

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS

SUPERIOR COURT
DOCKET NO. 2080CV00087

FIVE STAR BUILDING CORPORATION,

Plaintiff

v.

TOWN OF SHERBORN,

Defendant/Plaintiff-in-Counterclaim

ANSWER AND COUNTERCLAIM

HAMPSHIRE SUPERIOR COURT

OCT - 6 2020

HARRY JEKANOWSKI, JR.
CLERK/MAGISTRATE

ANSWER

Defendant Town of Sherborn ("Town") hereby responds to the unnumbered and numbered paragraphs in Plaintiff's Complaint as follows.

INTRODUCTION

The allegation set forth in the unnumbered introductory paragraph is admitted.

PARTIES

1. Upon information and belief, admitted.
2. Admitted, except that the Town is located in Middlesex County not Norfolk County.

COUNT I – QUANTUM MERUIT

3. Admitted.
4. Denied.
5. Denied.
6. Denied.
7. Denied.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX

OCT 30 2020

[Signature]
CLERK

8. Denied.

9. Admitted only that the Town terminated the contract due to Plaintiff's default and breach of that contract. All remaining allegations are denied.

10. Denied.

AFFIRMATIVE DEFENSES

The Town asserts the following affirmative defenses to the Complaint. The Town reserves the right to add to these affirmative defenses based upon information learned in discovery in this litigation:

1. The claims set forth in the Complaint are barred, in whole or in part, by Plaintiff's own acts and/or omissions.

2. The Complaint should be dismissed for failure to state a cause of action upon which relief may be granted.

3. The Complaint should be dismissed because Plaintiff has released and/or waived the claims asserted in the Complaint.

4. The Complaint should be dismissed pursuant to the doctrine of waiver and/or equitable estoppel.

5. The Complaint is barred because Plaintiff failed to comply with and breached the terms and conditions of its contract with the Town.

6. Plaintiff is not entitled to relief under theories of *quantum meruit* or unjust enrichment, because, as a matter of law, recovery under such theories is not available against a municipality.

7. Plaintiff has failed to satisfy conditions precedent to recovery in that it has failed to establish compliance with all statutory, common law, and contractual requirements and

prerequisites, including by failing to comply with the procedure in its contract for the making and perfection of claims.

8. Plaintiff is not entitled to any relief because the Town paid all amounts due and payable under any contract with Plaintiff.

9. Plaintiff's damages, if any, were caused by its own acts and omissions and/or the acts and omissions of persons for whom Plaintiff was responsible.

10. Pursuant to its contract with Plaintiff and applicable law, the Town has the right to withhold from Plaintiff all monies claimed due by Plaintiff.

11. Plaintiff failed to follow the procedures in the Contract necessary to assert, maintain and perfect its claims against the Town.

12. Venue for this litigation should be Middlesex County Superior Court.

WHEREFORE, the Town hereby demands that the Complaint be dismissed and that it be awarded its attorneys' fees and costs of suit incurred in defending against the Complaint, and for such other relief as the Court deems appropriate.

JURY DEMAND

The Town respectfully requests a trial by jury on all claims so triable.

[Counterclaim follows]

COUNTERCLAIM

PARTIES

1. The Town of Sherborn is a Massachusetts municipal corporation with an address of 19 Washington Street, Sherborn, MA.

2. Five Star Building Corporation ("FSBC") is a Massachusetts corporation with an address of 123 Union Street, Suite 200, Easthampton, MA.

FACTS

3. The Sherborn Public Library is a municipal public library.

4. The Sherborn Public Library was opened *circa* 1858 and has been housed at its current location at 4 Sanger Street, Sherborn, since 1971. The library is a community center. It is a place where the public gather to explore, interact and imagine. It serves residents and others from Sherborn and surrounding communities.

5. The library building was a gift to the Town in 1971 from Richard and Mary B. Saltonstall, residents of Sherborn for more than 50 years. It was designed not only for the sole purpose of serving as a public library, but also to serve as a piece of art, with close attention paid to aesthetic detail.

6. The library building is specialized in character and is a special purpose property.

7. In 2016, the Town solicited sealed bids pursuant to G.L. c. 149, § 44A, for the construction of renovations and additions to the Sherborn Public Library (the "Project").

8. The intent of the Project design was to renovate and expand the library building while being faithful to, and thus blending the new work with, the artistic design of the original building.

9. FSBC submitted a bid in response to the Town's solicitation, and the Town awarded FSBC the construction contract for the Project.

10. On December 28, 2016, the Town and FSBC entered into a construction contract (the “Contract”) for the Project.

11. The Contract included, among other documents, design plans and specifications prepared by the Town’s Project architect, Beacon Architectural Associates (“BAA”), and certain General Conditions, as amended.

12. Travelers Casualty and Surety Company of America (“Travelers”) issued a performance bond for the Project (the “Bond”). The Town and FSBC are listed on the Bond, respectively, as “obligee” and “principal.”

13. In undertaking the Project, the Town was performing a governmental function.

14. Pursuant to the Contract, FSBC was required to, among other things, perform all work that was required by and reasonably inferable from the Contract, including the design plans and specifications prepared by BAA.

15. Pursuant to the Contract, FSBC was required to substantially complete all Project work within 365 calendar days of December 9, 2016, subject to any adjustments allowed under the Contract.

16. FSBC did not substantially complete the Project before the Contract was terminated by the Town in January 2020.

17. FSBC failed to comply with its scheduling, staffing and supervisory obligations under the Contract.

18. Pursuant to the Contract, FSBC was required to prepare a construction schedule and to update the schedule every month, and to provide Recovery Schedules in the event delays in the Project work were anticipated.

19. FSBC failed to update its construction schedule every month, failed to provide Recovery Schedules in all instances when such a schedule was required, and failed to provide its schedules and schedule updates in a timely fashion.

20. Pursuant to section 3.10 of the General Conditions of the Contract, FSBC was required to, among other things, “monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays.”

21. FSBC failed to continuously or consistently monitor the progress of the work, and failed to promptly advise the Town of all delays and potential delays in the progress of the Project work.

22. Pursuant to the Contract, FSBC was required to staff the Project with a project manager, superintendent and assistant project superintendent having the minimum years of experience set forth in the Contract.

23. FSBC failed to continuously staff the Project with a project manager, superintendent and assistant superintendent having the minimum years of experience required by the Contract.

24. For significant periods of time during the Project, FSBC failed to staff the Project with an assistant superintendent.

25. FSBC changed its project manager for the Project no less than four times.

26. FSBC changed its superintendent for the Project no less than four times.

27. FSBC terminated one or more of its site-work subcontractors for failing to properly perform subcontract work.

28. FSBC terminated one or more of its concrete subcontractors for failing to properly perform subcontract work.

29. FSBC failed to construct portions of the Project within required dimensional tolerances.

30. FSBC's failure to construct the Project within required dimensional tolerances had material, adverse ramifications throughout the new construction including, without limitation, window installation and masonry work.

31. FSBC's installation of the Project foundations did not comply with the Contract plans and specifications and was, therefore, defective.

32. FSBC's was required to remove and reinstall the defective Project foundations.

33. FSBC failed to reinstall the Project foundations within required dimensional tolerances.

34. FSBC failed to properly install granite curbs and was required to re-perform that work.

35. FSBC installed parking lot grading at the wrong elevation.

36. FSBC withheld from the Town knowledge that it had installed parking lot grading at the wrong elevation for at least one year.

37. FSBC's withholding from the Town knowledge that FSBC had installed the parking lot grading at the wrong elevation was a breach of contract, breach of the implied covenant of good faith and fair dealing, and a willful and knowing unfair and deceptive act or practice in violation of G.L. c. 93A.

38. FSBC improperly fabricated windows for the new library building addition.

39. FSBC improperly installed windows for the new library building addition.

40. FSBC failed to install its masonry work in accordance with the Contract requirements.

41. FSBC failed to (1) level and plumb its brickwork; (2) properly align and space brick piers; (3) submit required shop drawings before installing brick veneer masonry; (4) complete and correct mockup(s) for final review before masonry installation; (5) provide the required cold-weather protection during masonry installation; (6) consistently install rigid insulation on the outside face of the foundation walls within the masonry cavity, as required by the Contract and/or building code; (7) arrange for inspections of the rigid insulation system and reinforced masonry, as required by the Contract and/or building code; (8) consistently and correctly install mortar for the masonry work; and (9) install mortar netting at the base of the masonry cavity.

42. FSBC failed and refused to correct its defective masonry work.

43. Before and/or during performance of its masonry work, FBSC became aware that its foundation and masonry work were not in compliance with Contract plans and specifications, and that, therefore, the new library building addition had not been installed within required dimensional tolerances.

44. Despite knowing that its work was defective, FSBC knowingly and wrongfully continued to perform the defective work without disclosing its knowledge of the defective condition to the Town.

45. FSBC's knowing performance of defective work was a breach of contract, breach of the implied covenant of good faith and fair dealing and a willful and knowing unfair and deceptive act or practice in violation of G.L. c. 93A.

46. Due to its defective masonry work, FSBC removed all masonry work in November 2019.

47. The Town, through BAA, directed FSBC to prepare a surveyed plan of the installed condition of certain Project work.

48. A surveyed plan of the installed condition of FSBC's work was necessary to determine the extent of dimensional nonconformities and defective installation of the work, and to identify possible corrective measures.

49. FSBC refused to prepare a surveyed plan of the installed condition of its work on grounds that it was not required by its Contract to prepare as-built plans.

50. FSBC refused to prepare a surveyed plan despite knowing that a surveyed plan was necessary to determine the extent of the dimensional nonconformities and defective installation of its work.

51. FSBC's refusal to prepare a surveyed plan was a pretext, and was intended to force the Town to cause such a plan to be prepared so that FSBC could later dispute the results of that plan and blame the Town for Project delays arising therefrom.

52. FSBC's refusal to prepare a surveyed plan as aforesaid was a breach of contract, breach of the implied covenant of good faith and fair dealing, and a willful and knowing unfair and deceptive act or practice in violation of G.L. c. 93A.

53. During construction, FSBC failed to install adequate weather protection for the library building, including the new library building addition.

54. FSBC proceeded with building interior work before installing adequate weather protection for the building despite knowing that doing so would subject the work to weather damage.

55. As a result of FSBC's failure to install adequate weather protection, significant quantities of rainwater infiltrated the building interior on more than one occasion, causing significant water and mold damage to the building interior, and exposing existing lighting fixtures and newly installed mechanical equipment to damage due to water infiltration and freezing.

56. FSBC improperly installed interior finishes before adequate temporary protection for such finishes had been installed, and was required to remove and reinstall those interior finishes.

57. As a direct result of FSBC's failure to protect the library building from weather during construction, existing specialty wood finishes in the existing building were damaged during weather events.

58. As a direct result of FSBC's failure to protect the library building from weather during construction, electrical equipment and the library building elevator had to be tested or retested.

59. FSBC failed to properly install flashing at the skylight-chimney interface, resulting in water damage to the building interior.

60. FSBC improperly installed the roofing system at the so-called main roof and connector roof, resulting in water infiltration and damage to the underlying insulation system and substrate.

61. In or about April 2019, FSBC retained the firm of Thompson & Lichtner to inspect and test a portion of the roofing system in order to ascertain whether water was present within the roofing system.

62. Thompson & Lichtner prepared an April 17, 2019 letter following its testing and inspection of the roof work.

63. Following its testing and inspection of the roof work, Thompson & Lichtner concluded, among other things, that water was present within the roofing system.

64. FSBC improperly installed roof decking and roofing on the main building roof over the main building entry and the work had to be reinstalled in order to correct the defects in the roof work.

65. FSBC improperly fabricated and installed piers and window frames along the so-called Sanger Street elevation of the new library building addition.

66. FSBC improperly installed fire protection and water lines, and failed to allow for inspections of that work before backfilling the utility trench.

67. FSBC improperly installed the foundation for the new library building addition and, as a result, had to re-perform the work.

68. FSBC improperly re-installed the foundation for the new library building addition, and the foundation remains out of required dimensional tolerances.

69. FSBC failed to comply with its obligation to procure and maintain property insurance under the Contract.

70. FSBC's failure to keep the building weather tight and maintain and enforce a no-smoking ban at the project site, among other things, made it impossible for the Town to procure and continuously maintain adequate property insurance for the library building and work before termination of the Contract.

71. FSBC was required to install waterproofing and vapor barrier systems on the exterior of the foundation and the building sheathing.

72. FSBC was also required to protect the waterproofing and vapor barrier systems from exposure to ultraviolet light and from damage caused by construction activity.

73. The waterproofing and vapor barrier systems were manufactured by GCP Applied Technologies ("GCP") and installed by FSBC subcontractor Debrino Caulking Associates, Inc. ("Debrino").

74. FSBC failed to protect the waterproofing and vapor barrier systems from exposure to ultraviolet light and from damage caused by construction activity, and as a result, such systems were irreparably damaged.

75. In November 2019, representatives of FSBC, Debrino and GCP inspected the waterproofing and vapor barrier systems installed at the library building.

76. During the inspection of the waterproofing and vapor barrier systems, representatives of FSBC and/or Debrino informed the GCP representative that the waterproofing and vapor barrier systems had been left exposed to ultraviolet light from February 2019 and May 2019 to the date of the inspection.

77. Following the inspection, GCP provided FSBC with a Field Observation Report dated November 25, 2019.

78. In the Field Observation Report, GCP indicated that the waterproofing and vapor barrier systems had been over-exposed to ultraviolet light and were damaged and that the systems' seams were compromised in multiple areas.

79. In the Field Observation Report, GCP indicated that the waterproofing and vapor barrier systems could not be warranted by GCP unless and until the deficiencies noted in the report were remedied.

80. FSBC never informed the Town of the results of GCP's November 2019 inspection of the waterproofing and vapor barrier systems.

81. FSBC never provided the Town with a copy of GCP's November 2019 Field Observation Report.

82. FSBC wrongfully withheld GCP's November 2019 Filed Observation Report from the Town.

83. FSBC's withholding of GCP's Field Observation Report was a breach of contract, breach of the implied covenant of good faith and fair dealing and a willful and knowing unfair and deceptive act or practice in violation of G.L. c. 93A.

84. FSBC's conduct on the Project rose to the level of gross negligence and willful misconduct.

85. By letter dated October 22, 2018, the Town had notified Travelers that the Town was considering declaring FSBC in default of the Contract.

86. Following Travelers' receipt of the Town's October 22, 2018 notice, representatives of the Town, Travelers and FSBC participated in a conference pursuant to paragraph 3 of the Bond.

87. During the period between October 22, 2018 and the date the Town terminated FSBC's contract by notice dated January 16, 2020, Travelers actively participated in communications and meetings with representatives of the Town and FSBC concerning the Town's allegations that FSBC was not performing the Project work in accordance with the terms of the Contract.

88. The Town terminated the Contract and made a claim on the Bond by notice to FSBC and Travelers dated January 16, 2020.

89. The Town satisfied the conditions precedent in paragraph 3 of the Bond.

90. In response to the Town's January 16, 2020 claim on the Bond, Travelers elected and agreed to undertake completion of the Project through its agents and independent contractors pursuant to paragraph 5.2 of the Bond.

91. Under the Bond, Travelers is, together with FSBC, jointly and severally liable to the Town.

92. The Town and Travelers entered into a Takeover Agreement dated June 15, 2020.

93. In the Takeover Agreement, Travelers agreed that the library building foundation had not been installed by FSBC within required dimensional tolerances and that, as a result, the new library building addition was out of alignment.

94. In the Takeover Agreement, Travelers agreed that additional work was necessary to address or correct the misaligned condition of the new library building addition, and that it would cause that work to be performed at no cost to the Town.

95. In 2019, the Massachusetts Division of Capital Asset Management and Maintenance ("DCAMM") denied FSBC's application for certification pursuant to G.L. c. 149, § 44D(4) and 810 CMR 4.

96. DCAMM's denial of FSBC's application was based on FSBC having received three or more failing project ratings on three or more separate projects in the five years preceding application.

97. On January 30, 2020, the Office of Attorney General denied FSBC's appeal of DCAMM's denial of FSBC's application for certification.

98. As a result of DCAMM's denial, FSBC is not eligible to submit bids for public construction contracts under G.L. c. 149, § 44A.

COUNT I
Breach of Contract

99. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

100. As set forth in the preceding paragraphs of this Counterclaim, FSBC failed to comply with material obligations of its Contract, including, without limitation, by knowingly performing defective work, by failing and refusing to correct its defective work, by wrongfully withholding material information from the Town regarding the defective conditions of FSBC's work, and by falsely blaming the Town for delays in the progress of the Project work arising from FSBC's failure to comply with the Contract.

101. FSBC's conduct, as set out in this Counterclaim, constitutes a material breach of the Contract.

102. As a direct and proximate result of FSBC's breach of the Contract, the Town has suffered and continues to suffer significant damages.

WHEREFORE, the Town hereby demands judgment against FSBC for the Town's damages, plus interest, attorneys' fees, costs of suit, and such other relief as the Court may deem appropriate.

COUNT II
Breach of the Covenant of Good Faith and Fair Dealing

103. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

104. Pursuant to the so-called covenant of good faith and fair dealing implied by law in the Contract, FSBC promised to act in good faith and to deal fairly with the Town in performance of the Contract.

105. FSBC's withholding from the Town knowledge that FSBC had installed parking lot grading at the wrong elevation, as set out in this Counterclaim, constitutes a breach of the covenant of good faith and fair dealing.

106. FSBC's refusal to prepare a surveyed plan of existing defective conditions of the work on the pretext that it was not required to do so, as set out in this Counterclaim, constitutes a breach of the covenant of good faith and fair dealing.

107. FSBC's decision to continue performing defective work despite knowing the work was defective, as set out in this Counterclaim, constitutes a breach of the covenant of good faith and fair dealing.

108. FSBC's withholding of GPC's Filed Observation Report, as set out in this Counterclaim, constitutes a breach of the covenant of good faith and fair dealing.

109. As a direct and proximate result of FSBC's breach of the implied covenant of good faith and fair dealing, the Town has suffered and continues to suffer significant damages.

WHEREFORE, the Town hereby demands judgment against FSBC for the Town's damages, plus interest, attorneys' fees, costs of suit, and such other relief as the Court may deem appropriate.

COUNT III
G.L. c. 93A, § 9

110. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

111. At all relevant times, FSBC was engaged in conduct of trade or commerce for the purpose of G.L. c. 93A.

112. FSBC's withholding from the Town knowledge that FSBC had installed parking lot grading at the wrong elevation, as set out in this Counterclaim, constitutes an unfair and deceptive act or practice in violation of G.L. c. 93A.

113. FSBC's refusal to prepare a surveyed plan of the existing defective conditions of its work on the pretext that it was not required to do so, as set out in this Counterclaim, constitutes an unfair and deceptive act or practice in violation of G.L. c. 93A.

114. FSBC's decision to continue performing defective work despite knowing the work was defective, as set out in this Counterclaim, constitutes an unfair and deceptive act or practice in violation of G.L. c. 93A.

115. FSBC's withholding of GPC's Field Observation Report, as set out in this Counterclaim, constitutes a breach of the covenant of good faith and fair dealing.

116. FSBC's unfair and deceptive acts and practices were willful and knowing under G.L. c. 93A.

117. As a direct and proximate result of FSBC's violations of G.L. c. 93A, the Town has suffered and continues to suffer significant damages.

WHEREFORE, the Town hereby demands judgment against FSBC for three times the Town's damages, plus interest, attorneys' fees, costs of suit, and such other relief as the Court may deem appropriate.

COUNT IV
Breach of Warranty

118. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

119. In section 3.5 of the General Conditions of the Contract, FSBC warranted "that the [Project] Work will conform to the requirements of the Contract Documents and will be free

from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective.”

120. FSBC’s failure and refusal to properly perform the Project work and its failure and refusal to correct its defective work, including its refusal to prepare a surveyed plan of the defective conditions of the work, all as set out in this Counterclaim, constitute a breach of warranty.

121. As a direct and proximate result of FSBC’s breach of warranty, the Town has suffered and continues to suffer significant damages.

WHEREFORE, the Town hereby demands judgment against FSBC for the Town’s damages, plus interest, attorneys’ fees, costs of suit, and such other relief as the Court may deem appropriate.

COUNT V
Liquidated/Actual Delay Damages

122. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

123. FSBC failed to substantially complete all Project work within 365 calendar days of December 9, 2016.

124. FSBC caused significant delays in the progress of the Project work.

125. As a result of FSBC-caused delays, FSBC did not and could not substantially complete the Project within the time set forth in the Contract.

126. Paragraph 8.4.1 of the General Conditions of the Contract provides as follows:

It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of same. . . . If the said Contractor shall neglect, fail or refuse

to complete the Work within the times herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree . . . to pay to the Owner \$1,000.00 . . . as liquidated damages for such breach of contract, for each and every calendar day that the Contractor shall be in default after the time stipulated for completing the Work. . . . It is further agreed that if the Owner for any reason is not eligible to recover the liquidated damages set forth above, Owner shall be entitled to seek recovery of its actual damages on account of any such neglect, failure or refusal of contractor.

127. By letter dated December 18, 2019, the Town notified FSBC that the Town was assessing liquidated damages for each day of delay in completion of the Project caused by FSBC.

128. For each day of delay caused by FSBC, FSBC owes the Town liquidated damages in the amount of \$1,000/day or, in the event the Town is not entitled to recover liquidated damages, the Town's actual damages, pursuant to paragraph 8.4.1 of the General Conditions of the Contract.

WHEREFORE, the Town hereby demands judgment against FSBC for the Town's damages, plus interest, attorneys' fees, costs of suit, and such other relief as the Court may deem appropriate.

COUNT VI
Contractual Indemnification

129. The preceding paragraphs of this Counterclaim are incorporated herein by reference.

130. Section 3.18.1 of the General Conditions of the Contract requires FSBC to "indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, including claims, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the Work, caused in whole or

in part by the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.”

131. Section 13.9.3 of the General Conditions also requires FSBC to “indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the work.”

132. As set forth in this Counterclaim, the Town has suffered and continues to suffer significant damages arising out of and resulting from FSBC’s performance of work.

133. For the reasons set forth in this Counterclaim, FSBC failed to exercise reasonable care and was grossly negligent in the performance of its work.

134. For the reasons set forth in this Counterclaim, including but not limited to Count II and Count III, FSBC committed wrongful acts and omissions.

135. As a result of FSBC’s acts and omissions and negligence, the Town has suffered and continues to suffer significant damages.

136. FSBC must indemnify the Town from any and all damages regardless of whether the Town or BAA allegedly caused, in part, any such damages, as set forth in the foregoing Contract indemnification provisions.

137. FSBC must also indemnify the Town for all attorneys' fees incurred by the Town in connection with FSBC's failure to properly perform the Project work, including all attorneys' fees incurred by the Town in this litigation.

WHEREFORE, the Town hereby demands judgment against FSBC for the Town's damages, plus interest, attorneys' fees, costs of suit, and such other relief as the Court may deem appropriate.

JURY DEMAND

The Town requests a trial by jury on all claims so triable.

DEFENDANT AND PLAINTIFF-IN-COUNTERCLAIM,
TOWN OF SHERBORN

By its attorneys,

A handwritten signature in black ink, appearing to be 'R. Holland', is written over a horizontal line.

Richard T. Holland (BBO# 632661)

Matthew V. Sirigu (BBO# 704166)

KP Law, P.C.

Town Counsel

101 Arch Street, 12th Floor

Boston, MA 02110-1109

(617) 556-0007

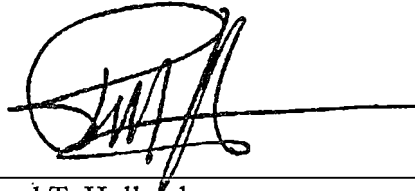
rholland@k-plaw.com

msirigu@k-plaw.com

CERTIFICATE OF SERVICE

I, Richard T. Holland, hereby certify that on the below date, I served a copy of the foregoing Answer and Counterclaim, by first-class mail, postage prepaid, to the following counsel of record:

Charles F. Ahern, III, Esq.
Corwin & Cowin LLP
600 Unicorn Park Drive
Boston, MA 02108
Woburn, MA 01801

A handwritten signature in black ink, appearing to be 'R. T. Holland', written over a horizontal line.

Richard T. Holland

Dated: September 29, 2020

HAMPSHIRE SUPERIOR COURT

OCT - 6 2020

HARRY JEKANOWSKI, JR.
CLERK/MAGISTRATE