC's replacement authorized at the Town Board's June 7, 2022, meeting. A true and correct copy of the RFP package published by the Town is annexed hereto as **Exhibit Q**.

107. On November 15, 2022, the ostensible deadline for RC to "cure" the alleged violations, RC consented to a limited inspection of the facility for the sole purpose of gauging compliance with the stop work order. The Town ignored that limitation and conducted another full-blown warrantless inspection of the entire golf facility.

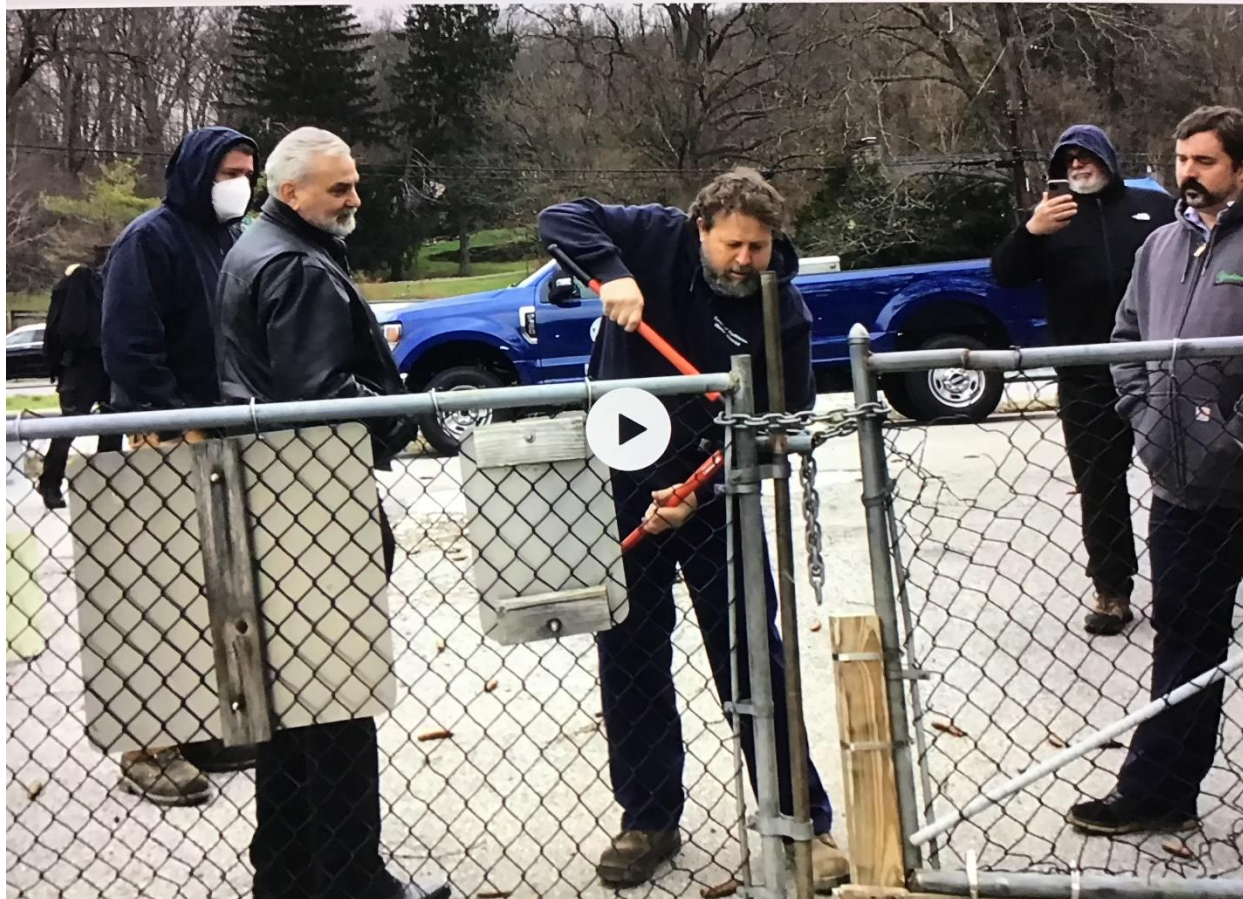
108. On November 16, 2022, the Town issued a formal Notice of Termination to RC, “due to RC’s failure to cure the previously noticed material breaches.” Additionally, the Town purported to exercise the Concession Agreement’s “convenience” clause, which permits the Town to terminate the Concession Agreement at its discretion any time more than sixty (60) days prior to the next golf season,” but failed to abide by the compensation and reimbursement provisions that are automatically triggered under the Concession Agreement in the event of such a “for convenience” termination.

109. Additionally, the Notice of Termination cited additional alleged violations that were not set forth in any prior orders, and for which RC had neither prior notice nor any opportunity to cure. The Town chose to summarily terminate the Concession Agreement in part on these newly-minted grounds. A true and correct copy of the Notice of Termination is annexed hereto as **Exhibit R**.

110. On November 30, 2022, Landi, Esposito, and Slater, accompanied by a cadre of Yorktown law enforcement agents, stormed the facility, cut the locks, and ordered RC off the property.







111. The day before, the Town had withdrawn all the civil charges against RC, which had yet to be adjudicated by that tribunal, claiming that they had become moot. At a hearing held on November 29, 2022, the Court agreed and dismissed all charges. Accordingly, the Town took it upon itself to act as prosecutor, judge, and juror, and to mete out the punishments of termination and forcible ejection, all based on unadjudicated alleged violations.

112. On December 5, 2022, RC filed its Supplemental Notice of Claim arising from the November 15, 2022, termination, and December 1, 2022, forced ouster of RC from the premises. A true and correct copy of the Supplemental Notice of Claim is annexed hereto as **Exhibit I**.

AS AND FOR A FIRST CAUSE OF ACTION
(The Stop Work Order is Arbitrary and Capricious and Contrary to Law)

113. RC repeats and realleges each and every allegation above as if set forth in full herein.

114. Slater and Esposito have admitted on the public record that they, together with another member of the Town Board, dressed up as golfers as a pretext to inspect the condition of the golf course, then reported their findings to Landi as a basis for the Stop Work Order.

115. The minutes of the September 6, 2022, Town Board meeting reveal that Landi was prepared only to discuss what was necessary to obtain a final certificate of occupancy, but was directed by Slater to discuss, then to issue a stop work order.

116. Landi, at Slater's behest and instruction, issued the Stop Work Order without notice to RC, without any opportunity to be heard, and without citing any specific provision of state or local law that had been violated.

117. Upon information and belief, the Stop Work Order does not represent Landi's independent judgment, but was wrongfully influenced by Slater's unmistakable directives at the September 6 Town Board meeting.

118. Landi issued the Stop Work Order that was vague, conclusory, and which failed to provide RC with any opportunity to cure any alleged violations, had any violations been alleged.

119. Section 15-6 (B) of the Town Code requires that Stop Work Orders, "shall . . . state the reasons for issuance, and, if applicable, state the conditions which must be satisfied before work will be permitted to resume."

120. Apart from the vague and unintelligible statement "Workmanship not in accordance with NYS Building Code," the Stop Work Order Slater ordered be issued fails to "state the reasons

for issuance.” Without specifying which “Workmanship,” or where, the Stop Work Order provides no reasons for issuance whatsoever.

121. Nor is it possible to discern whether and/or how to cure the alleged violation of “Workmanship,” without knowing exactly what work is being referred to, or where.

122. In form and function, and even assuming *arguendo* that the Stop Work Order had identified alleged code violations with sufficient specificity, it prohibited entry onto the property to cure any such violations.

123. In fact, on July 14, 2022, RC’s Fire Alarm contractor was prohibited from entering the facility to complete work on the fire alarm and suppression system – matters raised by Landi in his punch list of open items and upon which Slater and Esposito ordered issuance of the Stop Work Order.

124. The Town then refused to consider plans and drawings prepared and submitted by the same Fire Alarm contractor as it attempted to cure the alleged violations.

125. RC thus found itself subject to a vague and unintelligible Stop Work Order that embargoed all work on a multi-million-dollar construction project, including any work that might be necessary to cure whatever “Workmanship” issues Landi vaguely referred to in his Stop Work Order.

126. It was not until a week after the Stop Work Order was put in place, on July 12, 2022, that the Town Attorney (not Landi) attempted to supplement the Stop Work Order with a brand-new litany of alleged “violations,” but which conditions again were merely the expected result of the project being only partially completed.

127. The Town Attorney’s letter issued nearly a week later does not amend, or supplement the Stop Work Order.

128. On numerous occasions between July 6, 2022, and November 30, 2022, RC and/or its attorneys and contractors sought clarification of the requirements of the Stop Work Order. The Town refused to respond to those inquiries.

129. The Stop Work Order should thus be annulled and set aside on the grounds that it is arbitrary and capricious and entered into in a manner contrary to lawful procedure.

AS AND FOR A SECOND CAUSE OF ACTION
(Declaration of No Material Breach)

130. RC repeats and realleges each and every allegation above as if set forth in full herein.

131. The First Amendment to Concession Agreement controls “Termination,” and states, in pertinent part, “In the event of a material breach of the License by the Licensee, the Town may immediately terminate this License if the Licensee does not cure the condition giving rise to the material breach, to the extent curable, within thirty (30) days of such written notice by the Town identifying a material breach.”

132. In is July 12, 2022, correspondence, the Town Attorney declared the water supply arrangement at the golf course to be “illegal” and a “material breach” under the Concession Agreement, as amended.

133. Upon information and belief, the Town intends to use this claim as a pretext for terminating the Concession Agreement.

134. However, on July 11, 2022 (and as indicated in the exhibits to the Town Attorney’s July 12 letter), the Town water department remedied that situation and reconfigured the water supply lines. As he put it “the Town took it upon itself to install a new water meter to service the entire Park.” (Ex. N p. 2)

135. In other words, the Town declared RC to be in “material breach” *after* such alleged breach had already been cured. Given this cure, no breach at all exists presently relative to the water supply, material or otherwise.

136. None of the additional violations cited in the Termination Notice rise to the level of materiality. They all represent minor, normal-course conditions of a partially constructed building and grounds on an in-progress construction site.

137. The Town cannot declare the violations first listed in the Termination Notice as grounds for either a material breach or termination, given that RC had neither notice of nor a chance to cure those alleged violations.

138. Given the Town’s termination of the Concession Agreement, as amended, based on this alleged “material breach,” and given that certain “material breaches” have already been cured, there is a live controversy between the parties as to the Town’s inability to terminate the Concession Agreement on this ground.

139. RC has no adequate remedy at law and has not before requested any similar declaration from any court or other tribunal.

140. RC is entitled to a declaration that there has been no material breach of the Concession Agreement sufficient to support the Town’s for-cause termination.

AS AND FOR A THIRD CAUSE OF ACTION

(The Determination to Terminate the Concession Agreement is Arbitrary and Irrational)

141. RC repeats and realleges each and every allegation above as if set forth in full herein.

142. Under the Town Code, the normal course of events is for a project developer to obtain all necessary building and electrical permits from the local municipality, then set out on the construction project, requesting Town construction inspections as needed at intervals dictated by

the project developer. At the conclusion of a development project, the project developer typically requests a final inspection to support issuance of a permanent or final certificate of occupancy. By requesting that final inspection, the project developer is signaling that the work is substantially complete and that the premises are ready for use and occupation by the public.

143. By contrast here, the Town conducted numerous warrantless inspections of the premises unilaterally, and without any request by RC.

144. The Town's inspections unsurprisingly revealed that the golf course remained in various states of incompleteness – the same incompleteness that Slater and others had vehemently complained about over the preceding six months, but found themselves without a contractual right to remedy.

145. So, the Town adopted a new strategy. At Slater's behest and direction, an innocuous punch list of items to be completed before a certificate of occupancy could issue (none had been requested), developed as mere observations of where things stood at that time and what work was remained to be completed, was weaponized. At the September 6, 2022, Town Board meeting, Slater bullied his colleagues and building department staff to construe the punch list as something more, *i.e.*, a list of alleged violations of state and local building codes.

146. When viewed in this appropriate context, the alleged violations that the Town relied on to terminate the Concession Agreement mid-term for cause are revealed to be nothing more than the expected conditions of a partially constructed golf facility.

147. Additionally, the Town determined to terminate the Concession Agreement mid-term based on alleged violations that were never set forth in any prior notice to RC, and for which RC therefore never had an opportunity to cure. The opportunity to cure is a necessary and indispensable prerequisite to the Town's ability to terminate the Concession Agreement for cause.

148. Finally, the Town interfered with, obstructed, and otherwise impeded RC's ability to cure the alleged violations by refusing to consider various compliance submissions during the cure period and by threatening RC's contractors and agents with retribution and retaliation should they support RC's efforts to cure.

AS AND FOR A FOURTH CAUSE OF ACTION

(The RFP is Arbitrary and Demonstrates Slater's Real Interest in Re-Writing the Concession Agreement to Favor the Town)

149. RC repeats and realleges each and every allegation above as if set forth in full herein.

150. The Town issued the RFP while the Concession Agreement was in full force and effect with a presumptive term extending through the year 2028.

151. At the time the RFP was issued, the Town had just that same day issued the stop work order and notice to cure what were essentially minor construction issues, all of which were readily curable.

152. When the Town authorized issuance of the RFP, it had no reasonable expectation that RC would not cure the alleged violations, and had no basis upon which to suspect or believe that the Town would be able to contract with a new partner in RC's place and stead.

153. The sham nature of the RFP is revealed in the fact that in its first iteration, all bids were to be submitted to Slater for his personal review and approval. It was only later than the Town remedied that obvious defect.

154. The RFP also reveals Slater's true intent to re-write the Concession Agreement on terms more favorable to the Town. This was Slater's goal from the earliest days of his administration, all the way through the June 7, 2002, charade about the Second Amendment,

through his sham visit to the golf course of July 4 and subsequent July 6 resolution, to the termination of the Concession Agreement on November 15, 2002.

155. If the Town awards a new contract on December 19, 2022, the new contractor will immediately gain the use and benefit of RC's investment, including those fixtures and equipment for which RC is entitled to receive reimbursement and payment for a termination based on the Town's convenience.

156. In the November 15 termination notice, the Town purported to exercise this convenience termination in the alternative.

157. If RC prevails in annulling the termination, it will be entitled to a Judgment and Order restoring the Concession Agreement and restoring it to full possession of the premises, subject to the Town's exercise of the convenience termination clause.

158. Before it may terminate the Concession Agreement under the convenience termination clause, the Town must reimburse RC for the "unamortized portion of all fixed equipment," and for "all additional equipment" left behind.

159. Given that RC has renovated the clubhouse in its entirety, installed new commercial fixtures and equipment, installed sod, greens, and bunkers, and acquired numerous other pieces of equipment necessary to develop and operate a golf course, the Town's reimbursement obligations are well into seven figures.

160. Allowing the Town to contract with an install a substitute contractor while this and related actions are pending would cause RC to suffer irreparable harm, in that re-installing RC when such substitute has taken possession, and/or valuing fixtures and equipment in use by the substitute, would be complicated to the point of impossibility.

AS AND FOR A FIFTH CAUSE OF ACTION
(Unlawful Ouster – RPAPL § 853)

161. RC repeats and realleges each and every allegation above as if set forth in full herein.

162. On December 1, 2022, the Town stormed the facility seeking to forcefully dispossess RC. This intent is evidenced by the overwhelming show of unnecessary force the Town brought to bear on that date, which included numerous marked and unmarked police cruisers, and as many as a dozen Town-employee onlookers, including Slater.

163. After demanding that RC vacate the premises, a demand RC refused, Landi began directing a Town employee who was wielding a large bolt cutter.

164. When RC's principal sought to resist, he was threatened with personal violence and criminal prosecution which placed him in reasonable fear for his own well-being.

165. Landi thereafter directed the employee to cut through RC's lock, enter the premises, and oust RC by force with instructions not to return.

166. The Town had no right in law and/or at equity to reclaim possession of the premises, and certainly no right to do so through violence, forcible entry, and threat of criminal prosecution, all without any precedent court order or finding of liability.

167. As a result of this unlawful ouster, RC has been damaged to the extent the golf course infrastructure (greens, bunkers, etc.) are not currently being maintained by any golf professional and suffer damage on a daily basis as a result, and to the extent of project delays, lost revenue, reputational harm, and other damages.

168. Pursuant to NY RPAPL § 853, the Town is liable to RC for treble damages resulting from the unlawful ouster on December 1, 2022.

AS AND FOR A SIXTH CAUSE OF ACTION
(For Injunctive Relief and Appointment of a Receiver)

169. RC repeats and realleges each and every allegation above as if set forth in full herein.

170. RC is likely to succeed on the merits of its breach of contract, and Article 78 claims in this proceeding.

171. As a result of Slater's unlawful campaign of disparagement, culminating in the forced ouster of RC, RC has suffered reputational harm in the broader golf course development community, and with lenders, investors, contractors, materialmen, and other laborers.

172. As a result of Slater's unlawful campaign, RC has been damaged to the extent the golf course infrastructure (greens, bunkers, etc.) are not currently being maintained by any golf professional and suffer damage on a daily basis as a result, and to the extent of project delays, lost revenue, and other money damages.

173. Equity tips in RC's favor because RC has invested several million dollars in labor and equipment and has substantially redeveloped the site at little cost to the Town and for the Town's overall benefit for years to come.

174. RC continues to have an interest in the golf course property and, if the "for cause" termination is annulled, is entitled (at a minimum) to a full accounting of the value of fixtures and equipment left at the facility.

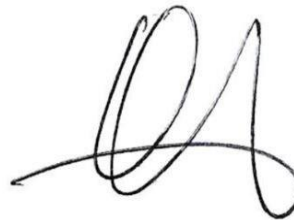
175. In the absence of injunctive relief and/or appointment of a Receiver pursuant to CPLR § 6401, the golf course property will suffer waste, material injury, and destruction by the elements, vandalism, and other external factors beyond the Town's ability to control.

WHEREFORE, RC Recreation Development, LLC respectfully requests a Judgment and Order of this Court:

1. annulling, vacating, and setting aside the stop work order as unduly vague, arbitrary, and irrational, and not in accordance with law;
2. annulling, vacating, and setting aside (i) the September 6, 2022, resolution; and (ii) the November 15 notice of termination as arbitrary, irrational, and contrary to lawful procedure.
3. vacating or staying the RFP, including any awards made thereunder;
4. entering preliminary and permanent injunctive relief;
5. appointing a Receiver pursuant to CPLR § 6401;
6. awarding RC treble damages for forced ouster pursuant to NY RPAPL § 853; and
7. awarding RC such other and further relief which to the Court seems just and proper, including RC's reasonable attorneys' fees and costs, and money damages incidental to any of the foregoing.

DATED: December 7, 2022

YOUNG / SOMMER, LLC



William A. Hurst
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VERIFICATION

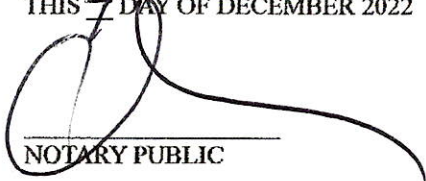
STATE OF NEW YORK)
)ss:
COUNTY OF ALBANY)

LARRY NUSSBAUM, being duly sworn, deposes and states:

I am the President and CEO of RC Recreation Development, LLC, Petitioner-Plaintiff in the above-entitled matter. I make this verification pursuant to Section 3020 of the N.Y. *Civil Practice Law & Rules*. I have read the foregoing Combined Verified Petition and Complaint and know the contents thereof. The same is true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.


LARRY NUSSBAUM

SWORN TO BEFORE ME
THIS 7 DAY OF DECEMBER 2022


NOTARY PUBLIC

2 WILLIAM A HURST
Notary Public, State of New York
No. 02HU6405056
Qualified in Albany County
Commission Expires 03/02/2024