IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

TPC OVERTOWN BLOCK 45, LLC, a Florida limited liability company, WW OGP 45, LLC, a Florida limited liability company, and OVERTOWN GATEWAY PARTNERS, LLC, a Florida limited liability company,

Plaintiffs,

v.

DOWNTOWN RETAIL ASSOCIATES, LLC, a Florida limited liability company, MICHAEL SWERDLOW, an individual, and ALBEN DUFFIE, an individual,

Defendants.
_____/

Case No.: 2020-007207-CA-01 (43)

AMENDED COMPLAINT

Plaintiffs, TPC OVERTOWN BLOCK 45, LLC, WW OGP 45, LLC, and OVERTOWN GATEWAY PARTNERS, LLC sue Defendants, DOWNTOWN RETAIL ASSOCIATES, LLC, MICHAEL SWERDLOW, individually, and ALBEN DUFFIE, individually, and allege as follows:

Nature of the Action, Parties, Potential Parties, Venue, and Jurisdiction

1. This is an action for damages in excess of $160,000,000 exclusive of interest, attorney's fees, and costs.

2. Plaintiff TPC OVERTOWN BLOCK 45, LLC ("TPC") is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

3. Plaintiff WW OGP 45, LLC ("WW OGP 45") is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

4. Plaintiff OVERTOWN GATEWAY PARTNERS, LLC ("OGP") is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

5. TPC and WW OGP 45 collectively own 100% of the issued and outstanding limited liability membership interests of OGP 45 Manager, LLC, a Florida limited liability company.

6. In turn, OGP 45 Manager, LLC owns 100% of the issued and outstanding limited liability company membership interests of OGP, and is the manager of OGP.

7. One of the managing members of OGP and OGP 45 Manager, LLC is R. Donahue "Don" Peebles ("Peebles"), one of America's most prominent African-American developers with projects and investments throughout the United States with an emphasis in Miami-Dade County.

8. OGP's other managing member is Barron Channer ("Channer"), a native of Miami and widely recognized as a community leader with an extensive history of philanthropic work. Channer is also an experienced real estate developer with over fifteen years of work on large and complex real estate transactions and previously worked for Peebles leading development efforts in the Eastern United States. Channer recruited Peebles to collaborate on the development projects that are the subject of this Complaint and served as the day-to-day point person.

9. Defendant DOWNTOWN RETAIL ASSOCIATES, LLC ("DRA") is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

10. Defendant MICHAEL SWERDLOW ("Swerdlow") is an individual, *sui generis*, residing and doing business as a real estate developer in Miami-Dade County, Florida.

11. Swerdlow is the managing member of Downtown Retail.

12. Defendant ALBEN DUFFIE ("Duffie") is an individual, *sui generis*, residing and doing business in Miami-Dade County, Florida. Duffie serves as President of Downtown Retail.

13. Current non-parties Keon Hardemon, Billy Hardemon, Clarence Woods, and Cornelius Shiver all reside in and/or do business in Miami-Dade County, Florida and are potential parties to this action as a result of their actions in furtherance of the breaches, interference, and/or conspiracy alleged herein.

14. Jurisdiction and venue are proper in Miami-Dade County, Florida because the breaches of contract and improper activities that serve as the basis for this complaint all took place in Miami-Dade County, Florida, and the real properties involved are located in Miami-Dade County, Florida.

15. All conditions precedent to this action have occurred, been performed, or were otherwise satisfied by Plaintiffs, or have been waived or excused by the actions or inactions of Defendants.

General Allegations

A. Overtown and The Southeast Overtown/Park West Community Redevelopment Agency.

16. Overtown, a predominantly African-American community located just northwest of downtown Miami, is one of the oldest continuously inhabited neighborhoods in Miami dating back to 1896. Unfortunately, it is also one of the poorest.

17. The Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") is a public agency and body corporate created pursuant to Section 163.356, Florida Statutes.

18. Pursuant to the Community Redevelopment Act of 1969, the CRA was created in 1981 to undertake activities and projects that would eradicate conditions of slum and blight in Overtown. The main objective of the CRA was and is to spearhead new development and redevelopment efforts that accomplish beneficial revitalization within its boundaries.

19. Shortly after the CRA was created, the Southeast Overtown/Park West Project area was designated as a community redevelopment area by Miami-Dade County, a political subdivision of the State of Florida (the "County"). A redevelopment plan was approved by the Commissioners of the City of Miami (the "City") and the Commissioners of Miami-Dade County with certain redevelopment authority granted by the County to the City for project implementation. The City assigned to the CRA the redevelopment authority granted by the County to the City.

20. The CRA is governed by a Board, whose members are City of Miami Commissioners. The Board Chair is customarily the commissioner elected to represent the Overtown community. The Board's policies on redevelopment activities are implemented by the

Executive Director. The current CRA Board consists of Board-Chair Keon Hardemon,[1] Alex Diaz De La Portilla, Ken Russell, Joe Carollo, and Manolo Reyes. The CRA's current Executive Director is Cornelius Shiver ("Shiver").

B. The County Settlement Agreement.

21. The project area for Overtown originally consisted of the parcels of land commonly known as Blocks 36, 45, 55 and 56. The City has always owned Block 55. The County initially owned Blocks 36, 45 and 56.

22. On May 9, 2013, the City, County and the CRA entered into a settlement agreement ("County Settlement Agreement") pursuant to related litigation involving the ownership of Blocks 36, 45 and 56 located in historic Overtown. The County and the CRA both claimed ownership to these Blocks, but reached a resolution in order to allow development of this area of Overtown.

23. Pursuant to the County Settlement Agreement, the County agreed to quit claim its interest in Blocks 36, 45 and 56 to the CRA.

24. The County Settlement Agreement permitted the CRA to control the selection of developers for Blocks 36, 45 and 56, and further set forth deadlines by which development must commence, or Blocks 36, 45 and 56 would be taken back by the County.

C. OGP Wins Approval to Develop Block 45

25. On May 8, 2013, pursuant to the County Settlement Agreement, the County and CRA entered into a Declaration of Restrictions which set forth certain development restrictions and criteria for Blocks 45 and 56, which was subsequently recorded in Official Record Book

[1] Keon Hardemon was elected November 5, 2013, and sworn in office on November 27, 2013.

28631, Pages 1264-1276 ("2013 Declaration"). The 2013 Declaration also set forth the process for the selection of a developer for those blocks.

26. Subsequently, the CRA, then Chaired by Commissioner Michelle Spence-Jones, issued Request for Proposal No. 13-002 ("RFP 13-002") for the development of Blocks 45 and 56.

27. Pursuant to RFP 13-002, OGP submitted a proposal for the development of Blocks 45 and 56, which included apartments, hotel, office, and ground-floor retail space. The CRA wanted a mixed-use project incorporating mixed-income residential units with an emphasis on architectural design and landscaping that acknowledged the culturally historic neighborhood, and in evaluating proposals, they looked at, among other things, the proposer's experience and qualifications, organization structure, financial strength, development concept, and the economic viability of the project as well as economic return.

28. Out of the three proposals received, OGP was evaluated by the CRA designated selection committee to be the highest-ranked proposer and to be the developer of Block 45 located at 152 NW 8th Street, Miami, Florida, and Block 56 located at 160 NW 7th Street, Miami, Florida. All Aboard Florida was the second highest-ranked proposer. Neither Downtown Retail nor any of Swerdlow's entities participated in RFP 13-002.

29. Facing aggressive tactics by All Aboard Florida, the second highest ranked bidder for RFP 13-002, and seeking to avoid protracted delays, OGP accepted an unusual proposal to allow the second highest-ranked proposer to receive Block 56, which was half of RFP 13-002, while OGP would retain rights to development Block 45.

30. Accordingly, on September 12, 2013, the CRA adopted Resolution No. CRA-R-13-0054, which approved OGP as developer of Block 45, and directed Woods to negotiate a

development agreement with OGP following the County's approval of OGP as the developer of Block 45.

31. On October 22, 2013, the Board of County Commissioners adopted Resolution No. R-860-13 approving OGP as the developer for Block 45 and approving certain variances to the 2013 Declaration requested by OGP and the CRA regarding the proposed development. It became effective ten (10) days later.

32. Resolution No. R-860-13 also established a deadline of ninety (90) days for the CRA to negotiate and enter into a development agreement with OGP. If the CRA failed to meet this deadline, it would compel the CRA to terminate negotiations and issue a new RFP to select a new developer for Block 45.

33. On September 2, 2014, the County and CRA entered into an Amended and Restated Declaration of Restrictions for Block 45 which reflected the approved variances, and was subsequently recorded in Official Record Book 29330, Pages 2018-2030.

34. The net proceeds projected by OGP on the Block 45 project at that time were over $70,000,000.

D. OGP Wins Approval to Develop Block 55.

35. On June 18, 2013, around the same time it issued RFP 13-002 for Block 45 and Block 56, the CRA, then chaired by Commissioner Michelle Spence-Jones, issued Request for Proposal No. 13-003 ("RFP 13-003) for the development of Block 55 located at 249 NW 6th Street, Miami, Florida.

36. Pursuant to RFP 13-003, OGP submitted a proposal for development of Block 55, which included a mixed use project consisting of approximately 500-600 apartments and a retail space on the ground floor.

37. On August 2, 2013, the selection committee evaluated OGP's proposal for the development of Block 55 as the highest-ranked proposer, and subsequently advised the CRA Executive Director of this in a memorandum dated August 7, 2013. BDB Miami, LLC was the second-highest proposer. Neither Downtown Retail nor any of Swerdlow's entities participated in RFP 13-003.

38. The net proceeds anticipated by OGP on the Block 55 project were over $90,000,000.

THE DELAYS AND CONSPIRACY AGAINST OGP BEGINS

E. The Block 45 Development Agreement.

39. Despite receiving approval on October 22, 2013, a Development Agreement for Block 45 ("Block 45 Agreement") was not entered into until January 29, 2014, just before the expiration period of the County-imposed deadline, which would have compelled the CRA to restart the developer selection process and expose them to potentially risk Block 45 to revert back to the County if no development agreement was finalized.

40. The Block 45 Agreement, drafted and substantially controlled by the CRA, contained several deadlines for certain items to be completed, and also created the requirement for OGP and the CRA to negotiate and finalize three ancillary agreements which would be governed by the CRA controlled deadlines: a Housing Restrictive Covenant, the Restrictive Covenant, and the CRA Grant Agreement ("Ancillary Documents").

41. Three amendments to the Block 45 Agreement were subsequently approved by the CRA to extend certain deadlines to allow for the parties to continue to negotiate and finalize the Ancillary Documents.

42. The Third Amendment dated July 15, 2014 amended the deadline to negotiate the terms and provisions of the Ancillary Documents to August 12, 2014. The Third Amendment also gave the CRA until August 12, 2014 to arrange for full execution and recording of the Amendment and Restated Declaration of Restrictions for Block 45. If either of the foregoing conditions were not fulfilled, OGP and the CRA retained the right to terminate the Block 45 Agreement.

F. The CRA Delays Negotiation of the Block 55 Development Agreement with OGP.

43. After OGP was evaluated by the selection committee as the highest-ranked proposer for Block 55 on August 2, 2013, the resolution for approval to formalize selection of OGP as the developer for Block 55 was inexplicably not put before the CRA Board until March 31, 2014, almost eight (8) months later.

44. On March 31, 2014, the CRA adopted Resolution No. CRA-R-14-0031, which directed Executive Director Woods to attempt to negotiate a development agreement with OGP for Block 55, and then present it to the Board for consideration and approval.

45. Despite adoption of Resolution No. CRA-R-14-0031, the CRA continued to delay the negotiation of a development agreement with OGP, which should not have taken more than one or two months since the two parties had already negotiated a development agreement for Block 45.

46. The first draft of the Block 55 development agreement was not received from the CRA until August 26, 2014, five (5) months after OGP's approval. This draft was essentially a minor modification of the Block 45 Development Agreement which was in existence and readily available as of March 2014 when OGP's selection for Block 55 was approved by the CRA.

G. The Conspiracy Begins in Earnest.

47. In November 2014, Keon Hardemon and Clarence Woods had dinner with several OGP representatives including Channer and Peebles, in which Hardemon directed Woods to get a deal done with OGP on both Blocks 45 and 55. In hindsight, OGP believes that Keon Hardemon was playing "good cop" to Woods" "bad cop" and had no intention of a deal ever being finalized with OGP.

48. Between November 2014 and February 2015, while negotiations were ongoing for Block 45 and issues were arising, CRA Board Chair Keon Hardemon was making himself scarce and not engaging to resolve any issues between the CRA and OGP or respond to communications from OGP representatives.

49. During this same time, Swerdlow and Duffie were in contact with Keon Hardemon and other CRA employees, as well as Billy Hardemon, the uncle of CRA Board Chair Keon Hardemon[2], regarding their interest in Blocks 45 and 55 and what development plans they had for the properties even though OGP was the designated developer for both and actively working to finalize agreements with the CRA.

50. Duffie, a former Miami-Dade County housing official, had relationships and contacts with the CRA Board and its staff, and is widely known to be a long-time colleague and collaborator of Billy Hardemon.

51. Ultimately, in or around April 2015, OGP and the CRA subsequently negotiated a Fourth Amendment to the Block 45 Agreement ("Fourth Amendment") which, among other

[2] It should be noted that Billy Hardemon, a local lobbyist and campaign manager for Keon Hardemon, had no official role with the CRA as was not an elected official or employed by the CRA.

things, included all of the finalized Ancillary Documents. All that was needed was approval by the CRA Board.

52. On April 16, 2015, counsel for the CRA advised OGP that the CRA intended to place the Fourth Amendment to the Block 45 Agreement including the Ancillary Documents on the CRA Board agenda for April 27, 2015.

53. However, less than one week later, on April 22, 2015, counsel for the CRA inexplicably advised, with no explanation, that the CRA Board Chair Keon Hardemon directed staff to remove the Fourth Amendment to the Block 45 Agreement after reviewing the proposed agenda for April 27, 2015.

54. This was a direct result of Swerdlow's and Duffie's contact with the CRA and their interference to complicate OGP's efforts in reaching final development agreements with the CRA, and create motive for OGP to consider the sale and assignment of its interests in Blocks 45 and 55.

55. If the Fourth Amendment and Ancillary Documents would have stayed on the agenda and been approved, it would have allowed OGP to move beyond negotiations and focus on the real estate development work needed to meet the deadlines attached to Block 45, for the benefit of the residents of Overtown, which was the whole purpose from the beginning.

56. In early May 2015, Duffie contacted a representative of OGP, Larry Spring, advising that he was collaborating with Swerdlow and they had interest in discussing and buying OGP's interests in Blocks 45 and 55. Duffie and Spring had a prior relationship and Swerdlow thought Spring would be the best conduit to convey and receive information from OGP related to Blocks 45 and 55. It is uncertain what remuneration or piece of the deal Swerdlow promised

Duffie to do his bidding, only that he was to receive from Swerdlow something substantial in the event they got the development rights.

57. Shortly thereafter, on May 7, 2015, Swerdlow and Channer met at the former's office, with Duffie also in attendance. Swerdlow and Duffie expressed interest in both Block 45 and Block 55, and already had plans for a significant retail project for the latter property. They also made statements indicating and making clear that they had already approached the CRA regarding their plans and had the blessing of Billy Hardemon, the uncle of CRA Board Chair Keon Hardemon, who was commonly believed to be running the CRA through shadow influence. Swerdlow and Duffie had met with the CRA enough times by this point that the CRA was apparently comfortable with them to take over the development rights from OGP.

58. From the very beginning of their interaction with Plaintiffs, Swerdlow and Duffie communicated that they already had the approval and blessing of the CRA and Billy Hardemon. Swerdlow knew this was key due to the CRA-imposed requirement for approval of any transfer of OGP's rights in Block 45 and Block 55 to anyone.

59. The next day, May 8, 2015, Channer met with Keon Hardemon and Woods at City Hall in an effort to resolve open items for the development agreements for both Blocks 45 and 55.

60. On May 11, 2015, Channer sent an email to Swerdlow which included a confidentiality agreement as a pre-text to discussing Block 55 and sharing confidential information requested by Swerdlow, as well as a survey of the site and other zoning information. Channer also requested to have "a discussion quickly to establish whether [Swerdlow's] concept can work with the mixed-use plan for the site.

61. At this meeting, Swerdlow outlined the terms of a proposal for Block 45 and Block 55 and represented that he had the capital to fund the transaction and ultimate project.

62. Around this same time, with no prompting from OGP and less than two weeks after OGP first became aware of Swerdlow's interest, on May 14, 2015, Cornelius Shiver contacted Channer via phone and requested to meet outside of the CRA offices and during non-business hours at Harry's Pizzeria in Miami's Design District. During this meeting, Shiver made it clear to Channer that OGP would have issues coming to agreements with the CRA for both Blocks 45 and 55.

63. Independently and without solicitation, Shiver strongly encouraged that Plaintiffs explore a deal with Swerdlow for assignment of OGP's rights to Block 45 and Block 55. He indicated awareness of details from Channer's recent meeting with Swerdlow, which was assumed to be private and confidential. This confirmed that the CRA had already been in significant contact with Swerdlow. Finally, Shiver suggested to Channer that OGP release Block 45 back to the CRA and focus only on pursuing a transaction with Swerdlow for Block 55.

64. On May 16, 2015, Channer sent correspondence to Swerdlow requesting an "LOI that outlines the terms you propose for Block 55." Copied on the email was Roger LeBlanc, retail consultant to Swerdlow, who at this time had already been in discussions with Swerdlow regarding the retail aspect of his plan for Block 55.

65. In the meantime, while these back-channel communications were taking place between Swerdlow, Duffie, the CRA, and Billy Hardemon, on May 15, 2015, Executive Director Woods sent an Inter-Office Memorandum to Board Chair Keon Hardemon and the rest of the CRA Board recommending that they adopt the resolution approving the Fourth Amendment to the Block 45 Agreement, which would have enabled OGP to begin focusing on advancing the

real estate development as needed to satisfy the CRA and County-imposed deadlines attached to Block 45 and contribute to much-needed economic development in Overtown.

66. Accordingly, for the second time, the Fourth Amendment was placed on the agenda for the May 26, 2015 meeting of the CRA Board. On May 21, 2015, Shiver contacted Channer and confirmed it would definitely be on the May 26, 2015 agenda.

67. Based on the May 15, 2015 memorandum and the May 21, 2015 communication, there was no reason for OGP to believe that it would not be on the agenda and would not be approved at the May 26, 2015 meeting.

68. However, at the May 26, 2015 meeting, the CRA Board Chairman, Keon Hardemon, without explanation, removed the approval of the Fourth Amendment and Ancillary Documents from the agenda and no vote took place to approve it.

69. This was a direct result of Swerdlow's and Duffie's communications with the CRA regarding their interest in Blocks 45 and 55 and potential deal to buy OGP's interests.

70. Simultaneously, in addition to putting a halt to the approval of the Block 45 Agreement and Ancillary Documents, as a direct result of Swerdlow's and Duffie's contact with the CRA, negotiations for the development agreement for Block 55 stalled and no development agreement was agreed to despite the fact OGP had been approved over a year before on March 31, 2014. Other than Swerdlow's and Duffie's interference with the process, there was no reason a development agreement could not be finalized for Block 55 since one had already been negotiated for Block 45 and the two were not substantially different to cause such a delay.

71. Ultimately, the Fourth Amendment to the Block 45 Agreement and associated Ancillary Documents were never placed back on a meeting agenda for approval despite the fact

the CRA established deadlines for the Block 45 Ancillary Documents were drawing nearer with each passing day.

H. The MIPSA Between OGP and Swerdlow.

72. Due to the lack of cooperation, pressure from the CRA representatives, the CRA imposed deadlines for the Block 45 Ancillary Documents, and the not so subtle indication that it was extremely unlikely that the CRA would finalize negotiations with OGP for either Block 45 or 55, and because of the tremendous effort expended by OGP, especially Channer, to move the projects forward, Plaintiffs reluctantly continued to entertain discussions with Swerdlow with respect to the purchase and/or assignment of OGP's interests so as to avoid litigation with the CRA and not lose everything it had worked for years to bring to fruition.

73. As part of the negotiations between Plaintiffs and Swerdlow, on June 22, 2015, OGP and Swerdlow entered into a Confidentiality Agreement as a precondition to confidential information about Blocks 45 and 55 being provided to Swerdlow. It signified his clear intent to purchase OGP's interests in both Block 45 and Block 55.

74. Based on previous conversations and communications with Channer, as well as Peebles, and consistent with prior draft letters of intent he had sent to Plaintiffs dating back to May 2015, on August 11, 2015, Swerdlow sent an executed Letter of Intent to Channer memorializing the representations he had made and the terms and conditions for the sale and/or assignment of OGP's interests in Blocks 45 and 55.

75. Swerdlow proposed a purchase price of $13,000,000, a 90-day due diligence period, a series of non-refundable deposits following the due diligence period, and a closing within thirty (30) days after expiration of the due diligence period.

76. The non-refundable deposits and expedited due diligence and closing periods were important to Plaintiffs as they did not want to risk wasting time and running up on deadlines for development imposed by the CRA, the very entity Defendants were interfering with, which came with the penalty of OGP losing its development rights and ability to profit.

77. It was critically important that any deal be done in a reasonable amount of time, and Swerdlow was making the representation that he intended to consummate the deal without delay.

78. Swerdlow also included a confidentiality provision agreeing to keep all negotiations and communications between him and OGP in strict confidence.

79. This was significant to Channer and Peebles because they were concerned that Swerdlow would continue to have discussions with the CRA and potentially complicate their ability to finalize the documents on their own. As such, they needed assurance there would be no circumvention in the future and ensure that any information they provided Swerdlow would not be given to anyone and that Swerdlow would not communicate with the CRA.

80. Based on this and further discussions with Swerdlow following the receipt of the August LOI where Swerdlow represented he had every intention of closing on the purchase as quickly as possible, Peebles and Channer agreed to finalize a deal.

81. Specifically, Peebles had been reluctant to enter into a transaction with Swerdlow. In or around September or October, Peebles and Swerdlow met for lunch in Coconut Grove to discuss the potential transaction. During this lunch meeting, Swerdlow relieved Peebles' apprehensiveness by assuring Peebles he understood the properties, he had done his economics, there would be a limited due diligence period because he had already performed much of it, and

he had the capital immediately available to purchase the interests. Based on this, Peebles agreed to move forward.

82. On October 21, 2015, a letter of intent was executed to further establish terms for the sale of OGP's entire interest in the development rights for Blocks 45 and 55. During numerous discussions involving Duffie, Swerdlow, and Channer leading up to the signing of the letter of intent, Duffie would regularly reference having Billy Hardemon's approval. The letter of intent provided that the June 22, 2015 Confidentiality Agreement would remain in full force and effect and Swerdlow was prohibited from having any direct contact with the CRA regarding Block 45 or Block 55 or the transaction contemplated by the letter of intent.

83. By this time, Swerdlow and Plaintiffs had negotiated a purchase price of $15,000,000 for their interests in OGP, an amount Swerdlow says he was ready, willing and able to pay for the two properties and had the financing in place to pay within a short amount of time.

84. It also included a non-refundable deposit of $1,300,000 to be paid upon the conclusion of the due diligence period as an inducement for OGP to enter into the transaction. The inclusion of the non-refundable deposit was material to Plaintiffs and cemented Swerdlow's commitment to consummate the transaction.

85. Similar to the prior letters of intent (May 2015 and August 2015), and representations made by Swerdlow throughout the negotiations, the October LOI included shortened due diligence and closing periods (within 30 days after close of due diligence period), as well as a $1,500,000 penalty to Swerdlow in the event closing was extended.

86. With no development agreement in place with the CRA for Block 55 and the Block 45 Agreement and Ancillary Documents still not formally approved by the CRA, Plaintiffs TPC and WW OGP 45, continued to negotiate with Swerdlow which was ultimately structured

as the sale of their controlled ownership interests in OGP. On January 29, 2016, TPC and WW OGP 45 entered into a Limited Liability Company Membership Interest Purchase and Sale Agreement ("MIPSA") with Downtown Retail and Swerdlow, individually, for the sale of Plaintiffs' membership interests in OGP, a third-party beneficiary to the MIPSA as the entity that held the development rights for Block 45 and Block 55. A copy of the MIPSA is attached as **Exhibit A**.

87. The MIPSA formalized the terms and conditions contained in the October 21, 2015 LOI.

88. Pursuant to the MIPSA, the total purchase price to be paid by Downtown Retail for interest in Blocks 45 and 55 was Fifteen Million and 00/100 Dollars ($15,000,000.00) plus an amount equal to all actual, out-of-pocket third party predevelopment costs for services in furtherance of the development of Blocks (such as architectural, engineering, etc.). *See* Exhibit A

89. The MIPSA, which was heavily negotiated between the parties and drafted primarily by counsel for Downtown Retail and Swerdlow, contained confidentiality and non-circumvention provisions.

90. Specifically, Section 4.1.1 of the MIPSA provides in part:

> Confidentiality...[Downtown Retail] acknowledges that, except as provided in this Section 4.1.1 and/or in Section 6.1 and/or Section 6.3, prior to the expiration of the Due Diligence Period, **[Downtown Retail] will not have any contact or communications with the CRA or any other governmental and non-governmental entities regarding the Development Agreements and the Property [Blocks 45 and 55] without [TPC and WW OGP 45's] prior written consent** (the giving or withholding of such consent shall be in [TPC and WW OGP 45's] sole discretion). After the expiration of the Due Diligence Period (and provided this Agreement is not terminated), no consent of [TPC and WW OGP 45] shall be required for [Downtown Retail] or its representatives to contact or communicate with the CRA or other governmental or non-governmental entities (but, as to communications with the CRA, [Downtown Retail] shall notify [TPC

and WW OGP 45] of any intended communications and [TPC and WW OGP 45] shall have the right to participate in same)... The provisions of this Section 4.1 shall terminate on the earlier of: (i) Closing; and (ii) eighteen (18) months after the date of termination of this Agreement.

Exhibit A, §4.1.1 (emphasis added).

91. Further, Section 4.1.2 of the MIPSA provides in part:

Purchaser or Swerdlow's Liability for Confidentiality Breach...**In the event of a breach of the provisions of Section 4.1.1 or Section 4.2 prior to Closing (each is, hereafter, a "Confidentiality Breach") by Purchaser or Swerdlow, Seller shall have the right to seek damages for such breach as follows**: (a) Seller shall be entitled to the Deposit, together with all interest earned thereon, and the Extension Fee (if paid) and may direct Escrow Agent to immediately pay to Seller the Deposit (upon Escrow Agent's receipt of a Joint Instruction), together with all interest earned thereon (whereupon this Agreement shall terminate and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination (for avoidance of doubt, this Section 4.1.2 and Section 4.1.3 shall survive such termination)); and (b) **in the event that the CRA terminates the Block 45 Development Agreement and/or the negotiations involving the Draft Block 55 Development Agreement due solely to a Confidentiality Breach (and not because of any act or omission of or by Seller or others (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party)** or for any other reason or event (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party)), then, in addition to the provisions of clause (a) of this Section 4.1.2, **Seller shall have the right to seek additional damages from Swerdlow for such Confidentiality Breach as follows (i) the damages under this clause (b) shall be limited to a claim for actual or consequential damages (but not punitive damages) directly caused by such Confidentiality Breach; and (ii) the aggregate amount of damages under this clause (b) shall in no event exceed $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property**.

Exhibit A, §4.1.2 (emphasis added).

92. Additionally, Section 4.1.3 of the MIPSA contains the following:

Purchaser or Swerdlow's Liability for Permitted Communication Party[3] Confidentiality Breach. **In the event of a Confidentiality Breach by a**

[3] "Permitted Communication Party" is defined as "Purchaser's employees, attorneys, professionals, architects, engineers, consultants, title insurance companies, companies providing due diligence services to Purchaser, managers and members, potential tenants and Purchaser's potential partners, investors and lenders." Exhibit A, §4.1.1.

Permitted Communication Party, Seller shall have the right to seek damages from Swerdlow for such breach as follows: (a) the damages shall be limited to a claim for actual or consequential damages (but not punitive damages) directly caused by Confidentiality Breach; and (b) the aggregate amount of damages shall in no event exceed $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property; and (c) a claim for damages shall arise only in the event that the CRA terminates the Block 45 Development Agreement and/or the negotiations involving the Block 55 Development Agreement due solely to a Confidentiality Breach and not because of any act or omission of or by Seller or others (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party) or for any other reason or event (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party) (collectively, a "CRA Termination").

Exhibit A, §4.1.3 (emphasis added).

93. Finally, Section 4.3 of the MIPSA titled "Non-Circumvention" provides in relevant part:

> In the event that (a) Purchaser does not consummate the purchase of the Membership Interests pursuant to this Agreement (including as a result of the CRA's termination of (i) the Block 45 Agreement and/or (ii) negotiations with respect to the Draft Block 55 Development Agreement); and (b) during the period which is eighteen (18) months after termination or expiration of this Agreement, Purchaser, Swerdlow and/or its or his affiliated entities desire to, directly or indirectly, enter into a transaction with the CRA or otherwise with an entity which enters or has entered into a transaction with the CRA, involving the acquisition or development of the Block 45 Property or the Block 55 Property, neither Purchaser nor Swerdlow shall (and shall cause their respective affiliated entities to not), during such eighteen (18) month period, do so (i) unless Purchaser and Seller (or their respective affiliates) reach agreement, acceptable to each of them in their sole and absolute discretion, to be partners in such acquisition or development transaction pursuant to an agreement with terms for projects of similar size, value and risk, each one equally sharing in the profits, losses and obligations of the partnership; or (ii) if (A) Seller shall, within ten (10) business days after receipt of a written request from Purchaser or Swerdlow to pursue the transaction, advise Purchaser and Swerdlow in writing to not pursue same, or (B) if Purchaser or Swerdlow and Seller (or their respective affiliated entities) are unable to reach agreement to be partners in any such transaction.[4]

[4] Section 4.3 contains two scenarios. The first scenario contained in this portion of Section 4.3 allows for the recovery of all damages suffered in the event that Downtown Retail and Swerdlow "directly or indirectly, enter into a transaction with the CRA ... involving the acquisition or development of the Block 45 Property or the Block 55 Property..." unless Plaintiffs and Defendants had reached an agreement to be partners. It also required Downtown Retail and

94. The MIPSA also contained an initial due diligence period until April 15, 2016, and a provision requiring Swerdlow to make a non-refundable deposit of $1,300,000 within two days following the expiration of the due diligence period. Exhibit A, §§3.2.3, 6.1.

95. Conditions for closing were limited to facilitate a streamlined transaction and closing which was to occur within thirty (30) days after the end of the due diligence period. Exhibit A, §§2, 8.

96. Swerdlow, individually, signed a joinder to the MIPSA expressly "(i) acknowledging and consenting to the transactions contemplated by the [MIPSA] and (ii) agreeing to be bound by the provisions of Sections 4, 6.5, 11.2 and 17.4 of this [MIPSA] as described therein." *See* Exhibit A.

I. The Breaches of the MIPSA and Culmination of the Conspiracy to Oust OGP

97. After entering into the MIPSA, despite its express terms, Swerdlow made the potential assignment of the agreements for Blocks 45 and 55 known to the CRA through Billy Hardemon and Duffie.

98. On April 14, 2016, OGP and Downtown Retail entered into a First Amendment to the MIPSA which extended the date of expiration of the due diligence period from April 15, 2016 to April 20, 2016. In all, the MIPSA was amended six times, all to extend the due diligence period with the Sixth Amendment extending it to June 13, 2016.[5] Swerdlow wanted

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Swerdlow to give OGP notice of its intent to pursue a transaction, and was prohibited from doing so if OGP advised them not to or they were unable to reach an agreement to be partners in any such transaction. Thus, as stated, it does not limit damages. OGP acknowledges there is a second scenario contained in Section 4.3 that limits damages to $15,000,000 ($7,500,000 for each for Block 45 and Block 55) in the event Downtown Retail and Swerdlow **consummated** a transaction during that eighteen (18) month period. However, the circumstances triggering the second scenario that limit the damages did not occur and it is inapplicable.

[5] Section 4 of the MIPSA was never amended.

the due diligence period extended for three reasons: 1) he never had an intention to perform under the MIPSA, 2) to allow more time for the rights OGP had in the properties to expire or be terminated so he could get them without paying OGP anything, and 3) to avoid having to pay the non-refundable deposit of $1,300,000.

99. All of these extensions were requested by Swerdlow who, along with Duffie, during this time were having back-channel communications with Keon Hardemon, Woods, Shiver, and Billy Hardemon in violation of Section 4 of the MIPSA. This was made clear to OGP from inferences and direct statements from Swerdlow and Duffie, as well as comments by Woods and Shiver as OGP continued to try to finalize its negotiations with the CRA on the development agreements for both Block 45 and Block 55.

100. On May 12, 2016, the parties to the MIPSA entered into a Fifth Amendment which extended the Due Diligence Period to May 25, 2016.

101. Despite having a fully negotiated Fourth Amendment to the Block 45 Agreement as well as the Ancillary Documents required thereunder that were ready in April 2015 which CRA Chair Keon Hardemon was refusing to place on the CRA Board agenda, on May 24, 2016, the CRA sent a Notice of Termination of the Block 45 Agreement to OGP. The reason being claimed was that OGP had failed to satisfy any of the CRA Conditions Precedent listed in Section 12 of the Block 45 Agreement, the same section requiring finalization of the Ancillary Documents.

102. The truth is the CRA could have approved the Fourth Amendment to the Block 45 Agreement, which included the Ancillary Documents when it was placed on the CRA Board agenda in April 2015 and then again in May 2015. However, the CRA was waiting for Swerdlow to make a deal with OGP.

103. Meanwhile, Swerdlow kept delaying finalization of the purchase pursuant to the MIPSA, and extending the Due Diligence Period in the MIPSA.

104. The CRA, fearful that no deal would get done between OGP and Swerdlow and concerned Block 45 could revert back to the County since no construction had started, terminated negotiations with OGP for Block 45 on May 24, 2016.

105. This was the day before the extension of the Due Diligence Period pursuant to the Fifth Amendment to the MIPSA.

106. Based on this, it was clear Swerdlow and the CRA were in communications with respect to the negotiations between Swerdlow and OGP regarding Blocks 45 and 55.

107. On June 3, 2016, OGP and the CRA mutually entered into a Termination Agreement which formally terminated the Block 45 Development Agreement.

108. To induce OGP to accept termination of the Block 45 Agreement, the CRA agreed to move forward to consummate negotiation of the development agreement for Block 55 on terms that had been negotiated and were then mutually acceptable. This was being conveyed to OGP by Clarence Woods and by the CRA's outside legal counsel.

109. The CRA used the Block 45 termination as leverage to try and force OGP to agree to transfer Block 55 to Downtown Retail and Swerdlow. It was a quid pro quo: If OGP gave Block 45 back to the CRA nicely, then OGP could keep Block 55, but only if it did a deal with Swerdlow.

110. As a result, OGP and Swerdlow entered into a Sixth (and final) Amendment to the MIPSA on May 31, 2016, which extended the Due Diligence Period to June 13, 2016.

111. On June 13, 2016, when no deal was finalized and OGP refused to yet again extend time per Swerdlow's request for a seventh amendment because it had lost faith in

Swerdlow and wanted to concentrate its focus on the negotiations for a Block 55 development agreement with the CRA, Swerdlow, through counsel, terminated the MIPSA as a way to avoid making a hard financial commitment required by the MIPSA. Swerdlow subsequently communicated to OGP that Keon Hardemon and Billy Hardemon would not be happy that the deal had fallen apart, further proof that Swerdlow was in contact with CRA representatives regarding the negotiations with OGP.

112. As a result of this termination, the 18-month non-circumvention period contained in Section 4.3 of the MIPSA commenced, meaning it would end December 13, 2017.

113. Despite OGP's approval as developer for Block 55 on March 31, 2014, over two-and-a-half years later, a development agreement for Block 55 still had not been finalized between OGP and the CRA.

114. Subsequent to Swerdlow's termination of the MIPSA, OGP learned that the CRA Board Chair Keon Hardemon directed the CRA not to enter into a development agreement for Block 55 with OGP unless OGP was going to assign its rights to Downtown Retail and Swerdlow.

115. On July 6, 2016, the CRA Executive Director Clarence Woods called Channer and told him directly it was not a good idea to let the MIPSA with Swerdlow end and that OGP's negotiations for a development agreement for Block 55 would be terminated if it did not consummate a transaction with Swerdlow. Channer was told by Woods that the CRA would only accept the architectural design proposed by Swerdlow even though it was OGP that was the approved developer, and it would push hard for approval if an assignment to Swerdlow was brought before the Board. This step would further compel OGP to accept a deal with Swerdlow

since only his design would be acceptable to the CRA. Woods further indicated that this was his direction from CRA Chair Keon Hardemon.

116. The message to OGP was surprising, but clear. It presented a quid pro quo scenario that raised the specter of troubling and possibly illegal actions being demanded from OGP.

117. It was further delivered on September 2, 2016 when Shiver requested an after-hours meeting with Channer outside of the CRA offices. While meeting at the then Sonesta Hotel in Miami's Coconut Grove neighborhood and near his residence, Shiver told Channer that orders from the CRA Chair Keon Hardemon (and his uncle Billy Hardemon) were to terminate negotiations with OGP at the September 26, 2016 meeting unless OGP arrived at an agreement with Swerdlow.

118. After two more months of no development agreement being finalized, in light of the troubling quid pro quo delivered by Woods, on September 9, 2016, counsel for OGP had correspondence hand delivered to the CRA Board Chair Keon Hardemon objecting to the CRA's conduct and requesting that the CRA cease its improper attempts to force OGP out. A copy of the September 9, 2016 correspondence is attached as **Exhibit B.**

119. That same night, Shiver, through his personal email account, forwarded a final draft of the development agreement for Block 55 from the CRA staff counsel and outside counsel to Channer. It was clear there was nothing standing in the way of an agreement except for changed political will and the desire to have Swerdlow on the project and undermined any credibility to the narrative that the CRA could not come to terms with OGP.

120. The next day, September 10, 2016, Peebles unexpectedly encountered Keon Hardemon in Washington D.C., in which Keon Hardemon acknowledged receipt of the

September 9, 2016 letter, and indicated that he would direct the CRA to terminate the negotiations for a development agreement with OGP for Block 55. No effort was made by Keon Hardemon to discuss or work through the issues and concerns raised in the September 9, 2016 letter.

121. On September 16, 2016, the CRA, by way of letter from Executive Director Clarence Woods, notified OGP that it was ending negotiations and intended to re-issue a request for proposal for the development of Block 55. A copy of this letter is attached as **Exhibit C.** Contrary to later reports in the press that the deal fell through because OGP and the CRA could not agree on what the project should be, Woods specifically referenced the September 9, 2016 letter from OGP's counsel as the basis for termination.

122. Three years after it stepped up and submitted two proposals to help rebuild Historic Overtown, OGP was officially pushed out of development of both Blocks 45 and 55, which was clearly not in the best interests of its residents.

123. On October 4, 2016, Keon Hardemon responded to the September 9, 2016 letter denying any knowledge of impropriety.[6] A copy of this letter is attached as **Exhibit D.**

124. Around this same time, Swerdlow had been communicating with Peebles and made several references to termination of OGP's rights to Block 55 and the CRA, solidifying that he was in regular communications with the CRA despite the non-circumvention provision of the MIPSA.

125. On October 31, 2016, the CRA passed a resolution authorizing the re-issuance of a request for proposal for the development of Block 55.

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[6] The letter was received by OGP on October 14, 2016, but it was dated October 4, 2016.

126. On June 6, 2017, Swerdlow, Duffie and the CRA's Shiver were observed meeting at the Ritz-Carlton in Coconut Grove and discussing the development of Block 55.

127. On July 26, 2017, the CRA published a new request for proposal soliciting bids for the development of Block 55.

128. On October 17, 2017, Swerdlow, through Downtown Retail, the same entity that previously negotiated with OGP, submitted a proposal for the development of Block 55. Duffie, a friend of Billy Hardemon, was prominently identified in the proposal as a managing member of Downtown Retail.

129. Upon learning of this, on December 13, 2017, OGP, through counsel, sent correspondence to Downtown Retail and Swerdlow giving them notice of their violation of Section 4.3 of the MIPSA. No response was received. A copy of the December 13, 2017 correspondence is attached as **Exhibit E.**

130. On March 1, 2018, unsurprisingly, the CRA selected Downtown Retail as the preferred developer for Block 55. By this time, Shiver had replaced Woods as the Executive Director of the CRA.

131. On September 24, 2018, the CRA Board approved a developer agreement between the CRA and Downtown Retail, and less than one month later, Downtown Retail entered into a formal development agreement with the CRA for Block 55 in October 2018.

132. Somehow, Downtown Retail and Swerdlow were able to get a development agreement finalized for Block 55 in six (6) months, something the CRA could not do in three years with OGP. In reality, there was nothing remarkably different from what OGP had proposed and what Downtown Retail proposed to explain or justify why it took significantly less time to reach an agreement with Downtown Retail.

133. Two years after having been selected, Downtown Retail and Swerdlow have still not brought the project to fruition and have subsequently had to bring Terra Group, who did not participate in either RFP process, to assist in the development of Block 55 and advance the project, as Swerdlow apparently is challenged in developing it himself. Such a material change should have triggered a rebidding of the project in order to provide transparency to the public.

J. The Impact of Defendants' Actions

134. Nearly four (4) years since the negotiations for the Block 45 Agreement were terminated, there has been no development of Block 45 and the land has reverted back to the County.

135. Six and one-half (6.5) years after OGP was first selected as the highest-ranked proposer to be the developer of Block 55 and four (4) years since negotiations were terminated, development still has not commenced on Block 55.

136. OGP was ready, willing, and able to develop both Block 45 and Block 55 in 2016 (and earlier).

137. Because of Defendants' actions, and the actions of the CRA, OGP was not allowed to develop Block 45 or Block 55.

138. Instead of both developments being completed by now, both lots sit undeveloped.

139. Unfortunately, it is not only OGP that has been damaged or impacted as a result of Defendants' actions, and the actions of the CRA, which were contrary to the public interest. No development has taken place and the Overtown community is sorely in need of affordable housing, economic growth, and jobs for its residents. These residents have been unfairly denied much needed opportunities. Additionally, the City, County and State have been deprived of significant tax revenue as a result of their conduct.

140. It is clear that the self-interest of certain people, one of whom is an elected official, have put their own personal gain, likes and vendettas before that of the public good. This is especially shameful in the case of an elected official who takes an oath to serve the greater good of the public first and not himself.

141. Almost seven (7) years after OGP proposed its project, the CRA continues to fail local residents and greater Miami-Dade County by not delivering jobs and economic opportunity at a meaningful scale. Shockingly, it has become widely known that the CRA is dominated by the personal interests of a few who are casual in observing rules and protocol to the significant detriment of the citizens of Miami-Dade County generally and Overtown specifically. OGP's own experience echoes this unfortunate reality and raises very serious legal questions civilly and potentially criminally.

142. Had the shenanigans, intrigue and games played to deny these projects from moving forward under the auspices of OGP not happened, both projects would have been completed long ago and the economic impact realized would be far in excess of any profit OGP as the Developer could expect to receive, all for the benefit of the citizens of Miami-Dade County generally and Overtown and its people and businesses specifically.

143. Plaintiffs have retained the undersigned counsel and have incurred attorney's fees and costs for which they are entitled to be reimbursed from the Defendants.

Count I—Breach of Contract (Sections 4.1.1, 4.1.2 and 4.1.3)
Against Downtown Retail and Swerdlow

144. Plaintiffs re-allege the allegations contained in paragraphs 1 through 143 above as if specifically set forth herein.

145. This is an action for damages against Downtown Retail and Swerdlow arising from their breach of Section 4.1.1 of the MIPSA, as well as the confidentiality breach by Duffie pursuant to Section 4.1.3.

146. On January 29, 2016, Plaintiffs and Defendants entered into the MIPSA.

147. Section 4.1.1 prohibited Downtown Retail and Swerdlow, as well as all Permitted Communication Parties, which included Duffie, from having any contact or communications with the CRA regarding the development agreements and Blocks 45 and 55 without Plaintiffs' prior written consent. *See* Exhibit A, §4.1.1.

148. It also prohibited them from providing Confidential Information to the CRA.

149. From the effective date of the MIPSA through the end of the Due Diligence Period (June 13, 2016), neither Downtown Retail nor Swerdlow were granted permission by OGP to contact the CRA with respect to OGP's negotiations of development agreements for Blocks 45 or 55, or Blocks 45 and 55 in general. Nor did OGP give their consent.

150. However, throughout that period, Swerdlow and/or Duffie were in regular communications with the CRA including its Board Chair Keon Hardemon as well as its Executive Director Clarence Woods and staff member Cornelius Shiver.

151. As part of these communications, Swerdlow and/or Duffie were sharing Confidential Information (as defined in the MIPSA) with the CRA, which included the very existence of the MIPSA and all material aspects of it.

152. As a direct and proximate result of these breaches, the CRA did not enter into development agreements for either Block 45 or Block 55, and in fact terminated its negotiations with OGP.

153. Pursuant to Section 4.1.2 and 4.1.3 of the MIPSA, Downtown Retail and/or Swerdlow are liable in the amount of $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property.

WHEREFORE, Plaintiffs requests that this Honorable Court enter a Judgment in favor of Plaintiffs and against Downtown Retail and Swerdlow, jointly and severally, for their breaches of the MIPSA, and an award of all damages that reasonably flow from those breaches proximately caused by them, including in excess of $15,000,000 in compensatory damages, attorney's fees pursuant to Section 20.6 of the MIPSA, costs and interest, as well as all such other relief as may be just and proper.

Count II—Breach of Contract (Section 4.3)
Against Downtown Retail and Swerdlow

154. Plaintiffs re-allege the allegations contained in paragraphs 1 through 143 above as if specifically set forth herein.

155. This is an action for damages against Downtown Retail and Swerdlow arising from their breach of Section 4.3 of the MIPSA.

156. On January 29, 2016, Plaintiffs and Defendants entered into the MIPSA.

157. Section 4.3 survived the termination of the MIPSA, which was June 13, 2016, for a period of 18 months (or December 13, 2017). *See* Exhibit A, §4.3.

158. During that 18-month period, Section 4.3 prohibited Downtown Retail and Swerdlow from "directly or indirectly, enter[ing] into a transaction with the CRA … involving the acquisition or development of the Block 45 Property or the Block 55 Property..." unless Plaintiffs and Defendants had reached an agreement to be partners. It also required Downtown Retail and Swerdlow to give OGP notice of its intent to pursue a transaction, and was prohibited

from doing so if OGP advised them not to or they were unable to reach an agreement to be partners in any such transaction. *See* Exhibit A, §4.3.

159. On October 17, 2017, before the expiration of the 18-month period, Swerdlow, through Downtown Retail, submitted a proposal to the CRA for the development of Block 55, which ultimately concluded in a development agreement.

160. Neither Downtown Retail nor Swerdlow gave OGP notice of its intent to enter into a transaction with the CRA.

161. By not allowing OGP to become partners with them in the development of Block 55 during the 18-month period following the termination of the MIPSA, or giving them an opportunity to say no to Swerdlow proceeding forward, and cutting them out of any transaction, Downtown Retail and Swerdlow willfully violated the agreement in place and cause OGP to suffer significant damages.

WHEREFORE, Plaintiffs requests that this Honorable Court enter a Judgment in favor of Plaintiffs and against Downtown Retail and Swerdlow, jointly and severally, for their breaches of Section 4.3 of the MIPSA, and an award of all damages that reasonably flow from those breaches proximately caused by them, including in excess of $90,000,000 in compensatory damages related to Block 55, attorney's fees pursuant to Section 20.6 of the MIPSA, costs and interest, as well as all such other relief as may be just and proper.

Count III—Tortious Interference
Against Downtown Retail, Swerdlow, and Duffie

162. Plaintiffs re-allege the allegations contained in paragraphs 1 through 143 above as if specifically set forth herein.

163. This is an action for tortious interference with an advantageous business relationship against Downtown Retail, Swerdlow, and Duffie.

164. OGP was the highest-ranked proposer to develop Block 45 and Block 55 as selected by the CRA.

165. As such, the CRA Executive Director was directed to negotiate developer agreements for both projects with OGP and no one else.

166. Defendants desired to develop Block 55, but could not directly contract with the CRA since the procurement process had concluded in OGP's favor. Defendants did not participate in the process and were not selected to develop Block 55.

167. By April 2015, the CRA and OGP had entered into negotiations for developer agreements for Blocks 45 and 55 and had essentially agreed on final agreements for both pending CRA Board approval, typically a formality.

168. In fact, OGP and the CRA did have a finalized development agreement for Block 45, along with the required Ancillary Documents, which were placed on the CRA Board agenda for approval in April and May 2015.

169. Around the same time, with an interest in obtaining the development rights for themselves and to stop OGP from consummating their agreements, Defendants had been in communications with Keon Hardemon, Billy Hardemon, and other CRA officials for several months.

170. Knowing that OGP had entered into negotiations with the CRA and they had essentially reached a final development agreement for each Block pending CRA Board approval, faced with the possibility they might be approved, Swerdlow and Duffie continued communicating with the CRA to delay the negotiations and stop the approvals.

171. Defendants' interference was successful, first as the CRA pulled the Block 45 Agreement and Ancillary Documents from the CRA Board agenda for approval not once (April 27, 2015 agenda) but twice (May 26, 2015 agenda).

172. Had it remained on either agenda, the Block 45 Agreement between OGP and the CRA and the Ancillary Documents would have been approved absent Defendants' interference and OGP would have been positioned to focus fully on development without the threat of near-term termination and loss of its development rights.

173. Similarly, during this same time period, OGP was negotiating a development agreement for Block 55, which it had received approval to be the developer in March 2014.

174. At the same time, in early 2015, in addition to Block 45, Defendants were also communicating their interest in Block 55 to the CRA and Billy Hardemon. This was made clear by communications from Shiver to Channer that the CRA was not going to approve OGP's agreement and OGP should do a deal with Swerdlow, who had already been blessed for development in the event he could take over OGP's rights.

175. Instead of the CRA approving a development agreement with OGP for Block 55, which should have taken no more than a few months, the CRA stalled negotiations as a direct result of the Defendants' interference.

176. Had the CRA only been negotiating with OGP for development agreements for Block 45 and Block 55, they would have been executed and approved by the middle of 2015, and by the end of 2015 at the latest. However, Defendants had surreptitiously injected themselves into the process preventing the negotiations and approvals to be consummated.

177. Downtown Retail, Swerdlow, and Duffie, intentionally and unjustifiably, went to great efforts to torpedo the negotiations between OGP and the CRA with respect to Block 45 and Block 55.

178. Not only did their interference cause the CRA to pull the approval of the Block 45 Agreement from the CRA Board agenda, the development agreement between OGP and the CRA for Block 55 would have been finalized and subsequently approved in 2015 absent Defendants' interference.

179. As a direct and proximate result of the intentional, and willful actions of Downtown Retail, Swerdlow, and Duffie, developer agreements between the CRA and OGP were never approved, and OGP was damaged in the tens of millions of dollars.

WHEREFORE Plaintiffs requests that this Honorable Court enter a Judgment in favor of Plaintiffs and against Downtown Retail, Swerdlow, and Duffie, jointly and severally, for their tortious conduct, and an award of all damages that reasonably flow from that conduct, including in excess of $160,000,000 in compensatory damages related to Block 45 and Block 55, costs and interest, as well as all such other relief as may be just and proper.

Count IV—Conspiracy
Against Swerdlow and Duffie

180. Plaintiffs re-allege the allegations contained in paragraphs 1 through 143 and 164 through 179 above as if specifically set forth herein.

181. This is an action for conspiracy against Swerdlow, and Duffie.

182. Swerdlow and Duffie, conspired with the CRA, including Keon Hardemon, Woods, Shiver, and their agent Billy Hardemon, to terminate OGP's right to negotiate for the development of Blocks 45 and 55.

183. Among other things, Swerdlow, Duffie, and the CRA met regularly in 2015 behind OGP's back in an effort to devise a plan to terminate the negotiations between the CRA and OGP so Swerdlow and Downtown Retail could become the approved developer, which ultimately occurred.

184. Swerdlow and Duffie both had personal financial interests in the development being awarded to Downtown Retail.

185. As a direct and proximate result of the conspiracy, no development agreements were entered into between OGP and the CRA ultimately terminated negotiations with OGP for development agreements related to both Block 45 and Block 55.

186. As a result, OGP was unable to develop either Block 45 or Block 55 and lost over $160,000,000 million in profits.

WHEREFORE, Plaintiffs requests that this Honorable Court enter a Judgment in favor of Plaintiffs and against Swerdlow and Duffie, jointly and severally, and an award of all damages that reasonably flow from that conduct, including in excess of $160,000,000 in compensatory damages related to Block 45 and Block 55, costs and interest, as well as all such other relief as may be just and proper.

Count V—Fraud in the Inducement
Against Swerdlow

187. Plaintiffs re-allege the allegations contained in paragraphs 1 through 143 above as if specifically set forth herein.

188. This is an action for damages against Swerdlow for fraud in the inducement.

189. In May 2015, Swerdlow met several times with Channer and represented that he already had the approval of the CRA for his proposed developments of Blocks 45 and 55, and as a result, he wanted to purchase the membership interests in OGP. Specifically, he represented

that he would pay OGP $13,000,000 for both properties and would do so within a reasonable amount of time.

190. These representations were memorialized in an August 11, 2015 Letter of Intent that Swerdlow prepared and executed.

191. Subsequent to the August 11, 2015 LOI, Swerdlow continued to negotiate with Plaintiffs and represented to Channer that he had every intention of purchasing OGP's interests.

192. Swerdlow also met Peebles, who was reluctant to enter into a transaction, for lunch in September or October 2015. During this lunch meeting, Swerdlow relieved Peebles' apprehensiveness by assuring Peebles he understood the properties, he had done his economics, there would be a limited due diligence period because he had already performed much of it, and he had the capital immediately available to purchase the interests. Based on this, Peebles agreed to move forward.

193. To induce Plaintiffs further, the purchase price went up to $15,000,000 and he added a provision providing for a non-refundable deposit of $1,300,000 to be paid following the expiration of an expedited due diligence period.

194. These were memorialized in an October 21, 2015 Letter of Intent executed by Swerdlow.

195. Based on these representations, Plaintiffs entered into the MIPSA on January 29, 2016.

196. However, throughout the negotiations with Plaintiffs from May 2015 to the execution of the MIPSA, Swerdlow misrepresented his intention to purchase OGP's interest in Block 45 and the negotiated Block 55 development agreement.

197. Swerdlow made the promises that he would purchase OGP's interests within a reasonable time with no intention of actually performing it.

198. Swerdlow represented that he was going to do a deal with OGP, but Swerdlow's real intention was to thwart OGP's development agreement with the CRA and obtain sole access to the transaction so that he could directly contract with the CRA to develop Blocks 45 and 55 through a subsequent procurement process without having to pay Plaintiffs anything. In order to do this, he needed insight into the CRA and how to negotiate with them, information and access he would get if Plaintiffs entered into a contract with him.

199. In furtherance of this, Swerdlow induced Plaintiffs to enter into the MIPSA with Downtown Retail and himself.

200. Swerdlow never intended to close on the purchase of Plaintiffs' interest in Blocks 45 and 55 and instead, kept extending the due diligence period until the CRA finally terminated its negotiations with OGP.

201. Swerdlow knew that he would not honor the MIPSA when he entered into it and he executed the MIPSA to perpetrate a fraud on Plaintiffs.

202. Swerdlow intended for Plaintiffs to rely on his representations and the MIPSA as a commitment they would receive at least $15,000,000 for their development rights in Blocks 45 and 55.

203. Plaintiffs executed the MIPSA and continued to extend the due diligence period in reasonable reliance that Swerdlow and Downtown Retail would perform under the MIPSA and purchase OGP's interests based on representations made prior to its execution.

204. Plaintiffs justifiably relied on Swerdlow's intention to purchase the rights to develop Blocks 45 and 55 to their detriment, and have suffered damages in excess of $100,000,000 as a result of entering into the MIPSA.

WHEREFORE Plaintiffs requests that this Honorable Court enter a Judgment in favor of Plaintiffs and against Swerdlow, and an award of all damages including in excess of $160,000,000 in compensatory damages related to Block 45 and Block 55, costs and interest, as well as all such other relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all matters so triable.

RESERVATION OF RIGHTS

Plaintiffs reserve the right to amend this Complaint, with leave of court, to include a claim for punitive damages against Downtown Retail, Swerdlow and/or Duffie.

Dated this 11th day of May 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed and served through the Florida Court's E-filing Portal on May 11, 2020, to counsel of record on the service list below:

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/s/ Glen H. Waldman
Glen H. Waldman, Esq.

EXECUTION COPY

LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

by and among

TPC OVERTOWN BLOCK 45, LLC,
a Florida limited liability company ("TPC Seller"),

WW OGP 45, LLC,
a Florida limited liability company ("WW Seller"; and together with TPC Seller, collectively "Seller"),

and

DOWNTOWN RETAIL ASSOCIATES LLC,
a Florida limited liability company ("Purchaser")

DATED: JANUARY 29, 2016

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LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this 29th day of January, 2016 (the "Effective Date"), by and among **TPC OVERTOWN BLOCK 45, LLC**, a Florida limited liability company ("TPC Seller"), **WW OGP 45, LLC,** a Florida limited liability company ("WW Seller"; and together with TPC Seller, collectively, and jointly and severally, "Seller"), and **DOWNTOWN RETAIL ASSOCIATES LLC**, a Florida limited liability company ("Purchaser") (each of TPC Seller and WW Seller and Purchaser is hereinafter sometimes referred to as "Party" and they are hereinafter sometimes referred to collectively as "Parties"). This Agreement is joined, for the limited purposes set forth in this Agreement, by **MICHAEL SWERDLOW** ("Swerdlow") and **R. DONAHUE PEEBLES** ("Peebles").

W I T N E S S E T H :

WHEREAS, TPC Seller and WW Seller collectively own one hundred percent (100%) of the issued and outstanding limited liability company membership interests of OGP 45 Manager, LLC, a Florida limited liability company (the "Company") (the limited liability company membership interests in the Company owned by TPC Seller shall hereinafter be referred to as the "TPC Membership Interests"; the limited liability company membership interests in the Company owned by WW Seller shall hereinafter be referred to as the "WW Membership Interests"; and all of the issued and outstanding limited liability company membership interests in the Company shall hereinafter be referred to collectively as the "Membership Interests");

WHEREAS, the Company owns one hundred percent (100%) of the issued and outstanding limited liability company membership interests (the "Subsidiary Membership Interests") of Overtown Gateway Partners, LLC, a Florida limited liability company (the "Subsidiary"; each of the Subsidiary and the Company is hereinafter sometimes referred to as a "Relevant Company");

WHEREAS, the Subsidiary is a party to that certain Block 45 Development Agreement by and between the Subsidiary and Southeast Overtown/Park West Community Redevelopment District, a public agency and body corporate created pursuant to Section 163.356, Florida Statues (the "CRA"), dated as of January 29, 2014, as amended by that certain Amendment dated as of April 25, 2014, as further amended by that certain Second Amendment, dated as of May 30, 2014 and as further amended by that certain Third Amendment, dated as of July 15, 2014, true and complete copies of which are attached hereto as Exhibit A-1 (collectively, and as the same may be further amended from time to time, the "Block 45 Development Agreement");

WHEREAS, the Subsidiary and the CRA have negotiated the terms of a Fourth Amendment to the Block 45 Development Agreement, a copy of which is attached hereto as Exhibit A-2A and has been approved in substantial form in a Resolution of the Board of Commissioners of the CRA, File No. 15-00629 (the "Draft Fourth Amendment");

WHEREAS, the Subsidiary and the CRA are negotiating the terms of a Block 55 Development Agreement by and between the Subsidiary and the CRA, a true and complete copy of the CRA's latest draft of which is attached hereto as Exhibit A-2 (the "Draft Block 55 Development Agreement"; and, when executed, together with the Block 45 Development Agreement and Fourth Amendment (when executed), the "Development Agreements");

WHEREAS, the Development Agreements contemplate, among other things, the acquisition and development by the Subsidiary of mixed-use projects, including residential, retail and commercial uses (a) on property located at 152 N.W. 8th Street, Miami, Florida 33136 (the "Block 45 Property"), and (b) on property located at 249 N.W. 6th Street, Miami, Florida 33136 (the "Block 55 Property"; and, together with the Block 45 Property, the "Property"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all of the Membership Interests in the Company.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties to this Agreement, the Parties agree to the following terms and conditions:

1. **TRANSFER, PURCHASE AND SALE**.

1.1. TPC Seller. Subject to the terms and conditions of this Agreement, on the Closing Date TPC Seller shall sell, transfer, convey and assign to Purchaser, or cause to be transferred, conveyed or assigned to Purchaser, as applicable, and Purchaser shall purchase and acquire from TPC Seller, all of TPC Seller's right, title and interest in the TPC Membership Interests, free and clear of all liens, encumbrances, liabilities, restrictions and claims of every kind.

1.2. WW Seller. Subject to the terms and conditions of this Agreement, on the Closing Date WW Seller shall sell, transfer, convey and assign to Purchaser, or cause to be transferred, conveyed or assigned to Purchaser, as applicable, and Purchaser shall purchase and acquire from WW Seller, all of WW Seller's right, title and interest in the WW Membership Interests, free and clear of all liens, encumbrances, liabilities, restrictions and claims of every kind.

2. **CLOSING**. Except as otherwise provided in this Section 2, and subject to the satisfaction or waiver of the conditions set forth in this Agreement, the Closing of the transactions contemplated herein (the "Closing") shall occur thirty (30) days after the end of the Due Diligence Period (as hereinafter defined) (the "Closing Date"). The Closing will be held at the offices of Greenberg Traurig, P.A., 333 S.E. 2nd Avenue, Suite 4400, Miami, Florida 33131, or such other place as mutually agreed upon by the Parties. It is contemplated that the Closing may occur with the Parties making their closing deliveries in person or through escrow to Escrow Agent (as hereinafter defined) and the concurrent delivery of the closing documents described herein and the payment of the Purchase Price and any other closing adjustments with respect to the Membership Interests. Notwithstanding anything to the contrary in this Section 2, (x) Purchaser may elect to have the Closing occur on or before the Closing Date set forth above

(provided that all conditions set forth in Section 8 have been satisfied or waived) by delivering to Seller written notice thereof at least three (3) business days prior to the date identified as the Closing Date in such written notice, (y) Seller shall have the one-time right to elect to postpone the Closing Date until a date no later than sixty (60) days after the end of the Due Diligence Period by delivering written notice of such election to Purchaser at least five (5) days prior to the then-current Closing Date, and (z) Purchaser may elect to postpone the Closing Date until a date no later than sixty (60) days after the end of the Due Diligence Period if (i) Purchaser delivers written notice of such election within two (2) business days after the expiration of the Due Diligence Period, and (ii) Purchaser simultaneously pays, as directed by Seller, in writing, a non-refundable (except in the event of Seller's default or if Seller's representations and warranties contained herein (as the same may be deemed to have been modified pursuant to the terms of Section 7.4) shall not be true and correct in all material respects beyond any applicable notice and cure period or the failure of the conditions set forth in Section 8.1 to be fulfilled or waived prior to Closing) extension fee (the "Extension Fee") equal to Three Hundred Thousand and 00/100 Dollars ($300,000.00) ($200,000 of the Extension Fee (the "Credit Portion") shall be applied against the Purchase Price payable by Purchaser at Closing; and the remaining portion of the Extension Fee (the "Non-Credit Portion") shall not be applied against the Purchase Price), at which time the entire Deposit (as hereinafter defined) (i.e., $1,500,000.00 (both the Initial Deposit and the Additional Deposit)) shall be immediately released by Escrow Agent, as directed by Seller, in writing, without the need for further instruction from either Party; provided that, upon Purchaser's extension of Closing pursuant to this Section 2, the Deposit shall remain refundable to Purchaser, by TPC Seller (on behalf of Seller), on the same terms and conditions as if the Deposit was still held by Escrow Agent.

3. PURCHASE PRICE.

3.1. Purchase Price. Subject to the provisions of this Agreement, the total purchase price (the "Purchase Price") to be paid by Purchaser to Seller for the Membership Interests is the sum of (a) Fifteen Million and 00/100 Dollars ($15,000,000.00) plus (b) an amount equal to all actual, out-of-pocket third party predevelopment costs for services in furtherance of the development of the Property (such as architectural, engineering, etc.) ("Predevelopment Costs") paid by Seller, a Relevant Company or any of their respective affiliates with respect to the Development Agreements or the Property after the Effective Date ("Paid Predevelopment Costs"), which Purchase Price shall be paid in cash by wire transfers of immediately available funds to TPC Seller and WW Seller as directed by Seller. Notwithstanding anything to the contrary contained in this Agreement: (w) Predevelopment Costs shall not include (1) overhead and/or personnel costs of TPC Seller, WW Seller, a Relevant Company or any of their respective affiliates, or (2) legal fees for the negotiation of this Agreement and/or for the representation of TPC Seller, WW Seller, a Relevant Company or any of their respective affiliates, in connection with the consummation of the transactions described herein; (x) Predevelopment Costs shall include legal fees incurred by TPC Seller, WW Seller, a Relevant Company or any of their respective affiliates, for the negotiation with the CRA of changes to the Draft Block 55 Development Agreement; (y) the Paid Predevelopment Costs included in the Purchase Price pursuant to clause (b) of this Section 3.1 shall not exceed $500,000.00; and (z) any Predevelopment Costs incurred (but not paid) by TPC Seller, WW Seller, a Relevant Company or any of their respective affiliates after the Effective Date shall, to the extent same do not exceed the excess of $500,000.00 over the Paid Predevelopment Costs, be retained by the

Company or the Subsidiary and shall not be the responsibility of Seller ("Retained Predevelopment Costs"). Purchaser acknowledges that the amount set forth in this Section 3.1 is consideration for the transfer of the Membership Interests and is not an amount paid or owed to the CRA. Not later than ten (10) days prior to Closing, Seller shall provide to Purchaser a schedule of the Paid Predevelopment Costs and Retained Development Costs and reasonable supporting detail and evidence of payment of same. Seller shall, two (2) business days prior to Closing, further update such schedule in "final" form and provide updated supporting detail and evidence of payment or existence. For avoidance of doubt, in no event shall the aggregate of Paid Predevelopment Costs and Retained Development Costs exceed $500,000.00.

3.2. Deposit.

3.2.1 Earnest Money. To secure the performance by Purchaser of Purchaser's obligations under this Agreement, Purchaser will deliver, within three (3) business days following the Effective Date, to Shutts & Bowen LLP ("Escrow Agent"), the sum of Two Hundred Thousand and 00/100 Dollars ($200,000.00) by wire transfer to the depository identified in Schedule 3.2.1, the proceeds of which shall be held in trust as an earnest money deposit (the "Initial Deposit") by Escrow Agent, and disbursed only in accordance with the terms of this Agreement. At the Closing, the Initial Deposit (plus all interest accrued on the Initial Deposit as of the Closing Date) and, if Closing has been extended by Purchaser as provided above, the Credit Portion, shall be applied against the Purchase Price payable by Purchaser.

3.2.2 Initial Deposit Instructions. Upon receipt of an executed IRS Form W-9 from Purchaser setting forth Purchaser's tax identification number, Escrow Agent shall invest the Initial Deposit in an interest-bearing account or certificate of deposit maintained with or issued by such depository or financial institution. All interest accrued or earned on the Initial Deposit shall be credited to Purchaser or applied against the Purchase Price, except in the event that the Initial Deposit is disbursed at the written direction of Seller in accordance with this Agreement. Purchaser and Seller acknowledge that any amount over Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) shall not be insured, and all Parties release and hold harmless Escrow Agent from all losses, costs and liabilities which may accrue or be incurred related to such lack of insurance.

3.2.3 Additional Deposit. Unless the Closing Date occurs on or before the end of the Due Diligence Period, within two (2) business days following the expiration of the Due Diligence Period (unless Purchaser shall have terminated this Agreement), Purchaser will deliver to Escrow Agent an additional sum of One Million Three Hundred Thousand and 00/100 Dollars ($1,300,000.00) (the "Additional Deposit", and, together with the Initial Deposit, the "Deposit") by wire transfer to the depository identified in Schedule 3.2.1, the proceeds of which shall become a part of the non-refundable Deposit to be disbursed only in accordance with the terms of this Agreement.

3.3. Distribution of Cash and Cash Equivalents. At or before Closing, Seller shall be permitted to cause the Company to distribute any cash or cash equivalents then held by the Company to Seller, and such distribution shall not reduce, change or otherwise modify the Purchase Price; provided, however, that at Closing, Seller shall have no unpaid liabilities or obligations except as provided in this Agreement.

4. CONFIDENTIAL NATURE OF AGREEMENT.

4.1. Confidentiality.

4.1.1 In General. Swerdlow and Purchaser agree that, except for communications with (and Confidential Information (as defined below) which may be provided to) Purchaser's employees, attorneys, professionals, architects, engineers, consultants, title insurance companies, companies providing due diligence services to Purchaser, managers and members, potential tenants and Purchaser's potential partners, investors and lenders (each, a "Permitted Communication Party"), Purchaser, Swerdlow and their respective affiliates will keep confidential, until the Closing shall have occurred, all of the data and information contained in any of the Due Diligence Documents, all of the Constituent Documents, the existence of this Agreement (provided that Purchaser may disclose that a transaction is contemplated between the Parties and such other matters as are permitted hereunder) and all material aspects of this Agreement (collectively, the "Confidential Information"); provided, however, that Purchaser may disclose to potential tenants the existence and timing (but not the financial terms) of this Agreement, as well as Purchaser's proposed development plans, site plans, renderings and other items customarily associated with seeking tenants for a new project. Prior to disclosure of any of the Confidential Information to any Permitted Communication Party, Swerdlow and Purchaser shall inform such Permitted Communication Party of the terms of this Section 4.1. Swerdlow and Purchaser shall be responsible for the observance of the terms of this Section 4.1 by each Permitted Communication Party to which Confidential Information is disclosed. Swerdlow and Purchaser agree to institute and maintain reasonably appropriate procedures to maintain the confidentiality of Confidential Information. If Swerdlow or Purchaser becomes aware of any breach of the confidentiality of, or the misappropriation of, any of the Confidential Information, Swerdlow and/or Purchaser shall immediately give written notice thereof to Seller. Purchaser acknowledges that, except as provided in this Section 4.1.1 and/or in Section 6.1 and/or Section 6.3, prior to the expiration of the Due Diligence Period, Purchaser will not have any contact or communications with the CRA or any other governmental and non-governmental entities regarding the Development Agreements and the Property without the Seller's prior written consent (the giving or withholding of such consent shall be in Seller's sole discretion). After the expiration of the Due Diligence Period (and provided this Agreement is not terminated), no consent of Seller shall be required for Purchaser or its representatives to contact or communicate with the CRA or other governmental or non-governmental entities (but, as to communications with the CRA, Purchaser shall notify Seller of any intended communications and Seller shall have the right to participate in same). After the expiration of the Due Diligence Period (and provided this Agreement is not terminated), other than as set forth in this sentence, there shall be no restrictions on contacts or communications with governmental (other than the CRA, as provided in the foregoing sentence) or non-governmental entities; however, before and after the expiration of the Due Diligence Period, prior to Purchaser or its representatives contacting or communicating with the "Block 56 Developer" (as defined in the Block 45 Development Agreement (currently, an affiliate of All Aboard Florida)), Purchaser shall notify Seller of any intended communications and Seller shall have the right to participate in same. Notwithstanding anything to the contrary contained herein, the following items will not constitute Confidential Information for purposes of this Section 4.1: (x) information that is or has become generally available to the public (including, without limitation, the Development Agreements and other publicly available information and documents involving the CRA and the Property) concerning

this Agreement other than as a result of a disclosure under this Agreement, and/or (y) information that was available prior to the disclosures made prior to or in connection with this Agreement (except information made available to Purchaser by a person or entity Purchaser knew or had reason to know was subject to confidentiality obligations to Seller or the Company), and/or (z) information that is required to be disclosed by law or by regulatory or judicial process. Seller agrees that the Confidentiality Agreement between Swerdlow Development Company, LLC ("SDC") and Seller, dated June 22, 2015 (the "Confidentiality Agreement"), is hereby terminated in all respects. The provisions of this Section 4.1 shall terminate on the earlier of: (i) Closing; and (ii) eighteen (18) months after the date of termination of this Agreement.

4.1.2 Purchaser or Swerdlow's Liability for Confidentiality Breach. In the event of a breach of the provisions of Section 4.1.1 or Section 4.2 prior to Closing (each is, hereafter, a "Confidentiality Breach") by Purchaser or Swerdlow, Seller shall have the right to seek damages for such breach as follows: (a) Seller shall be entitled to the Deposit, together with all interest earned thereon, and the Extension Fee (if paid) and may direct Escrow Agent to immediately pay to Seller the Deposit (upon Escrow Agent's receipt of a Joint Instruction), together with all interest earned thereon (whereupon this Agreement shall terminate and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination (for avoidance of doubt, this Section 4.1.2 and Section 4.1.3 shall survive such termination)); and (b) in the event that the CRA terminates the Block 45 Development Agreement and/or the negotiations involving the Draft Block 55 Development Agreement due solely to a Confidentiality Breach (and not because of any act or omission of or by Seller or others (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party) or for any other reason or event (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party)), then, in addition to the provisions of clause (a) of this Section 4.1.2, Seller shall have the right to seek additional damages from Swerdlow for such Confidentiality Breach as follows (i) the damages under this clause (b) shall be limited to a claim for actual or consequential damages (but not punitive damages) directly caused by such Confidentiality Breach; and (ii) the aggregate amount of damages under this clause (b) shall in no event exceed $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property. Except with respect to written claims made upon Purchaser prior to the expiration of the provisions of this Section 4.1.2, the provisions of this Section 4.1.2 shall terminate on the earliest of: (x) Closing; (y) one hundred eighty (180) days after the date of termination of this Agreement; or (z) one hundred eighty (180) days after the date that the Block 45 Development Agreement and/or the negotiations involving the Block 55 Development Agreement is/are terminated. For the avoidance of doubt, in the case of a Confidentiality Breach, the provisions of this Section 4.1.2 and Section 4.1.3, as applicable, and not Section 10, shall be applicable.

4.1.3 Purchaser or Swerdlow's Liability for Permitted Communication Party Confidentiality Breach. In the event of a Confidentiality Breach by a Permitted Communication Party, Seller shall have the right to seek damages from Swerdlow for such breach as follows: (a) the damages shall be limited to a claim for actual or consequential damages (but not punitive damages) directly caused by Confidentiality Breach; and (b) the aggregate amount of damages shall in no event exceed $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property; and (c) a claim for damages shall arise only in the event that the CRA terminates the Block 45 Development Agreement and/or the negotiations

involving the Block 55 Development Agreement due solely to a Confidentiality Breach and not because of any act or omission of or by Seller or others (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party) or for any other reason or event (other than a Confidentiality Breach by Purchaser, Swerdlow or a Permitted Communication Party) (collectively, a "CRA Termination"). Except with respect to written claims made upon Purchaser prior to the expiration of the provisions of this Section 4.1.3, the provisions of this Section 4.1.3 shall terminate on the earliest of: (x) Closing; (y) one hundred eighty (180) days after the date of termination of this Agreement; or (z) one hundred eighty (180) days after the date that the Block 45 Development Agreement and/or the negotiations involving the Draft Block 55 Development Agreement is/are terminated. For the avoidance of doubt: (i) in the case of a Confidentiality Breach, the provisions of Section 4.1.2 and this Section 4.1.3, as applicable, and not Section 10, shall be applicable; and (ii) a Confidentiality Breach by a Permitted Communication Party that does not result in a CRA Termination shall not be a breach of this Agreement by Purchaser or Swerdlow.

4.1.4 No Duplication. Notwithstanding anything to the contrary contained herein, the cumulative damages that Seller may recover under clause (b) of Section 4.1.2 and/or under Section 4.1.3, in the aggregate, shall not exceed $7,500,000.00 in the case of the Block 45 Property and $7,500,000.00 in the case of the Block 55 Property

4.2. Press Releases; Announcements. Unless required by law (in which case each of Purchaser and Seller agree to use reasonable efforts to consult with each other prior to any such disclosure as to the form and content of such disclosure), after the Effective Date and through and including the Closing Date, no press releases, announcements or, except as permitted under Section 4.1, Section 6.1 or Section 6.3, other releases of information restricted by this Agreement or the transactions contemplated hereby, will be issued or released without the written consent of each of Purchaser and Seller. At Closing, Purchaser and Seller may issue a joint press release.

4.3. Non-Circumvention. In the event that (a) Purchaser does not consummate the purchase of the Membership Interests pursuant to this Agreement (including as a result of the CRA's termination of (i) the Block 45 Agreement and/or (ii) negotiations with respect to the Draft Block 55 Development Agreement); and (b) during the period which is eighteen (18) months after termination or expiration of this Agreement, Purchaser, Swerdlow and/or its or his affiliated entities desire to, directly or indirectly, enter into a transaction with the CRA or otherwise with an entity which enters or has entered into a transaction with the CRA, involving the acquisition or development of the Block 45 Property or the Block 55 Property, neither Purchaser nor Swerdlow shall (and shall cause their respective affiliated entities to not), during such eighteen (18) month period, do so: (i) unless Purchaser and Seller (or their respective affiliates) reach agreement, acceptable to each of them in their sole and absolute discretion, to be partners in such acquisition or development transaction pursuant to an agreement with terms for projects of similar size, value and risk, each one equally sharing in the profits, losses and obligations of the partnership; or (ii) if (A) Seller shall, within ten (10) business days after receipt of a written request from Purchaser or Swerdlow to pursue the transaction, advise Purchaser and Swerdlow in writing to not pursue same, or (B) if Purchaser or Swerdlow and Seller (or their respective affiliated entities) are unable to reach agreement to be partners in any such transaction. If, during such eighteen (18) month period, Swerdlow or Purchaser (or any of

their respective affiliated entities), directly or indirectly, consummates any transaction with the CRA (or an entity which enters or has entered into a transaction with the CRA) in violation of the terms of this Section 4.3, then Seller shall immediately be entitled to receive from Swerdlow and/or Purchaser, liquidated damages in an amount equal to $7,500,000 for each transaction involving the Block 45 Property and $7,500,000 for each transaction involving the Block 55 Property (for the avoidance of doubt, if a single transaction in breach of this Section 4.3 involves both the Block 45 Property and the Block 55 Property, the liquidated damages due pursuant to this Section 4.3 shall be an amount equal to $15,000,000). **PURCHASER, SWERDLOW AND SELLER EXPRESSLY ACKNOWLEDGE AND AGREE THAT (1) THE FOREGOING AMOUNTS ARE REASONABLE ESTIMATES OF SELLER'S DAMAGES IN THE EVENT THAT SWERDLOW OR PURCHASER (OR ANY OF THEIR RESPECTIVE AFFILIATES) BREACH THE OBLIGATIONS UNDER THIS SECTION 4.3, AND (2) THE FOREGOING AMOUNTS ARE INTENDED NOT AS A FORFEITURE OR PENALTY UNDER ANY STATE LAWS, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.** Except with respect to written claims made upon Purchaser prior to the expiration of the provisions of this Section 4.3, the provisions of this Section 4.3 shall survive termination of this Agreement for a period of eighteen (18) months.

5. **TITLE EVIDENCE**. Attached hereto as Exhibit B is a draft title insurance commitment with respect to Block 45 obtained by the Company pursuant to Section 6.1 of the Block 45 Development Agreement (the Block 45 Commitment"). Attached hereto as Exhibit C-1 is a Survey with respect to Block 45 obtained by the Company pursuant to Section 6.1 of the Block 45 Development Agreement (the "Block 45 Survey"). Attached hereto as Exhibit C-2 is a Survey with respect to Block 55 obtained by the Company (the "Block 55 Survey"). The Parties acknowledge and agree that (a) neither Seller nor any Relevant Company has obtained a title commitment with respect to Block 55, (b) neither Seller nor any Relevant Company shall have any obligation to cure any title defects with respect to the Block 45 Property or the Block 55 Property, and (c) after Closing, Purchaser shall control the Subsidiary's title review and objection rights with respect to Block 55 as such rights are set forth in the final, executed version of the Draft Block 55 Development Agreement, including the Block 55 Revisions to the extent incorporated in accordance with Section 6.3 (collectively, the "Block 55 Development Agreement").

6. **DUE DILIGENCE PERIOD.**

6.1. Right to Inspect. During the period (the "Due Diligence Period") beginning on the Effective Date and ending at 5:00 p.m. Eastern Time on the date which is the earlier of: (a) April 15, 2016; or (b) five (5) business days after Purchaser's receipt of the Draft Block 55 Development Agreement accompanied by written evidence reasonably satisfactory to Purchaser that such document is in "final" form and has been fully approved by all necessary actions of each of the Subsidiary and the CRA (and, as to the CRA, by all other governmental authorities whose approval is required) in order that it be executed (provided, a resolution adopted by the CRA approving the Draft Block 55 Development Agreement shall be deemed to be written evidence satisfactory to the Purchaser that the Draft Block 55 Development Agreement is in "final" form and has been fully approved by the CRA). Subject to Section 6.4 below, not later than the earlier of forty-five (45) days after Purchaser is granted physical access to the Property or the end of the Due Diligence Period, Purchaser shall complete its desired due

diligence review, tests and inspections of the physical condition of the Property (provided that Purchaser may, subject to Section 6.4 and with Seller's consent (not to be unreasonably withheld, delayed or conditioned) conduct follow-up reviews, tests and inspections if Purchaser has a reasonable belief that the physical condition of the Property has changed in any material respect after its initial review, tests and inspections). Purchaser shall have the right to appoint one representative or counsel (which shall be John Dellagloria, Esq. or another representative or counsel of or to Purchaser reasonably approved by Seller) to attend meetings and listen to, conference calls (and to be promptly provided copies of written materials and communications) between Seller (or any Relevant Company) and the CRA solely to observe discussions, with respect to the Development Agreements and matters arising out of, involving or concerning same as well as Property and/or Property-related matters concerning the CRA or other governmental agencies, governmental approvals, permitting, the 7th Street promenade and matters relating thereto, the development process, properties in the area of the Property, costs, grants, resolutions and other project-related and/or development-related matters and activities (and to be kept reasonably informed as to the status of the foregoing); however, after the expiration of the Due Diligence Period, the foregoing restrictions on Purchaser and its representatives or counsels' contact with the CRA, and the restrictions limiting Purchaser and its representatives' participation in meetings and conference calls, and to listening and observing discussions, with the CRA, shall no longer be applicable (but shall be subject to the limitations set forth in Section 4.1). Prior to the expiration of the Due Diligence Period: (i) Seller will reasonably communicate to the CRA Purchaser's written requests, questions or items concerning the Development Agreements or the Property and matters arising out of, involving or concerning same; and (ii) except for observing the discussions as provided in the immediately preceding sentence, neither Purchaser nor its representatives shall participate in any meetings or other discussions between Seller (or any Relevant Company) and the CRA. Seller shall provide reasonable notice to Purchaser of scheduled meetings and calls with the CRA related to the Development Agreements and other related matters, in order to facilitate attendance and observation by Purchaser's representatives and counsel, as provided herein. As the current draft of the Draft Block 55 Development Agreement does not reflect Purchaser's intended development of the Block 55 Property and matters related thereto, Seller agrees to reasonably cooperate with Purchaser in order to request the Block 55 Revisions (as hereinafter defined). Purchaser shall have the right, subject to the terms of this Agreement, to conduct, at Purchaser's expense, whatever reasonable investigations, analyses and studies of the Property, the Company, the Subsidiary and the Development Agreements that Purchaser may deem appropriate to satisfy Purchaser with regard to the Property, the Company, the Subsidiary and the Development Agreements, including, without limitation, the following: (a) the permitted uses of and improvements to the Property under applicable building and zoning ordinances and the present compliance or non-compliance with the same; and (b) evidence of the physical condition of, and of any hazardous waste or similar materials, and of radon, in, on, under or about the Property, subject in all instances to the terms and conditions of the Development Agreements. Subject to Section 4.1, Seller also acknowledges that Purchaser may engage third-party consultants ("Third-Party Consultants") to perform customary due diligence regarding the Company, the Subsidiary and/or the Property, including, without limitation, unrecorded lien, "open" permit, code violation and special assessment searches, surveys, UCC-1 searches, title or property searches, environmental site assessments, soil and other searches. Purchaser agrees that Seller shall have the right to reasonably approve the Third-Party Consultants other than Purchaser's counsel (except that

Seller hereby approves any nationally-recognized title insurance company with respect to title searches, any nationally-recognized service company with respect to UCC-1 searches, and Abramowitz Tax and Lien Service, Inc. with respect to unrecorded lien, "open" permit, code violation and special assessment searches). Seller may condition its approval of a Third-Party Consultant who intends to communicate with governmental agencies on the basis that the response to the request being made by the Third-Party Consultant be issued in the name of the Third-Party Consultant and/or the Company and/or the Subsidiary. Within five (5) business days after the Effective Date, using commercially reasonable efforts, Seller shall provide to Purchaser such information and materials in its possession or control with respect to the Development Agreements and/or the Property, including, without limitation, information and materials regarding the amounts of all governmental grants and loans specifically provisioned for the Block 45 Property and/or the Block 55 Property of which Seller has actual knowledge, if any, and all surveys, title policies and other information reasonably requested by Purchaser which are in Seller's possession or control. In addition, Seller shall make available to Purchaser at all times during normal business hours prior to the Closing Date, all documents and information relating to the matters described in this Section 6.1 which are in Seller's possession or control, for review and copying by Purchaser (collectively, the "Due Diligence Documents"), including, without limitation, any existing soil studies and any existing environmental studies. Except as otherwise expressly provided herein, Seller makes no representations or warranties as to the accuracy or completeness of the Due Diligence Documents. Purchaser shall promptly provide to Seller copies of all third-party physical inspection reports commissioned by Purchaser (including, without limitation, environmental and engineering reports and asbestos studies, if any, but excluding any financial or legal due diligence which Purchaser may obtain or perform) which Purchaser may obtain relating to the Property.

6.2. Right of Entry. Purchaser acknowledges that neither Seller nor any Relevant Company owns the Property. To the extent Seller may obtain physical access (or, if not, Seller shall promptly request such access from the CRA), then Purchaser and its agents and employees may enter upon the Property for the purpose of making inspections and tests, at Purchaser's sole risk, cost and expense, provided that, (a) all of such entries upon the Property shall be at reasonable times during normal business hours upon at least two (2) business days' prior notice to Seller or Seller's agent, and Seller or Seller's agent shall have availability to accompany Purchaser during any activities or interviews performed by Purchaser on the Property, (b) Purchaser shall comply with the terms of Section 4.1 during all such entries; and (c) prior to any such entry, Purchaser shall provide to Seller, from its third-party inspectors or consultants performing inspections or tests, evidence of insurance coverage required pursuant to Section 4.5 of the Block 45 Development Agreement, applicable to the Block 45 Property and the Block 55 Property, and naming Seller and each Relevant Company as an additional insured.

6.3. Draft Block 55 Development Agreement. On or before 5:00 p.m. Eastern Time on the date which is seven (7) days after the Effective Date of this Agreement, Purchaser shall deliver to Seller a written list setting forth in reasonable detail each of the proposed revisions to the Draft Block 55 Development Agreement which Purchaser desires in order to make the Draft Block 55 Development Agreement acceptable to Purchaser (the "Notice of Proposed Block 55 Revisions"). Not later than three (3) business days after Seller's receipt of the Notice of Proposed Block 55 Revisions, Seller shall deliver to Purchaser a notice (the "Block 55 Responsive Notice") setting forth any objections and/or proposed modifications to the

revisions proposed in the Notice of Proposed Block 55 Revisions. During the five (5) business day period after Purchaser's receipt of the Block 55 Responsive Notice (the "Block 55 Resolution Period"), Purchaser and Seller shall negotiate in good faith to resolve any disputes related to proposed revisions to the Draft Block 55 Development Agreement. If (a) all disputes are resolved during the Block 55 Resolution Period, the "Block 55 Revisions" shall consist of those revisions Purchaser and Seller mutually determine during the Block 55 Resolution Period or (b) the Parties are unable to agree upon the proposed revisions to the Draft Block 55 Development Agreement, then either party may terminate this Agreement by written notice to the other prior to 5:00 p.m. Eastern Time on the first business day following the expiration of the Block 55 Resolution Period, whereupon, without the requirement of a Joint Instruction (as hereinafter defined), Escrow Agent shall return the Initial Deposit, together with all interest earned thereon, to Purchaser, and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination. If neither Party terminates this Agreement pursuant to item (b) above, then the "Block 55 Revisions" shall consist of the proposed revisions set forth in the Notice of Proposed Block 55 Revisions, as modified by the Block 55 Responsive Notice.

6.4. Right to Terminate. Purchaser, for any reason or no reason, in Purchaser's sole and exclusive judgment, may terminate this Agreement on or prior to the end of the Due Diligence Period by notifying Seller (which notice may be given via electronic mail or facsimile, so long as a copy of such notice is delivered by hand, or delivered by a nationally recognized overnight delivery service, to Seller and others entitled to such notice under this Agreement on or before the next business day) of such termination at any time prior to 5:00 p.m. Eastern Time on or before the final day of the Due Diligence Period, whereupon Escrow Agent shall, without the requirement of receipt of a Joint Instruction. return the Initial Deposit, together with all interest earned thereon, to Purchaser, and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination. If Purchaser or Seller terminates this Agreement pursuant to the terms hereof, Purchaser shall, promptly following termination (and to the extent not already delivered), deliver to Seller all of the Due Diligence Documents (unless Purchaser takes the actions described in clause (y) below of this Section 6.4) and all third-party physical inspection reports commissioned by Purchaser, which obligation shall expressly survive such termination. Upon Purchaser's waiver of or failure to duly exercise its right to terminate described in this Section 6.4, Purchaser shall have elected to proceed with the purchase of the Membership Interests pursuant to the terms of this Agreement and thereafter the Deposit (plus interest accrued thereon) shall be non-refundable to Purchaser except as otherwise provided in this Agreement. Upon termination of this Agreement, Purchaser shall either (y) destroy all of the Due Diligence Documents received from Seller and confirm and certify such destruction to Seller in writing within five (5) calendar days after receipt of such request or (z) return all of the Due Diligence Documents received from Seller within five (5) calendar days after receipt of such request; and all copies, extracts, or other reproductions in whole or in part thereof.

6.5. Purchaser's Indemnities. Notwithstanding any provisions in this Agreement to the contrary, Swerdlow and Purchaser, jointly and severally, do and shall defend, indemnify and hold harmless Seller, and each Relevant Company and their respective agents and employees, against all losses, claims, damages, liability, attorneys and accountants' fees and costs of litigation and all other expenses related to, growing out of, or arising from Purchaser's

investigation of or entry upon the Property which are caused by the acts or omissions of Purchaser, its agents, invitees, contractors, employees or representatives when accessing the Property, including, without limitation, mechanic's or materialmen's liens and any willful and knowing breaches or violations of the Block 45 Development Agreement caused by such investigation or entry (provided, however, that Seller, upon receipt of actual written notice of same, shall promptly notify Purchaser of any alleged breach or violation of the Block 45 Development Agreement and, to the extent notice and cure rights for breach are provided to Seller under the Block 45 Development Agreement, provide Purchaser with the same opportunity to cure such breach as is granted to Seller, except that Purchaser's period of cure shall expire three (3) business days prior to the date of expiration of Seller's period of cure for such breach under the Block 45 Development Agreement). Purchaser shall repair any damage caused by its entry onto the Property. Except with respect to written claims made upon Purchaser prior to the expiration of the provisions of this Section 6.5, the provisions of this Section 6.5 shall terminate on the earlier of: (i) one hundred eighty (180) days after Closing; and (ii) one hundred eighty (180) days after the date of termination of this Agreement. Purchaser and Swerdlow acknowledge and agree that the indemnification obligations set forth in this Section 6.5 shall not be subject to the limitations set forth in Section 11.

6.6. Disclaimer of Warranties; Seller's Disclaimer. Purchaser acknowledges and agrees that Seller, except as set forth in this Agreement or the documents of conveyance and assignment to be delivered at the Closing, has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether expressed or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property including, without limitation:

(a) Value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology and status of any permits and governmental approval;

(b) Income to be derived from the Property;

(c) Suitability of the Property for any and all development or other activities and uses which Purchaser may conduct thereon;

(d) Compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;

(e) Habitability, merchantability, marketability, profitability or fitness for particular purpose of the Property;

(f) Manner, quality, state of repair or lack of repair of the Property; or

(g) Other matters with respect to the Property and, specifically that Seller has not made, does not make and specifically disclaims any representation regarding compliance with any federal, state or local environmental law, regulation or ordinance regarding hazardous substances or waste including, but not limited to, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and Chapters 376 and 403, Florida Statutes (1993), both as amended or modified.

The provisions of this Section 6.6 shall survive the Closing or any termination of this Agreement indefinitely and shall not be merged into the closing documents.

6.7. "As Is" Sale. To the maximum extent permitted by applicable law, and except for Seller's representations and warranties in this Agreement or the documents of conveyance and assignment to be delivered at the Closing (collectively, "Seller's Warranties"), this sale is made and will be made without representation, covenant, or warranty of any kind (whether express or implied to the maximum extent permitted by applicable law) with regard to the Company, the Subsidiary, the Membership Interests and the indirect rights to purchase the Property by Seller. Subject to the foregoing, as a material part of the consideration of this Agreement, Purchaser agrees to accept the Membership Interests and the indirect rights to purchase the Property on an "AS IS" and "WHERE IS" basis, with all faults and any and all latent and patent defects, and without any representation or warranty, all of which Seller hereby disclaims, except for Seller's Warranties. Purchaser acknowledges that Purchaser has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance and legal condition of the Property and that, except as otherwise provided in this Agreement, Purchaser is not now relying, and will not later rely, upon any representations and warranties made by Seller or anyone acting or claiming to act, by, through or under or on Seller's behalf concerning the Company, the Subsidiary, the Membership Interests or the Property. The provisions of this Section 6.7 shall survive the Closing or any termination of this Agreement indefinitely and shall not be merged into the closing documents.

6.8. CRA Consent. On or before the end of the Due Diligence Period, Seller and Purchaser shall seek to reach agreement as to a proposed form of the CRA's written consent to the transactions contemplated by this Agreement (such agreed upon form being referred to as the "Approved CRA Consent Form"). After the expiration of the Due Diligence Period, Seller shall promptly seek the written consent of the CRA to the transactions contemplated by this Agreement on the Approved CRA Consent Form. For purposes of this Agreement, the "CRA Consent" means (i) the written consent of the CRA to the transactions contemplated by this Agreement on the Approved CRA Consent Form as the same may be modified or supplemented by the CRA (provided any such modifications or supplements may not be material or materially adverse); or (ii) in the event that Seller and Purchaser do not agree on an Approved CRA Consent Form prior to the end of the Due Diligence Period, such written consent to the transactions contemplated by this Agreement as the CRA is willing to provide (and subject to such conditions as the CRA may impose) as long as such written consent includes (a) confirmation from the CRA that the Development Agreements (including the Fourth Amendment and the Block 55 Development Agreement) are in full force and effect and have not been otherwise modified or amended; (b) confirmation from the CRA that none of the parties to the Development Agreements are in default thereunder and there is no event which, with notice, or the passage of time, or both, would become a default under the Development Agreements; and (c) the Release (as defined below); provided, however, the requirement that such written consent includes the Release may be waived in writing by Seller.

7. REPRESENTATIONS AND WARRANTIES.

7.1. Seller's Representations and Warranties. As a material inducement to Purchaser to execute this Agreement and to consummate the transactions contemplated hereunder, Seller hereby represents and warrants to Purchaser as of the Effective Date and as of Closing (or such time as may be specified in a particular representation or warranty) as follows:

7.1.1 Organization and Power.

(a) Each of TPC Seller, WW Seller, the Company and the Subsidiary is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida.

(b) Each of TPC Seller and WW Seller has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

(c) True and correct copies of the articles of organization of the Company, as filed with the Florida Secretary of State, and a redacted copy of the limited liability company operating agreement of the Company, and all amendments thereto, are attached hereto as Exhibit A-2B (the "Company Constituent Documents"). No member of the Company is in violation of the Company Constituent Documents. All of the issued and outstanding Membership Interests have been duly authorized and validly issued and are fully paid and non-assessable.

(d) True and correct copies of the Articles of Organization filed with the Florida Secretary of State, and of the limited liability company operating agreement of the Subsidiary, and all amendments thereto, are attached hereto as Exhibit A-2C (the "Subsidiary Constituent Documents," and together with the Company Constituent Documents, collectively the "Constituent Documents"). No member of the Subsidiary is in violation of the Subsidiary Constituent Documents. All of the issued and outstanding Subsidiary Membership Interests have been duly authorized and validly issued and are fully paid and non-assessable.

7.1.2 Due Authorization; Binding Agreement.

(a) The execution, delivery and performance of this Agreement by TPC Seller, and the consummation by TPC Seller of the transactions contemplated hereby, have been duly authorized by all necessary limited liability company action on the part of TPC Seller (and each Relevant Company, if required); no consent, approval, authorization or order of any person is required with respect to the consummation of the transactions contemplated by this Agreement; and this Agreement constitutes a valid and binding obligation of TPC Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(b) The execution, delivery and performance of this Agreement by WW Seller, and the consummation by WW Seller of the transactions contemplated hereby, have been duly authorized by all necessary limited liability company action on the part of WW Seller (and each Relevant Company, if required); no consent, approval, authorization or order of any person is required with respect to the consummation of the transactions contemplated by this Agreement; and this Agreement constitutes a valid and binding obligation of WW Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

7.1.3 Consents.

(a) Except with respect to the CRA Consent (as hereinafter defined), the execution, delivery and performance by TPC Seller under this Agreement does not, and will not, require any consent, approval, authorization or other action by, or filing with or notification to, any governmental authority or any other person.

(b) Except with respect to the CRA Consent (as hereinafter defined), the execution, delivery and performance by WW Seller under this Agreement does not, and will not, require any consent, approval, authorization or other action by, or filing with or notification to, any governmental authority or any other person.

7.1.4 Conflicts. Subject to obtaining the CRA Consent: (a) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of nor the compliance with the terms, conditions and provisions of this Agreement does or will conflict with or result in a violation or breach of TPC Seller's organizational documents or any other instrument or agreement of any nature to which TPC Seller is a party or by which Seller is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement; (b) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of nor the compliance with the terms, conditions and provisions of this Agreement does or will conflict with or result in a violation or breach of WW Seller's organizational documents or any other instrument or agreement of any nature to which WW Seller is a party or by which WW Seller is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement; and (c) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will breach or violate any governmental authority requirements or any of the material agreements, covenants, conditions or restrictions affecting the Property or any of the Membership Interests.

7.1.5 Notices of Violations. To Seller's knowledge, each Relevant Company has been and is in compliance in all material respects with (a) all applicable laws, regulations, orders, judgments and decrees and (b) permits, licenses, orders and approvals of all federal, state, local or foreign governmental or regulatory bodies required for it to carry out its business as presently conducted. No Relevant Company has received any notice from any governmental or regulatory agency or authority that it is not in compliance and no Relevant

Company has knowledge of any non-compliance in any material respect. All such permits, licenses, orders and approvals are in full force and effect, and no suspension or cancellation, nor any proposed adverse modification of any of them is pending or, to the knowledge of Seller, threatened. No consent of any governmental or regulatory body issuing such permits, licenses, orders and approvals is necessary for the consummation of the transactions contemplated by this Agreement.

7.1.6 Securities. The Membership Interests represent all of the issued and outstanding securities of the Company. The Subsidiary Membership Interests represent all of the issued and outstanding securities of the Subsidiary. There are no outstanding subscriptions, warrants, options, calls, puts, convertible securities, registration or other rights, arrangements or commitments: (i) that are convertible into, exchangeable for, or carrying the right to acquire, any securities, obligations or membership interests of any Relevant Company, or (ii) obligating any Relevant Company to issue, sell, register, purchase or redeem any of its respective securities or any ownership interest or rights therein. Subject to the Development Agreements, there are no contracts, commitments, arrangements, understandings or restrictions to which Seller or any other person is bound relating in any way to any membership interests or other securities of any Relevant Company, including voting trusts or other similar agreements or understandings with respect to the voting of any Relevant Company's securities. No individual or entity other than Seller has any interests in any Relevant Company. There are no dividends or distributions which have accrued or have been declared but will be unpaid as of the Closing Date on the Membership Interests. There are no stock appreciation rights, phantom stock rights, or similar rights or arrangements outstanding with respect to any Relevant Company. All securities issued by either Relevant Company have been issued in transactions exempt from registration under the Securities Act of 1933, as amended, and all applicable state securities or "blue sky" laws, and no Relevant Company has violated the Securities Act of 1933, as amended, or any applicable state securities or "blue sky" laws in connection with the issuance of any such securities.

7.1.7 Title. TPC Seller (a) is the lawful owner, of record and beneficially, of the TPC Membership Interests and (b) has good and marketable title to such TPC Membership Interests, free and clear of any and all liens, encumbrances, liabilities, restrictions and claims of every kind and with no restriction on the voting rights and/or the beneficial ownership pertaining thereto or to the TPC Membership Interests. WW Seller (a) is the lawful owner, of record and beneficially, of the WW Membership Interests and (b) has good and marketable title to such WW Membership Interests, free and clear of any and all liens, encumbrances, liabilities, restrictions and claims of every kind and with no restriction on the voting rights and/or the beneficial ownership pertaining thereto or to the WW Membership Interests. No Relevant Company owns any real or personal property, tangible or intangible or intellectual property (other than the rights of the Subsidiary under the Block 45 Development Agreement). No Relevant Company is a party to any lease or agreement, except the Development Agreements, regarding occupancy or possession of any property. Neither TPC Seller nor WW Seller is the subject of any bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar proceeding affecting creditors' rights and remedies generally. Except for this Agreement, there are no contracts or other understandings or arrangements between TPC Seller or WW Seller and any other person with respect to the acquisition, disposition, transfer, registration or voting of, or any other matters in any way

pertaining or relating to, any of the securities of any Relevant Company. Neither TPC Seller nor WW Seller has any right whatsoever to receive or acquire any additional membership interests or other securities of any Relevant Company.

7.1.8 Undisclosed Liabilities. No Relevant Company has any liabilities, claims or obligations of any kind, whether accrued, absolute, contingent or otherwise, whether known or unknown, asserted or unasserted, accrued or unaccrued, or liquidated or unliquidated, and whether due or to become due, regardless of when asserted, other than (a) Retained Predevelopment Costs and liabilities (including, without limitation the "Replacement Deposits" described in this Agreement) set forth in Schedule 7.1.8x hereto (the "Schedule of Liabilities"), (b) liabilities and obligations under the Block 45 Development Agreement and the Block 55 Development Agreement not yet due and payable or due to be performed, and (c) liabilities unrelated to the Development Agreements that arise in the ordinary course of business after the date of the Schedule of Liabilities but before Closing (which Seller will cause to be paid in full at or before Closing, including any liabilities arising under the "Contracts" (if any) described in Section 17.1 below which are terminated or are to be terminated at or as of Closing). Schedule 7.1.8y hereto sets forth the obligations arising under the Block 45 Development Agreement which the Subsidiary has performed or satisfied. Schedule 7.1.8z hereto ("Schedule of Seller Paid Liabilities") sets forth liabilities of each Relevant Company outstanding as of the Effective Date, which liabilities will be paid in full or otherwise satisfied or terminated by Seller or the Relevant Companies at or before Closing (with reasonable evidence of such payment or satisfaction or termination being provided to Purchaser at or prior to Closing). Other than the foregoing, or as otherwise expressly set forth in Section 7.1, Seller makes no representations or warranties with respect to any other liabilities or obligations arising under, or with respect to, any of the Development Agreements, all of which other liabilities or obligations (together with the Retained Predevelopment Costs) are expressly acknowledged and assumed by Purchaser and shall not be deemed a part of "Seller Indemnifiable Damages." For avoidance of doubt, the liabilities set forth on Schedule of Seller Paid Liabilities shall be the sole responsibility of Seller and shall not be considered Paid Predevelopment Costs or Retained Predevelopment Costs.

7.1.8a Schedule of Liabilities. Except with respect to liabilities arising under the Development Agreements and liabilities described in clauses (a) through (c) of Section 7.1.8, the Schedule of Liabilities and Schedule of Seller Paid Liabilities fully and accurately set forth the liabilities of the each Relevant Company as of the date, and for the period then ended, set forth therein. Subject to Section 3.3, since the date of the Schedule of Liabilities, any dividends or distributions which may have existed, accrued or been declared, have been (or will, prior to Closing, be) fully paid on the Membership Interests and the Subsidiary Membership Interests and no dividends or distributions will exist or remain unpaid by the Company as of the Closing Date.

7.1.9 OFAC. None of TPC Seller, WW Seller or any of their respective equity or beneficial owners, employees, officers, or directors, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any similar statute, executive order (including the September 24, 2001, Executive Order Blocking

Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other similar governmental action.

7.1.10 Contracts; Development Agreements. None of TPC Seller, WW Seller or any Relevant Company has entered into, or is a party to, any contracts, commitments, subcontracts, arrangements, undertakings, obligations, licenses, concessions, leases, easements or other agreements that will not be terminated without cost or penalty (except as paid by Seller at Closing) as of the Closing Date, either recorded or unrecorded, written or oral, affecting the Company, the Subsidiary, the Membership Interests or the Subsidiary Membership Interests, other than the Development Agreements. The Development Agreements (and the exhibits and schedules thereto) set forth the entire agreement between the Subsidiary and the CRA and Seller has heretofore delivered to Purchaser true complete and correct copies of the Development Agreements. Seller has no knowledge that any of the representations and warranties of the CRA set forth in the Development Agreements are not accurate. The Block 45 Development Agreement (excluding the Fourth Amendment) is now, and will at Closing (including the Fourth Amendment, subject to the conditions precedent below) be, in full force and effect. Except as set forth in Schedule 7.1.10, the Subsidiary is in compliance in all material respects with all of its obligations under the Development Agreements which are required to be performed or satisfied prior to the Effective Date. There is no default by the Subsidiary (or event which, with notice, or the passage of time, or both, would become an default) under the Development Agreements. To Seller's knowledge, there is no default by the CRA (or event which, with notice, or the passage of time, or both, would become an default) under the Development Agreements.

7.1.11 Taxes. Each Relevant Company has, or shall pursuant to Section 17.3 below, (a) duly and timely filed with the appropriate governmental authorities all tax returns and reports required to be filed prior to the Effective Date and all prior years and there are no extensions for filing of any tax returns; and (b) duly paid all taxes, interest, penalties, assessments and deficiencies and other governmental charges upon it and its properties, assets, income, franchises, business, sales and payrolls, including all amounts assessed as additional taxes, penalties and interest. Each Relevant Company has withheld and paid over all taxes required to have been withheld and paid with respect to employees or others. No tax return of any Relevant Company is or has been the subject of any notice of any audit or audit, examination, investigation or other proceeding by the Internal Revenue Service or any state, local, foreign or other taxing authority for any taxable period. There is no tax sharing, allocation or indemnity agreement or similar contract or arrangement to which any Relevant Company is a party (whether or not written) that will require the payment of any tax by any Relevant Company (or Purchaser) after the Effective Date. There are no tax liens on any of the assets of Seller (including, without limitation, the Membership Interests) or any Relevant Company and none are pending or threatened. The Company has been classified as a partnership for income tax purposes at all times since its formation, and no election has ever been made to classify the Company as other than a partnership at any time for income tax purposes. The Subsidiary has been classified as a "disregarded entity" for income tax purposes at all times since its formation, and no election has ever been made to classify any Relevant Company as other than a "disregarded entity" at any time for income tax purposes.

7.1.12 Existing Environmental Reports. The Due Diligence Documents shall include a complete and accurate list (and copies) of all environmental reports and other environmental studies and analyses relating to the Property which Seller has knowledge of, or which are in Seller's or any Relevant Company's possession or control.

7.1.13 Pending Actions. There are no existing, pending or, to Seller's knowledge, threatened, actions, proceedings, lawsuits, or appeals of prior lawsuits or proceedings, before any judicial, administrative, bankruptcy, governmental, quasi-governmental or municipal tribunal affecting Seller, any Relevant Company or the assets of Seller or any Relevant Company.

7.1.14 Brokers. Neither any Relevant Company nor Seller has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or the transactions contemplated by this Agreement.

7.1.15 No Employees. No Relevant Company has any employees.

7.1.15a Affiliates. There is no existing or pending transaction for the purchase, acquisition or lease of any property or services from, or the sale, transfer or lease of any property on services to, or the loan or advancement of any money to, or the borrowing of any money from, any Relevant Company, on the one hand, and any affiliate of any Relevant Company or Seller, or any of their respective beneficial owners, on the other hand.

7.1.15b Investments in Others. Other than the Company's ownership of the Subsidiary Membership Interests, no Relevant Company has a direct or indirect equity interest by stock ownership or otherwise in any other corporation, limited liability company, partnership, joint venture, firm, association or business enterprise. No Relevant Company has made any loan or advance to any individual or entity which will be outstanding on the date Closing, nor is any Relevant Company obligated or committed to make any such loan or advance, nor is any Relevant Company obligated as guarantor or otherwise for the debts or commitments of any other individual or entity.

7.1.15c No Violations with Respect to Property. To Seller's knowledge, except as may be set forth in the Due Diligence Documents, the Property is in compliance in all material respects with (a) all applicable laws, regulations, orders, judgments and decrees and (b) permits, licenses, orders and approvals, if any, of all federal, state, local or foreign governmental or regulatory bodies having jurisdiction thereover. Seller has no knowledge of issuance any notice from any governmental or regulatory agency or authority that the Property is not in such compliance. To Seller's knowledge, all such permits, licenses, orders and approvals, if any, are in full force and effect, and no suspension or cancellation, nor any proposed adverse modification of any of them is pending or threatened.

7.1.16 Seller's Knowledge. At all times during the term of this Agreement and as of the Closing Date, all of Seller's representations, warranties and covenants in this Agreement shall be true, complete and correct in all material respects. For purposes of

Seller's representations and warranties under this Section 7.1, "to Seller's knowledge", or any similar phrase or qualification based on knowledge, shall mean the actual (but not constructive or imputed) knowledge, without any implication of verification or investigation concerning such knowledge, of Barron Channer and/or Lowell D. Plotkin.

7.2. Purchaser's Representations and Warranties. As a material inducement to Seller to execute this Agreement and to consummate the transactions contemplated hereunder, Purchaser hereby represents and warrants to Seller as of the Effective Date and as of Closing (or such time as set forth therein) as follows:

7.2.1 Organization and Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida; and Purchaser has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

7.2.2 Due Authorization; Binding Agreement. The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby have been duly authorized by all necessary limited liability company action on the part of Purchaser; no consent, approval, authorization or order of any person is required with respect to the consummation of the transactions contemplated by this Agreement; and this Agreement constitutes a valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

7.2.3 Consents. Except with respect to the CRA Consent, the execution, delivery and performance by Purchaser under this Agreement does not, and will not, require any consent, approval, authorization or other action by, or filing with or notification to, any governmental authority or any other person.

7.2.4 Conflicts. Subject to obtaining the CRA Consent, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of nor the compliance with the terms, conditions and provisions of this Agreement does or will conflict with or result in a violation or breach of Purchaser's organizational documents or any other instrument or agreement of any nature to which Purchaser is a party or by which Purchaser is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement; neither the execution and delivery of this Agreement nor (subject to obtaining the CRA Consent) the consummation of the transactions contemplated hereby will breach or violate any governmental authority requirements, or any of the material agreements, covenants, conditions or restrictions to which Purchaser is a party.

7.2.5 Availability of Funds and Solvency. As of Closing, Purchaser will have the funds available to it to fully pay the Purchase Price in accordance with the terms of this Agreement and to replace all existing letters of credit and/or deposits funded by Seller pursuant to the Development Agreements (the "Replacement Deposits"). Notwithstanding anything to the contrary contained in this Agreement, the provisions of this

Section 7.2.5 shall not survive Closing and a breach of the foregoing provision by Purchaser on or prior to the Closing Date shall not be deemed a part of "Purchaser Indemnifiable Damages."

7.2.6 OFAC. Neither Purchaser nor any of its equity owners nor any of their respective employees, officers, or directors, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any similar statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other similar governmental action.

7.2.7 Brokers. Purchaser has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or the transactions contemplated by this Agreement.

7.3. Survival. The representations and warranties of Seller set forth in Section 7.1 of this Agreement shall survive only for a period which is one hundred eighty (180) days after the Closing Date; provided, however, that such limitation shall not apply to a claim of breach of any of the representations and warranties of Seller as set forth in Sections 7.1.1 and 7.1.2 of this Agreement, which representations and warranties shall survive Closing for the applicable statute of limitations. The representations and warranties of Purchaser set forth in Section 7.2 of this Agreement shall survive only for a period which is one hundred eighty (180) after the Closing Date; provided, however, that such limitation shall not apply to a claim of breach of any of the representations and warranties of Purchaser as set forth in Sections 7.2.1 and 7.2.2 of this Agreement, which representations and warranties shall survive Closing for the applicable statute of limitations. Subject to the foregoing, the liability a Party with respect to such representations and warranties shall be limited in time to claims asserted in writing by the other Party on or before the applicable survival date. Except as otherwise expressly provided in this Agreement or in the documents to be delivered by the Parties at Closing, no other representations, warranties, covenants or obligations of the Parties hereunder shall survive the Closing.

7.4. Representations and Warranties Which Become Untrue or Inaccurate After Effective Date Due to Change in Facts or Circumstances. In the event that, after the Effective Date but prior to Closing, any representation or warranty of a Party shall, due to a change in facts or circumstances occurring after the Effective Date (other than those caused by an act or omission of a Party, its agents or employees), have become untrue or inaccurate in a material respect, such Party (the "Representing Party"), upon learning of same, shall promptly notify the other Party in writing (the "Representation Correction Notice") with reasonable detail and provide other Party with such information regarding these matters as is reasonably requested. In that event, the representation and warranty of the Representing Party shall be deemed modified and amended to reflect the change in facts or circumstances; provided, however, that the other Party shall have the right, to be exercised within ten (10) days after receipt of the Representation Correction Notice and the information regarding these matters as has been reasonably requested from the Representing Party, to terminate this Agreement, whereupon, subject to Escrow Agent's receipt of a Joint Instruction if termination occurs after the expiration

of the Due Diligence Period, the Deposit, together with all interest earned thereon, and the Extension Fee (if any) paid by Purchaser pursuant to Section 2 above, shall be returned Purchaser, and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination.

8. CONDITIONS PRECEDENT.

8.1. Conditions to Obligations of Purchaser. The obligation of Purchaser to effect the transactions contemplated by this Agreement is subject to the satisfaction or waiver (it being understood that only Purchaser may waive such conditions in its sole discretion) on or prior to the Closing Date (or such other date as may be specified below) of the following Conditions:

8.1.1 All of Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of Closing, except to the extent such representations and warranties expressly relate to a specific date, in which case the representations and warranties shall be true and correct in all material respects as of such specific date;

8.1.2 As of the Closing Date, Seller shall have performed its obligations hereunder in all material respects and all deliveries to be made at the Closing (or such earlier date as may be specified in this Agreement) by Seller shall have been tendered;

8.1.3 As of the Closing Date, there shall exist no pending or, to Seller's actual knowledge (as defined above), threatened, action, suit or proceeding with respect to Seller, any Relevant Company, the Property and/or the Development Agreements before or by any court or administrative agency, including, without limitation, any which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement, or the consummation of the transaction contemplated herein;

8.1.4 On or before the end of the Due Diligence Period, to the extent that any revisions or modifications agreed to by Seller, Purchaser and the CRA have been made to the Draft Fourth Amendment, the CRA shall evidence or acknowledge (in writing or by execution thereof) its approval of the Draft Fourth Amendment as so revised or modified (for purposes of this Agreement, the "Fourth Amendment" means the Draft Fourth Amendment unless any revisions or modifications agreed to by Seller, Purchaser and the CRA have been made to the Draft Fourth Amendment, in which case the "Fourth Amendment" means the Draft Fourth Amendment as so revised or modified);

8.1.5 On or before the end of the Due Diligence Period, the CRA shall evidence or acknowledge (in writing) its approval of the Draft Block 55 Development Agreement, which shall incorporate the Block 55 Revisions and any other revisions agreed upon by Seller and Purchaser (provided (y) a resolution adopted by the CRA approving the Draft Block 55 Development Agreement, the Block 55 Revisions (if incorporated) and any other revisions agreed upon by Seller and Purchaser, shall satisfy the condition set forth in this Section 8.1.5, and (z) Purchaser shall be deemed to have waived the condition set forth in this Section 8.1.5 if (1) the CRA does not evidence or acknowledge (in writing) such approval on or

before the end of the Due Diligence Period and (2) Purchaser does not terminate this Agreement in accordance with Section 6.4 on or before the end of the Due Diligence Period); and

8.1.6 INTENTIONALLY LEFT BLANK.

8.1.7 On or before the Closing Date, Seller and Purchaser shall have received the fully executed (a) CRA Consent, (b) Fourth Amendment, and (c) Block 55 Development Agreement (as modified or supplemented by the mutual written agreement of the Parties).

8.2. Conditions to Obligations of Seller. The obligation of Seller to effect the transactions contemplated by this Agreement is subject to the satisfaction or waiver (it being understood that only Seller may waive such conditions in its sole discretion) on or prior to the Closing Date (or such other date as may be specified below) of the following Conditions:

8.2.1 All of Purchaser's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date, except to the extent such representations and warranties expressly relate to a specific date, in which case the representations and warranties shall be true and correct in all material respects as of such specific date;

8.2.2 As of the Closing Date, Purchaser shall have performed its obligations hereunder in all material respects and all deliveries to be made at the Closing (or such earlier date as may be specified in this Agreement) by Purchaser shall have been tendered;

8.2.3 On or before the Closing Date, Purchaser shall have tendered the Replacement Deposits to the CRA;

8.2.4 On or before the Closing Date, if required by the CRA as a condition to the Release or the CRA Consent, Purchaser shall have provided a Replacement Guarantor satisfactory to the CRA; and

8.2.5 On or before the Closing Date, Seller and Purchaser shall have received the fully executed (a) CRA Consent (which shall, for Seller's benefit only, include a complete release of Seller, Bach Real Estate, LLC, The Peebles Corporation and each of their respective principals and affiliates from their respective obligations under the Development Agreements (collectively, the "Release")), (b) Fourth Amendment and (c) Block 55 Development Agreement (as modified or supplemented by the mutual written agreement of the Parties).

8.3. Frustration of Closing Conditions. After the end of the Due Diligence Period, no Party hereto may rely on the failure of any condition set forth in Sections 8.1 or 8.2, as the case may be, to be satisfied if such failure was directly or in material part caused by such Party's failure to use its commercially reasonable efforts to fulfill its own obligations hereunder in order that the Parties consummate the transactions contemplated by this Agreement. Purchaser and Swerdlow shall use commercially reasonable efforts to cooperate with Seller in obtaining the CRA Consent, but the foregoing shall not obligate

Purchaser or Seller to agree to any particular request or to agree to any particular changes to documents in order to obtain the CRA Consent.

9. **DEFAULT BY SELLER**. In the event of any default by Seller in the performance or observance of any covenant or agreement of Seller at or prior to the Closing or should any of Seller's representations and warranties be untrue or inaccurate in any material respect, and the continuance of such default or untruthfulness or inaccuracy for a period of ten (10) business days after receipt by Seller of written notice thereof, Purchaser, as its exclusive option, may elect one of the following:

9.1. Waive such Seller's default, or untruthfulness or inaccuracy of Seller's representations and warranties, and close on the Membership Interests subject to such default or untruthfulness or inaccuracy; or

9.2. Terminate this Agreement by written notice to Seller, whereupon subject to receipt of a Joint Instruction (except for a termination by Purchaser on or before the expiration of the Due Diligence Period), Escrow Agent shall return the Deposit, together with all interest earned thereon, to Purchaser. Further, Seller shall reimburse Purchaser for the actual, third-party out-of-pocket costs and expenses incurred by Purchaser involving, arising out of or relating to this Agreement, in an amount not to exceed $200,000.00, promptly following receipt by Seller of a schedule of such costs and reasonable supporting detail and evidence of same (which reimbursement obligation shall survive termination of this Agreement). Thereafter, all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination; or

9.3. Seek specific performance of Seller's obligations under this Agreement.

10. **DEFAULT BY PURCHASER**. In the event of any default by Purchaser in the performance or observance of any covenant or agreement of Purchaser at or prior to the Closing or should any of Purchaser's representations and warranties be untrue or inaccurate in any material respect, and the continuance of such default or untruthfulness or inaccuracy for a period of ten (10) business days after receipt by Purchaser of written notice thereof, Seller, as its sole and exclusive option, may elect to direct Escrow Agent to immediately pay to Seller the Deposit (upon Escrow Agent's receipt of a Joint Instruction), together with all interest earned thereon, as agreed and liquidated damages for said breach, and as Seller's sole and exclusive remedy for default of Purchaser, whereupon this Agreement shall terminate and all Parties shall be released from all further obligations under this Agreement, except for those which expressly survive such termination. Seller and Purchaser agree that the amount of the Deposit is a reasonable estimation of Seller's loss in the event that Purchaser breaches its obligations hereunder. Notwithstanding the foregoing, in the event of any default by Swerdlow or Purchaser of the obligations set forth in Section 4.3 of this Agreement, Seller shall be entitled to seek to exercise all rights and remedies available at law or in equity, including the right to damages (but as to damages, limited solely to the amount of liquidated damages described in Section 4.3 and to no other damages, special, consequential or otherwise) and the right to equitable relief by way of injunction without the posting of a bond unless required by a court. For the avoidance of doubt,

in the case of a Confidentiality Breach, the provisions of Section 4.1.2 and Section 4.1.3, as applicable, and not this Section 10, shall be applicable.

11. INDEMNIFICATION.

11.1. Seller Indemnification. Subject to the limitations set forth in Section 11.4, Seller and Peebles, jointly and severally with one another, hereby agree to indemnify, defend and hold harmless Purchaser from and against any and all claims, actions, causes of action, losses, costs, damages and expenses incurred or asserted against Purchaser, including, without limitation, attorneys' fees at trial and appellate levels) arising out of or resulting from (collectively, "Seller Indemnifiable Damages"):

11.1.1 a breach of any the representations or warranties set forth in Section 7.1, subject to the limitation on survival for such representations and warranties provided for in Section 7.3; or

11.1.2 a failure to perform any covenant or agreement of Seller contained in this Agreement which is to be performed after Closing or is contained in any document delivered at Closing; or

11.1.3 any material undisclosed liability, claim or obligation of any kind with respect to the Company (other than Retained Predevelopment Costs, any liabilities arising under the Development Agreements or liabilities described in clauses (a) and (b) of Section 7.1.8, except to the extent described in Section 17.5, (Seller having agreed to pay, at or before Closing, the liabilities described in Section 7.1.8(c))), arising during or for any period prior to the Closing Date that is not set forth in the Schedule of Liabilities, whether accrued, absolute, contingent or otherwise, whether known or unknown, asserted or unasserted, accrued or unaccrued, or liquidated or unliquidated, and whether due or to become due, regardless of when asserted. For purposes of this Section 11.1.3, "material" shall mean, in the aggregate with respect to all undisclosed liabilities, claims and obligations, of $5,000.00.

11.2. Purchaser Indemnification. Subject to the limitations set forth in Section 11.4, Purchaser and Swerdlow, jointly and severally with one another, hereby agree to indemnify, defend and hold harmless Seller from any and all losses incurred or asserted arising out of or resulting from (collectively, "Purchaser Indemnifiable Damages"):

11.2.1 a breach of any the representations or warranties set forth in Section 7.2, subject to the limitation on survival for such representations and warranties provided for in Section 7.3; or

11.2.2 a failure to perform any covenant or agreement of Purchaser contained in this Agreement which is to be performed after Closing or is contained in any document delivered at Closing; or

11.2.3 any obligations or liabilities under the Development Agreements which arise, or are to be performed, after the Closing Date except those, if any, expressly imposed upon Seller in the CRA Consent; or

11.2.4 Any documentary stamp tax or surtax, if any, imposed in connection with the transfer of the Membership Interest to Purchaser.

11.3. Time Limitation. The liability of Seller and Peebles for its and his indemnification obligations arising under Section 11.1 of this Agreement shall be limited to claims for which Buyer delivers written notice to Seller on or before the date which is one hundred eighty (180) days after the Closing Date; provided, however, that such limitation shall not apply to a claim of breach of any of the representations and warranties of Seller as set forth in Sections 7.1.1 and 7.1.2 of this Agreement, which representations and warranties shall survive Closing for the applicable statute of limitations. The liability of Purchaser and Swerdlow for its and his respective indemnification obligations arising under Section 11.2 of this Agreement shall be limited to claims for which Seller delivers written notice to Purchaser on or before the date which is one hundred eighty (180) days after the Closing Date; provided, however, that such limitation shall not apply to a claim of breach of any of the representations and warranties of Purchaser as set forth in Sections 7.2.1 and 7.2.2 of this Agreement, which representations and warranties shall survive Closing for the applicable statute of limitations.

11.4. Limitations on Liability.

11.4.1 Any claim under this Section 11 shall be effective and valid only if made in writing (specifying in reasonable detail the nature of the claim and the factual and legal basis for any such claim, and the provisions of this Agreement upon which such claim is made) against the other party.

11.4.2 In no event shall Seller and/or Peebles be liable for, or required to make any payment pursuant to Section 11.1 for any Seller Indemnifiable Damages suffered by Purchaser unless and until the aggregate dollar amount of all such Seller Indemnifiable Damages under this Agreement exceeds Five Thousand and No/100 Dollars ($5,000.00) (such amount, the "Basket Amount"), in which case Purchaser shall be entitled to recover all Seller Indemnifiable Damages inclusive of the Basket Amount; and in no event shall the indemnification obligations of Seller and Peebles and the dollar amount of Seller Indemnifiable Damages (and the obligation of Seller and Peebles to indemnify) exceed, in the aggregate, Five Hundred Thousand and No/100 Dollars ($500,000.00). Notwithstanding anything to the contrary contained in this Agreement, Peebles' aggregate liability under any and all provisions of this Agreement which impose liability upon him shall be deemed included in and limited by the foregoing $500,000.00 amount. Additionally, the obligation of Seller and Peebles under Section 11.1 to remedy a misrepresentation or breach of warranty in Section 7.1 or to pay Seller Indemnifiable Damages shall be reduced or limited if and to the extent that any matter, fact or circumstance that would otherwise give rise to a misrepresentation or breach of warranty in Section 7.1 was: (a) actually known (but not due to constructive or imputed knowledge) to Swerdlow, his counsel or an employee of Swerdlow, Swerdlow Development Company, LLC, or Purchaser after the Effective Date and prior to the Closing Date because such matter, fact or circumstance was set forth in the Due Diligence Documents delivered to Purchaser or its attorneys; and (b) Purchaser nonetheless consummated the transactions described herein. The liability of Seller and Peebles shall be further limited or reduced if and to the extent Purchaser and, following the Closing, the Company, have failed to use commercially reasonable efforts to seek to mitigate the damage (the cost of such mitigation, however, being

part of Seller Indemnifiable Damages); and (ii) such claim arises or is increased as a result of any new legislation, regulation or rule of law not in force at the end of the Due Diligence Period or any amendment of any legislation, regulation or rule of law after the end of the Due Diligence Period.

11.4.3 In no event shall Purchaser and/or Swerdlow be liable for, or required to make any payment pursuant to Section 11.2 for any Purchaser Indemnifiable Damages suffered by Seller unless and until the aggregate dollar amount of all such Purchaser Indemnifiable Damages under this Agreement exceeds the Basket Amount, in which case Seller shall be entitled to recover all Purchaser Indemnifiable Damages inclusive of the Basket Amount; and in no event shall the indemnification obligations of Purchaser and Swerdlow and the dollar amount of Purchaser Indemnifiable Damages (and the obligation of Purchaser and Swerdlow to indemnify) exceed, in the aggregate, Five Hundred Thousand and No/100 Dollars ($500,000.00). Notwithstanding anything to the contrary contained in this Agreement, Swerdlow's aggregate liability under any and all provisions of this Agreement which impose liability upon him, except for the provisions of Section 4.3 or Section 6.5, shall be deemed included in and limited by the foregoing $500,000.00 amount. Additionally, the obligation of Purchaser and Swerdlow under Section 11.2 to remedy a misrepresentation or breach of warranty in Section 7.2 or to pay Purchaser Indemnifiable Damages shall be reduced or limited if and to the extent that any matter, fact or circumstance that would otherwise give rise to a misrepresentation or breach of warranty in Section 7.2 was: (a) actually known (but not due to constructive or imputed knowledge) to Seller, its counsel or an employee of Seller or The Peebles Corporation after the Effective Date and prior to the Closing Date because such matter, fact or circumstance was set forth in the documents delivered to Seller or its attorneys; and (b) Seller nonetheless consummated the transactions described herein. The liability of Purchaser and Swerdlow shall be further limited or reduced if and to the extent: (i) Seller has failed to use commercially reasonable efforts to mitigate the damage (the cost of such mitigation, however, being part of Purchaser Indemnifiable Damages); and (ii) such claim arises or is increased as a result of any new legislation, regulation or rule of law not in force at the Closing Date or any amendment of any legislation, regulation or rule of law after the Closing Date.

11.5. Notice of Indemnity Claims.

11.5.1 Following the Closing, Purchaser shall be required to notify Seller of any claim against Seller for Seller Indemnifiable Damages by the delivery of a notice, specifying in reasonable detail the nature of the claim and the factual and legal basis for any such claim, and the provisions of this Agreement upon which such claim is made. If Seller does not notify Purchaser within thirty (30) calendar days following its receipt of such notice that Seller disputes its liability to Purchaser, such claim specified by Purchaser in such notice shall be conclusively deemed an obligation of Seller, and Seller will pay the amount of Seller Indemnifiable Damages to Purchaser on demand.

11.5.2 Following the Closing, Seller shall be required to notify Purchaser of any claim against Purchaser for Purchaser Indemnifiable Damages by the delivery of a notice, specifying in reasonable detail the nature of the claim and the factual and legal basis for any such claim, and the provisions of this Agreement upon which such claim is made. If Purchaser does not notify Seller within thirty (30) calendar days following its receipt of such

notice that Purchaser disputes its liability to Seller, such claim specified by Seller in such notice shall be conclusively deemed an obligation of Purchaser, and Purchaser will pay the amount of Purchaser Indemnifiable Damages to Seller on demand.

11.6. Indemnification Procedure. The Party or Parties making a claim for indemnification under Sections 11.1 or 11.2, for purposes of this Agreement, shall be referred to as the "Indemnified Person" and the Party or the Parties against whom such claims are asserted under this Section 11.6, for purposes of this Agreement, shall be referred to as the "Indemnifying Person." All "Third Party Claims" (defined below) brought against any Indemnified Person under this Section 11 shall be asserted and resolved as follows:

11.6.1 In the event of any claim, demand, suit, action, arbitration, investigation, inquiry or proceeding which is covered by Section 11.1 or Section 11.2 is brought by a third party against any Indemnified Person (in each such case, a "Third Party Claim"), the Indemnified Person shall promptly cause written notice of the assertion of such Third Party Claim which is covered by Section 11.1 or Section 11.2 to be forwarded to the Indemnifying Person (a "Notice of Claim"). The failure of the Indemnified Person to give a prompt Notice of Claim of any Third Party Claim shall not release, waive or otherwise affect the Indemnifying Person's obligations with respect thereto except to the extent that the Indemnifying Person is actually prejudiced as a result of such failure. Subject to Section 11.6.2, the Indemnifying Person on behalf of the Indemnified Person shall have the right to reasonably control the defense of any a Third Party Claim, and the costs and expenses thereafter incurred by the Indemnifying Person in connection with such defense (including reasonable attorneys' fees, other professionals' and experts' fees and court or arbitration costs) shall be paid by the Indemnifying Person. In any event, at all times the Indemnified Person may participate, through counsel of its own choice and at its own expense, in the defense of any Third Party Claim;

11.6.2 With respect to the defense of any Third Party Claim, the Indemnifying Person shall not be entitled to continue control of such defense, and shall pay the actual, reasonable, out-of-pocket costs and expenses incurred by the Indemnified Person in connection with such defense, if the Indemnifying Person has: (a) materially failed (or is materially failing) to defend such claim, and (b) the Indemnifying Person has not corrected, in all material respects (or caused the correction of, in all material respects), such failure within ten (10) business days after receipt of notice from the Indemnified Person specifying such failure in reasonable detail (provided that if action is reasonably necessary to protect or preserve the interests of the Indemnified Person prior to the expiration of the ten (10) business day period, the Indemnified Person may take reasonable action to do so and be entitled to be reimbursed its actual, out-of-pocket costs and expenses for same);

11.6.3 If the Indemnifying Person has the right to and does elect to defend any Third Party Claim after receipt of a Notice of Claim as provided in Section 11.6.1 above, the Indemnifying Person shall: (a) conduct the defense of such Third Party Claim actively and diligently and keep the Indemnified Person reasonably informed of developments in the Third Party Claim at all stages thereof; and (b) to the extent practicable, permit the Indemnified Person and its counsel to confer with the Indemnifying Person and its counsel regarding the conduct of the defense thereof. Purchaser and Seller will make available to each other and each other's counsel and accountants, without charge, all of their books and records containing

information reasonably relating to the Third Party Claim, and each party will render to the other party such reasonable assistance as may be reasonably requested by the Indemnifying Person in order to ensure the proper and adequate defense thereof and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the other party in connection therewith; provided, however, the Indemnified Person shall not have an obligation to disclose any information or documents, that are proprietary, subject to confidentiality restrictions, or privileged. The Indemnified Person and the Indemnifying Person also agree to render to each other such reasonable assistance and cooperation as may reasonably be requested to ensure the proper and adequate defense of such claim or demand;

11.6.4 If the Indemnifying Person has the right to and does elect to defend any Third Party Claim after receipt of a Notice of Claim, the Indemnifying Person shall have the right to enter into any settlement of a Third Party Claim without the consent of the Indemnified Person provided that (a) no amount is payable by, and no liability or obligations are imposed upon, such Indemnified Person in connection with such settlement, (b) such settlement does not involve any injunctive or other equitable relief or the contractual equivalent thereof binding upon such Indemnified Person, and (c) such settlement expressly and unconditionally releases such Indemnified Person from all liabilities and obligations with respect to such claim, with prejudice;

11.6.5 In the event that the Indemnifying Person does not elect to defend any Third Party Claim after receipt of a Notice of Claim and/or fails to so take the actions necessary to undertake the defense of same within ten (10) business days after receipt of written notice (other than the Notice of Claim) from the Indemnified Person, subject to Section 11.6.2 above, the Indemnified Person shall have the right to defend, and with the prior consent of the Indemnifying Person (not to be unreasonably withheld), enter into any settlement of such Third Party Claim; provided that where the Indemnifying Person has not taken reasonable actions to protect or preserve the interests of the Indemnified Person and such actions must be taken before the expiration of said ten (10) business day period, the Indemnified Person shall have the right, at its option and without the consent of the Indemnifying Person, to take such actions with respect to the Third Party Claim as are reasonable or necessary under the circumstances in order to protect and preserve the rights of the Indemnified Person (in which event the Indemnified Person shall be promptly reimbursed by the Indemnifying Person for the actual, out-of-pocket costs and expenses thereafter incurred by the Indemnified Person in connection with such actions);

11.6.6 In calculating amounts payable to an Indemnified Person, the amount of any indemnified damages shall be determined net of (a) any reduced tax liability inuring to such Indemnified Person on account of such damages, (b) any amounts covered by any insurance policy with respect to such damages and (c) any prior recovery by such Indemnified Person from any Person with respect to such damages; and

11.6.7 In the event that any third party payments or other recoveries from any third party are received by an Indemnified Person subsequent to receipt by such Indemnified Person of any indemnification payment hereunder from the Indemnifying Person in respect of the claims to which such indemnity payments relate, appropriate refunds

shall be made promptly by the Indemnified Person to Indemnifying Person of all or the relevant portion of such indemnification payment.

11.7. Exclusive Remedy. Purchaser and Seller acknowledge and agree that, except as set forth in Section 6.5, following the Closing, the foregoing provisions in this Section 11 shall be the exclusive remedy of Purchaser and Seller with respect to the transactions contemplated by this Agreement.

11.8. Tax Treatment. For all tax purposes, the Parties agree to treat indemnity payments made pursuant to this Agreement as an adjustment to the Purchase Price.

11.9. Manner of Payment. Any indemnification or other payments required to be made by Seller or Purchaser pursuant to this Section 11 shall be effected by wire transfer of immediately available funds to the accounts designated by Seller or Purchaser, as applicable, within five (5) business days after the final determination thereof.

11.10. Survival of Indemnification. The provisions of this Section 11 shall survive the Closing for the period set forth in Section 11.3; provided, however, that a claim for indemnification which is made prior to the expiration of the period set forth in Section 11.3 shall continue in effect notwithstanding the expiration of such period.

12. **CLOSING COSTS**. If applicable, at Closing, Purchaser shall pay the costs of documentary stamp tax and surtax, if any, due as a result of the consummation of the assignment of the Membership Interests by Seller to Purchaser. If applicable, Purchaser shall pay for the any updated surveys, the search fees and the owner's title insurance premium for any title policies, and Purchaser's due diligence costs. Each party shall pay its own attorneys' fees and costs.

13. **CLOSING**.

13.1. Seller Deliveries. At Closing, Seller shall deliver to Purchaser the following, each duly executed and in form reasonably acceptable to Purchaser and Seller:

13.1.1 An Assignment and Assumption Agreement with respect to the Membership Interests in the form attached hereto as Exhibit D;

13.1.2 A certificate restating and affirming as of the Effective Date all of Seller's representations and warranties in the form attached hereto as Schedule 13.1.2;

13.1.3 A non-foreign certificate and other documentation as may be appropriate and satisfactory to Purchaser to meet the non-withholding requirements under FIRPTA and any other federal statute or regulations (or, in the alternative, Seller shall cooperate with Purchaser in the withholding of funds pursuant to FIRPTA regulations);

13.1.4 A Closing statement;

13.1.5 True and complete, fully-executed copies of this Development Agreements;

13.1.6 The CRA Consent.

13.1.7 Such other reasonable documents as may be reasonably requested by Purchaser in order to consummate the transactions described herein.

13.2. Purchaser's Deliveries. Purchaser shall pay the balance of the cash portion of the Purchase Price, and shall deliver signed counterparts of the closing documents which require Purchaser's signature. Purchaser shall deliver the Replacement Deposits to the CRA.

14. **ASSIGNABILITY**. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns; and Purchaser may assign its rights and obligations hereunder to an entity controlled by, or under the control of, Purchaser and/or Michael Swerdlow. Except as aforesaid, neither Seller nor Purchaser shall have the right to assign this Agreement.

15. **TERMINATION**.

15.1. Mutual Termination of Agreement. This Agreement may be terminated at any time after the Effective Date and prior to any Closing by mutual written consent of Purchaser and Seller, which consent shall include a Joint Instruction.

15.2. Termination by Seller or Purchaser. This Agreement may be terminated by giving written notice of such termination:

15.2.1 by Seller, if Purchaser shall have breached its obligation to fund the Initial Deposit, the Additional Deposit or the Extension Fee as required pursuant to either Section 3.2.1, Section 3.2.3 or Section 2, respectively.

15.2.2 so long as the terminating party is not in breach of its obligations under this Agreement beyond any applicable notice or cure period, by either Party if all of the conditions precedent in favor of such Party are not satisfied or waived by such Party as of the Closing Date.

15.2.3 by Purchaser, in accordance with Section 6.1 or Section 9.2.

15.3. Effect of Termination.

15.3.1 In the event of termination of this Agreement as provided in Section 15.2.2 (after Escrow Agent's receipt of a Joint Instruction), or Section 15.2.3 (after Escrow Agent's receipt of a Joint Instruction if this Agreement is terminated pursuant to Section 9.2; but no Joint Instruction shall be required to Escrow Agent if this Agreement is terminated by Purchaser pursuant to Section 6.1), the Deposit (plus any interest accrued thereon) and any Extension Fee paid by Purchaser pursuant to Section 2 above (if such termination by Purchaser, as aforesaid, occurs after Purchaser has exercised an extension of the Closing Date pursuant to Section 2 and Purchaser's termination is not due to an event of default by Seller or because Seller's representations and warranties contained herein (as the same may be deemed to have

been modified pursuant to the terms of Section 7.4) are not true and correct in all material respects beyond any applicable notice and cure period or the failure of the conditions set forth in Section 8.1 to be fulfilled or waived at or prior to Closing), shall be returned to Purchaser by Escrow Agent and/or Seller (as applicable) and, as to the Extension Fee, by Seller), and the Parties shall have no further obligations to, or recourse against, each other (except as provided in any provision of this Agreement which is expressly stated to survive the termination of this Agreement); provided, however, Seller shall be entitled to the Deposit (and the Deposit shall be non-refundable) if (a) Seller terminates this Agreement as a result of a failure of the condition set forth in Section 8.2.3 or Section 8.2.4 because Purchaser (other than for reasons of Seller's default in Seller's obligations under this Agreement beyond any applicable notice and cure period, or the failure of the conditions set forth in Section 8.1.1 – 8.1.5 to be fulfilled or waived at or prior to Closing, or the failure of the conditions set forth in Section 8.1.7 to be fulfilled or waived at or prior to Closing unless such failure was caused by Purchaser's refusal or failure to provide a Replacement Guarantor satisfactory to the CRA (if a Replacement Guarantor is required by the CRA as a condition to the Release or the CRA Consent)) has failed to tender the "Replacement Deposit" or has failed or refused to provide a "Replacement Guarantor" (if required by the CRA as a condition to the Release or the CRA Consent); or (b) Seller terminates this Agreement as a result of the failure of the condition set forth in Section 8.2.5 because Purchaser (other than for reasons of Seller's default in Seller's obligations under this Agreement beyond any applicable notice and cure period, or the failure of the conditions set forth in Section 8.1.1 – 8.1.5 to be fulfilled or waived at or prior to Closing, or the failure of the conditions set forth in Section 8.1.7 to be fulfilled or waived at or prior to Closing unless such failure was caused by Purchaser's refusal or failure to provide a Replacement Guarantor satisfactory to the CRA (if a Replacement Guarantor is required by the CRA as a condition to the Release or the CRA Consent)) has failed or refused to provide a "Replacement Guarantor" (if required by the CRA as a condition to the Release or the CRA Consent).

15.3.2 In the event of termination of this Agreement as provided in Section 15.2.1, the Deposit (plus interest any accrued thereon), to the extent funded to Escrow Agent, shall be disbursed to Seller, and the Parties shall have no further obligations to, or recourse against, each other (except as provided in any provision of this Agreement which is expressly stated to survive the termination of this Agreement).

15.3.3 The provisions of this Section 15 shall survive termination of this Agreement.

16. **NOTICES**. Any notices required or permitted to be given under this Agreement shall be delivered by hand; or delivered by a nationally recognized overnight delivery service, and addressed as described below; notices shall be deemed effective only upon receipt or refusal of delivery.

Notices to Seller:

TPC OVERTOWN BLOCK 45, LLC
c/o The Peebles Corporation
2020 Ponce de Leon Blvd., Suite 907
Coral Gables, Florida 33134

Attn: Lowell D. Plotkin
Fax: [_____]
E-mail: lplotkin@peeblescorp.com

And

WW OGP 45, LLC
1320 N.E. 156 Street
North Miami Beach, Florida 33162
Attn: Barron Channer
E-mail: barron.channer@bachre.com

With a copy to:

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida, 33131
Attn: Kimberly S. LeCompte
Fax: [_____]
E-mail: lecomptek@gtlaw.com

And

Lydecker Diaz LLP
Attention: Stephen H. Johnson, Esq.
Re: Overtown Gateway
1221 Brickell Avenue, 19th Floor
Miami, FL 33131

Notices to Purchaser:

Downtown Retail Associates LLC
2901 Florida Avenue
Coconut Grove, FL 33133
Attn: Michael Swerdlow
Fax: [_____]
E-mail: MSwerdlow@swerdlow.com and
R.Alston@swerdlow.com

With a copy to:

John Dellagloria, Esq.
P.O. Box 560333
Miami, FL 33156
Fax: [_____]
Email: Johndellagloria@johndellaglorialaw.com

And

Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, Florida 3330
Attn: Marshall J. Emas
Fax: 954-888-3065
E-mail: memas@shutts.com

Notices to Escrow Agent:

Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, Florida 3330
Attn: Marshall J. Emas
Fax: 954-888-3065
E-mail: memas@shutts.com

17. **COVENANTS AFTER DATE OF THIS AGREEMENT**.

17.1. Seller covenants and agrees with Purchaser, from and after the Effective Date through the Closing, unless Purchaser's prior written consent to any unpermitted action hereunder is first obtained (given or denied in Purchaser's sole discretion), Seller shall not (and shall not permit any Relevant Company to): (a) issue, deliver, sell, transfer, assign, grant, pledge or otherwise encumber the Membership Interests or the Subsidiary Membership Interests or subject to any lien any of its interest in the Membership Interests or the Subsidiary Membership Interests, (b) amend or modify, or permit the amendment or modification of, the Constituent Documents, (c) cause or permit any Relevant Company to incur indebtedness for borrowed money or guarantee the indebtedness of another person, (d) cause or permit any Relevant Company to issue any additional interests in, or any options, warrants or other rights to purchase, or securities or interests convertible into or exchangeable for, interests in any Relevant Company or admit any additional members or permit a change in the manager of any Relevant Company, (e) modify or amend the Development Agreements other than in accordance with this Agreement, or (f) merge or consolidate or agree to merge or consolidate with any other person or entity. Between the Effective Date and the Closing, Seller may cause a Relevant Company to enter into contracts not in effect as of the Effective Date and disclosed in this Agreement (the "Contracts"), without Purchaser's consent so long as: (i) Purchaser is given prompt written notice of a Relevant Company having entered into any such Contract and been provided with a

copy of same if requested in writing; (ii) the Contracts do not consist of or involve any of the items described in clauses (a) through (f) of this Section 17.1; (iii) the Contracts are terminable immediately upon notice to the vendors or upon not more than thirty (30) days' prior notice to the vendors, without (in either event) penalty, charge or termination fee; and (iv) at or before Closing, unless Purchaser (in its sole discretion) directs otherwise, Seller (or the applicable Relevant Company) terminates the Contracts (or, if prior notice is required for termination before termination becomes effective, gives such notice of termination to the vendors) and pays in full all amounts which are due or will become due, and other penalties, charges and termination fees, under the Contracts (the Parties agreeing that, except as otherwise agreed to by Purchaser pursuant to this Section 17.1, no Relevant Company shall, from and after Closing, be bound by or owe sums under the Contracts). Notwithstanding anything to the contrary contained herein, but subject to the provisions of Section 3.1, Seller, the Company and/or the Subsidiary may incur Predevelopment Costs after the Effective Date and before Closing.

17.2. Seller covenants and agrees with Purchaser, from and after the expiration of the Effective Date through the Closing, Seller shall: (a) conduct the business of each Relevant Company diligently, in good faith and in the ordinary course of business consistent with past practices, (b) preserve the assets, business and goodwill of each Relevant Company, (c) cause each Relevant Company to remain in compliance in all material respects with applicable law, rules and regulations and all permits, licenses and approvals, if any, and (d) promptly advise Purchaser in writing of the commencement, or the knowledge of written threat, of any actions, suits, claims or proceedings against, relating to or involving any Relevant Company and/or the Property.

17.3. To the extent required by applicable law, promptly following Closing, Seller shall, at its expense, cause each Relevant Company to file: (a) all unfiled tax returns due for the period prior to Closing; and (b) a "stub-year" tax return for 2016, relating to the period from the beginning of such calendar year through Closing; and, as to each of the foregoing, shall promptly pay all taxes, if any, attributable to such period. Without the prior written consent of Seller, not to be unreasonably withheld, Purchaser shall not (i) file (or permit any Relevant Company to file) any tax return of any Relevant Company relating to any period occurring prior to Closing or (ii) amend (or permit any Relevant Company to amend) any previously filed tax return of any Relevant Company relating to any period occurring prior to Closing. The foregoing provisions shall survive Closing.

17.4. If a "Replacement Guarantor" is required by the CRA as a condition to the Release or the CRA Consent, then, unless this Agreement is terminated on or before the expiration of the Due Diligence Period, Purchaser and Swerdlow hereby agree that Swerdlow will agree to serve as the "Replacement Guarantor" (as defined in the Development Agreements) or otherwise provide a Replacement Guarantor satisfactory to the CRA. In such event, to the extent so required by the CRA, Purchaser and Swerdlow shall use commercially reasonable efforts to cause Swerdlow to be approved as the "Replacement Guarantor" (including, but not limited to, providing such financial and other confirmation as reasonably requested by the CRA). For the avoidance of doubt, unless this Agreement is terminated on or before the expiration of the Due Diligence Period, Purchaser and Swerdlow acknowledge and agree that the refusal or failure to provide a Replacement Guarantor satisfactory to the CRA shall constitute a breach by Purchaser and Swerdlow of the covenant contained in this Section 17.4.

17.5. Immediately prior to Closing, Seller shall deliver to Purchaser an updated Schedule of Liabilities (the "Updated Schedule of Liabilities") and an updated Schedule of Seller Paid Liabilities (the "Updated Schedule of Seller Paid Liabilities"), in each case dated as of Closing, and Seller shall pay or otherwise satisfy (i) any liabilities reflected on the Updated Schedule of Liabilities that are not also reflected on the Schedule of Liabilities (with reasonable evidence of such payment or satisfaction being provided to Purchaser at or prior to Closing); and (ii) any liabilities reflected on the Updated Schedule of Seller Paid Liabilities that are not also reflected on the Schedule of Seller Paid Liabilities (with reasonable evidence of such payment or satisfaction being provided to Purchaser at or prior to Closing).

18. ESCROW AGENT.

18.1. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement. In the event of a dispute between the Parties, the Parties consent to Escrow Agent continuing to represent Seller, notwithstanding that Escrow Agent shall continue to have the duties provided for in this Agreement.

18.2. Escrow Agent may (a) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (b) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (c) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; Escrow Agent's duties under this Agreement are and shall be limited to those duties specifically provided in this Agreement.

18.3. The Parties to this Agreement shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, including attorneys' fees and costs, which it may incur or with which it may be threatened by reason of its action as Escrow Agent under this Agreement, except for such matters which are the result of Escrow Agent's gross negligence or willful misconduct.

18.4. If the Parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement with respect to the Deposit or Escrow Agent, or about their respective rights and obligations, or about the propriety of any action contemplated by Escrow Agent, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, Escrow Agent shall be released from all obligations under this Agreement. Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees, including those for appellate and post judgment matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action; Escrow Agent may represent itself in any such interpleader action and charge reasonable legal fees for such representation, and the court shall award such attorneys' fees, including those for appellate and post judgment matters and for paralegals and similar persons, to Escrow Agent from the losing party. Escrow Agent shall be fully protected in

suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

18.5. Escrow Agent may consult with counsel of its own choice, including counsel within its own firm, and shall have full and complete authorization and protection in accordance with the opinion of such counsel. Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its gross negligence or willful misconduct.

18.6. Escrow Agent may resign upon five (5) business days' written notice to Seller and Purchaser. If a successor escrow agent is not appointed jointly by Seller and Purchaser within the five (5) business day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.

18.7. Unless a unilateral instruction or an action which does not require a Joint Instruction is expressly permitted for an action by Escrow Agent under the terms of this Agreement, Escrow Agent shall not disburse the Deposit, until such time as each of Purchaser and Seller shall deliver joint written instructions to disburse same (each a "Joint Instruction"); provided, however, if any Party (the "Entitled Party") is entitled to the Deposit under any provision of this Agreement, and the disbursement of the Deposit by the Escrow Agent pursuant to such provision is subject to the Escrow Agent's receipt of Joint Instructions, then upon the written request of the Entitled Party the other Party shall execute and deliver Joint Instructions to the Escrow Agents authorizing the disbursement of the Deposit in accordance the such provision. If a Party is obligated by this Agreement to execute a Joint Instruction and such Party refuses to execute or deliver a Joint Instruction to the Escrow Agent instructing disbursement of the Deposit within three (3) business days after request therefor by the other Party, and a court finds, in a final judgment following the resolution of any appeals, that such Party should have executed the joint written instruction, the Party who so refused to execute the Joint Instruction will pay the costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the other Party in the litigation.

19. **RADON GAS NOTICE**. Pursuant to Florida Statutes Section 404.056(5), Seller hereby makes, and Purchaser hereby acknowledges, the following notification:

> RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

20. **MISCELLANEOUS**.

20.1. No Third-Party Beneficiary. This Agreement is for the benefit only of the Parties, Peebles and Swerdlow, and/or their respective heirs, personal

representatives, successors and permitted assigns, and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom or enforce against any party hereto any provision hereof.

20.2. Amendments and Waivers. No amendment or waiver of any provision of this Agreement will be valid and binding unless it is in writing and signed, in the case of an amendment, by Purchaser and Seller, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach or violation of, default under, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any Party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof.

20.3. Recordation. Neither Seller nor Purchaser shall record this Agreement or any memorandum or notice thereof.

20.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without application of choice of law or conflicts of laws principles.

20.5. Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20.6. Attorneys' Fees. In the event of any litigation between the Parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees. Wherever provision is made in this Agreement for "attorneys' fees," such term shall be deemed to include accountants' and attorneys' fees and court costs, whether or not litigation is commenced, including those for appellate and post judgment proceedings and for paralegals and similar persons.

20.7. No Construction Against Draftsman. Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either party.

20.8. Construction. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

20.9. Headings. The captions in this Agreement are for the convenience of reference only and shall not be deemed to alter any provision of this Agreement.

20.10. Dates. Any reference in this Agreement to time periods less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays; any time period provided for in this Agreement which shall end on a Saturday, Sunday or legal

holiday shall extend to 5:00 p.m. of the next full business day. All references to a specified number of days shall refer to calendar days unless otherwise specified. Time is of the essence.

20.11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought, and any third party beneficiaries hereto.

20.12. Exhibits and Schedules. All references in this Agreement to exhibits, Schedules, paragraphs, subparagraphs and Sections refer to the respective subdivisions of this Agreement, unless the reference expressly identifies another document.

20.13. Successor and Assigns. All of the terms of this Agreement, including but not limited to the representations, warranties and covenants of Seller, shall be binding upon and shall inure to the benefit of the Parties to this Agreement and their respective successors and assigns.

20.14. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties. Counterpart signature pages to this Agreement may be delivered by facsimile or electronic delivery (i.e., by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

20.15. Further Actions. Each Party agrees to reasonably cooperate with the other Party and to execute and deliver such additional instruments and documents as the other Party may reasonably request for the purpose of carrying out this Agreement and the transactions contemplated hereby.

20.16. Limitation of Liability. Except as otherwise expressly set forth above with respect to the limited liability of Peebles and Swerdlow hereunder, none of the officers, directors, shareholders, partners, principals, members, managers or employees or either Party shall have any personal liability for any obligation of such Party hereunder, and neither Party shall take any action against any of same or the principals of the other Party, whether disclosed or undisclosed.

20.17. Seller Decisions and Action. The Parties hereby acknowledge and agree that that any action or decision by, or the exercise or waiver of any rights of, Seller pursuant to the terms of this Agreement shall require the written joint action of both TPC Seller and WW Seller. By way of illustration, and not limitation, the following matters shall require the joint action of TPC Seller and WW Seller: (i) any consent or approval on behalf of Seller under this Agreement; (ii) the execution or delivery of any notices, documents or certificates to be executed by Seller in connection with this Agreement; (iii) any determination as to whether the conditions to Closing in Section 8.2 have been satisfied, or whether such conditions should be waived by Seller; (iv) any action that may be necessary or desirable in connection with the termination of this Agreement in accordance with Section 10; (v) any and all actions that may be necessary or desirable in connection with making, defending, negotiating or entering into any

settlements and compromises of any claim for indemnification pursuant to this Agreement; and (vi) acceptance of any notices on behalf of Seller in accordance with Section 16. Notwithstanding the foregoing, TPC Seller and WW Seller may, in a written joint notice to Purchaser, delegate the authority with respect to any matter described in this Section 20.17 to either TPC Seller or WW Seller, acting alone.

[The remainder of this page is blank intentionally.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers, managers or other authorized individuals, thereunto duly authorized, all as of the Effective Date.

TPC SELLER:

TPC OVERTOWN BLOCK 45, LLC, a Florida limited liability company

By: _____
Name: R. Donahue Peebles
Title: Manager

WW SELLER:

WW OGP 45, LLC, a Florida limited liability company

By: _____
Name: Barron Channer
Title: Manager

PURCHASER:

DOWNTOWN RETAIL ASSOCIATES LLC, a Florida limited liability company

By: _____
Name: Michael Swerdlow
Title: Manager

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers, managers or other authorized individuals, thereunto duly authorized, all as of the Effective Date.

TPC SELLER:

TPC OVERTOWN BLOCK 45, LLC, a Florida limited liability company

By: _____
Name: R. Donahue Peebles
Title: Manager

WW SELLER:

WW OGP 45, LLC, a Florida limited liability company

By: _____
Name: Barron Channer
Title: Manager

PURCHASER:

DOWNTOWN RETAIL ASSOCIATES LLC, a Florida limited liability company

By: _____
Name: Michael Swerdlow
Title: Manager

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers, managers or other authorized individuals, thereunto duly authorized, all as of the Effective Date.

TPC SELLER:

TPC OVERTOWN BLOCK 45, LLC, a Florida limited liability company

By: _____
Name: R. Donahue Peebles
Title: Manager

WW SELLER:

WW OGP 45, LLC, a Florida limited liability company

By: _____
Name: Barron Channer
Title: Manager

PURCHASER:

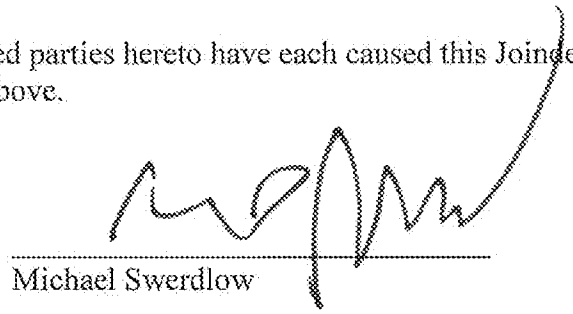
DOWNTOWN RETAIL ASSOCIATES LLC, a Florida limited liability company

By: _____
Name: Michael Swerdlow
Title: Manager

JOINDER OF SWERDLOW

The undersigned, Michael Swerdlow, hereby joins in the foregoing Agreement for purposes of (i) acknowledging and consenting to the transactions contemplated by the Agreement and (ii) agreeing to be bound by the provisions of Sections 4, 6.5, 11.2 and 17.4 of this Agreement as described therein.

IN WITNESS WHEREOF, the undersigned parties hereto have each caused this Joinder to be executed as of the day and year first written above.

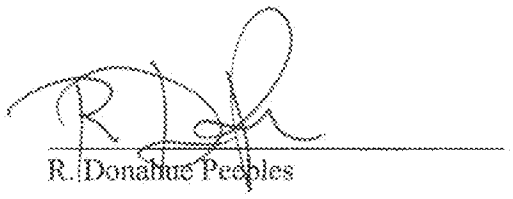


Michael Swerdlow

JOINDER OF PEEBLES

The undersigned, R. Donahue Peebles, hereby joins in the foregoing Agreement for purposes of (i) acknowledging and consenting to the transactions contemplated by the Agreement and (ii) agreeing to be bound by the provisions of Section 11.1 of this Agreement as described therein.

IN WITNESS WHEREOF, the undersigned parties hereto have each caused this Joinder to be executed as of the day and year first written above.



R. Donahue Peebles

RECEIPT

The undersigned agrees to act as Escrow Agent under the foregoing Agreement and to hold and disburse the Initial Deposit and/or the Additional Deposit pursuant to the terms of the foregoing Agreement.

ESCROW AGENT:

SHUTTS & BOWEN LLP

By: _____

Name: _____

Title: _____

EXHIBIT A-1

BLOCK 45 DEVELOPMENT AGREEMENT

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT A-2

DRAFT BLOCK 55 DEVELOPMENT AGREEMENT

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT A-2A

DRAFT FOURTH AMENDMENT TO BLOCK 45 DEVELOPMENT AGREEMENT

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT A-2B

ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT FOR THE COMPANY

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT A-2C

ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT FOR THE SUBSIDIARY

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT B

BLOCK 45 TITLE COMMITMENT

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT C-1

BLOCK 45 SURVEY

Delivered to Purchaser via Google Drive by B. Channer

EXHIBIT C-2

BLOCK 55 SURVEY

Delivered to Purchaser via Google Drive by B. Channer

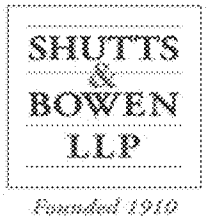
EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[To Be Reasonably Agreed by Seller and Purchaser During the Due Diligence Period]

SCHEDULE 3.2.1

ESCROW AGENT WIRE TRANSFER INSTRUCTIONS



SunTrust Trust Account for Title or Real Estate Settlement Services
Wire-In Instructions

The instructions for **Wire Transfer** to the Shutts & Bowen SunTrust Trust Account for Title or Real Estate Settlement Services:

Wire Transfer In:

Bank:	**SunTrust Bank, N.A.**
Bank Location:	25 Park Place Atlanta, GA 30308
ABA No.:	[redacted]104
Beneficiary Name:	Shutts & Bowen LLP – FL Bar Found IOTA Real Estate Title Trust Account
Beneficiary Account No.:	[redacted]
Reference Number:	**43862-0001/MJE**

Schedule 7.1.8x – Schedule of Liabilities

- Obligations of the Subsidiary, as "Developer", under that certain Block 45 Development Agreement by and between the Subsidiary and Southeast Overtown/Park West Community Redevelopment District, a public agency and body corporate created pursuant to Section 163.356, Florida Statues (the "CRA"), dated as of January 29, 2014, as amended by that certain Amendment dated as of April 25, 2014, as further amended by that certain Second Amendment, dated as of May 30, 2014 and as further amended by that certain Third Amendment, dated as of July 15, 2014 (as amended, the "Block 45 Development Agreement").

    - Note: Block 56 Developer (as defined in the Block 45 Development Agreement) has commenced vertical construction of its project and, pursuant to Section 8.8.5 of the Block 45 Development Agreement, shall be responsible for the budgeting, schedule, design, permitting and construction of the 7th Street Promenade Roadway (as defined in the Block 45 Development Agreement). Block 56 Developer has provided its initial plans and budget for comment. The Subsidiary has provided comments to the budget and design as of January 27, 2016. Based on Block 56 Developer's initial budget, $436,000 would be required to be posted by the Subsidiary pursuant to, and in the manner provided in, Section 8.8 of the Block 45 Development Agreement as its contribution toward the cost of the 7th Street Promenade Roadway work. The Subsidiary will not post such amount prior to Closing and the CRA has confirmed, via an email from Executive Director Clarence Woods, dated January 19, 2016, that the CRA is amenable to there being a lien placed on the Block 45 in lieu of the money being posted in escrow, where such lien can be released when the Subsidiary closes on its construction financing. Therefore, neither Seller nor either Relevant Company will be posting such amount prior to Closing.

Schedule 7.1.8y – Performed Obligations Under Development Agreements

- $500,000 Deposit (initial and additional) posted in form of Letter of Credit.
- Zoning Verification Letter, dated February 5, 2015, submitted in satisfaction of Section 8.7.1 of the Block 45 Development Agreement.
- Established agreement on form of Participation Reports pursuant to Section 10.3 of the Block 45 Development Agreement.

Schedule 7.1.8z – Seller/Relevant Company Obligations to be Satisfied At Or Prior To Closing

- Open Invoices with Revuelta Architecture International for Retainer and Architectural Services rendered for Conceptual Design
    - Invoice 1222.1-14-1 – $30,000.00 (Block 45)
    - Invoice 1222.2-14-1 – $30,000.00 (Block 55)
    - Invoice 1222-8-1R – $76.02 (Reimbursable expenses)
- Memorandum of Understanding between Developer and Construction Manager, dated June 10, 2013, by and between BACH Real Estate LLC (whose principal, Barron Channer, is an indirect beneficial owner of the Subsidiary), and Munilla Construction Management, LLC, d/b/a MCM.
    - Reimbursement of invoices paid by MCM for prior printing services
        - Invoice #677527 (Vendor: ARC Florida) – $446.16
        - Invoice #20640 (Vendor: Print Pro Shop) – $6,304.57
- Memorandum of Understanding, dated May 10, 2013, by and between BACH Real Estate LLC (whose principal, Barron Channer, is an indirect beneficial owner of the Subsidiary), and the City of Miami Department of Off-Street Parking a/k/a Miami Parking Authority.
- Invoice #20640 (Vendor: Print Pro Shop) - $6,304.57Open invoices for prior legal work performed by Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel, P.A. (accruing minimal interest)
    - Invoice 109363 – $275.00
    - Invoice 116667 – $23.90
    - Invoice 153914 – $5.92
- Ongoing legal work by Greenberg Traurig, P.A. in connection with the Agreement and transactions contemplated thereunder.
- Fulcrum Management Corp. – Consulting services related to predevelopment of Block 45. Current open invoice No. 275 for $3,231.25.

Schedule 7.1.10 – Noncompliance with Development Agreements

- Block 56 Developer (as defined in that certain Block 45 Development Agreement by and between the Subsidiary and Southeast Overtown/Park West Community Redevelopment District, a public agency and body corporate created pursuant to Section 163.356, Florida Statues (the "CRA"), dated as of January 29, 2014, as amended by that certain Amendment dated as of April 25, 2014, as further amended by that certain Second Amendment, dated as of May 30, 2014 and as further amended by that certain Third Amendment, dated as of July 15, 2014 (as amended, the "Block 45 Development Agreement") has commenced vertical construction of its project and, pursuant to Section 8.8.5 of the Block 45 Development Agreement, shall be responsible for the budgeting, schedule, design, permitting and construction of the 7th Street Promenade Roadway (as defined in the Block 45 Development Agreement). Block 56 Developer has provided its initial plans and budget for comment. The Subsidiary has provided comments to the budget and design as of January 27, 2016. Based on Block 56 Developer's initial budget, $436,000 would be required to be posted by the Subsidiary pursuant to, and in the manner provided in, Section 8.8 of the Block 45 Development Agreement as its contribution toward the cost of the 7th Street Promenade Roadway work. The Subsidiary will not post such amount prior to Closing and the CRA has confirmed, via an email from Executive Director Clarence Woods, dated January 19, 2016, that the CRA is amenable to there being a lien placed on the Block 45 in lieu of the money being posted in escrow, where such lien can be released when the Subsidiary closes on its construction financing. Therefore, neither Seller nor any Relevant Company will be posting such amount prior to Closing.

SCHEDULE 13.1.2

FORM OF BRING DOWN CERTIFICATE FOR SELLERS

THIS BRING DOWN CERTIFICATE is given effective as of _____, 2016, by each of the undersigned sellers (collectively, "Seller"), to **DOWNTOWN RETAIL ASSOCIATES LLC**, a Florida limited liability company ("Purchaser"), in connection with the closing of the transactions contemplated by that certain Limited Liability Company Membership Interest Purchase and Sale Agreement, dated as of January 29, 2016, among Seller and Purchaser, and joined in by **MICHAEL SWERDLOW** and **R. DONAHUE PEEBLES** (the "MIPA"). Any capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the MIPA.

Seller, jointly and severally, restates and affirms to Purchaser the representations and warranties of Seller contained in the MIPA as of the Effective Date.

TPC OVERTOWN BLOCK 45, LLC, a Florida limited liability company

By:_____
Name:_____
Title:_____

WW OGP 45, LLC a Florida limited liability company

By:_____
Name:_____
Title:_____

ARNSTEIN & LEHR LLP
Accomplished lawyers who understand your goals.

200 South Biscayne Boulevard · Suite 3600
Miami, Florida 33131
Phone 305.428.4500 · Fax 305.374.4744
www.arnstein.com

Susan E. Trench
305.428.4508
setrench@arnstein.com

September 9, 2016

HAND DELIVERED

Commissioner/CRA Board Chair Keon Hardemon
3500 Pan American Drive
Miami, Fl 33133

Re: **Block 55 Development Agreement: Overtown Gateway Partners, LLC**

Dear Commissioner/Chair Hardemon:

This office represents Overtown Gateway Partners, LLC (the "**OGP**"), whose principals have requested that we deliver this communication to you, as the Board Chair overseeing the Southeast Overtown/Park West Community Redevelopment Agency (the "**CRA**"), given escalating concerns about the appropriateness of various actions by the CRA related to negotiations for the Block 55 Development Agreement.

In early 2014 the CRA directed its Executive Director, Mr. Clarence Woods, to undertake negotiations with OGP for agreement(s) to govern development of the property located at Block 55 (Plat Book "B" p. 41) within the Redevelopment Area ("**Block 55**"). This directive was provided after a public solicitation in which OGP participated and was evaluated based on its Proposal and submissions that included a specific development concept, with detailed description of its proposed project, site plans and renderings, as well as all other required information.

For over two (2) years now, OGP has diligently attempted to work with the CRA to formalize the Block 55 Development Agreement. We still remain hopeful that this will be finalized and are prepared to continue despite the unexplained delays.

However, some actions of the CRA, allegedly at your direction, have raised mounting levels of concern for OGP. Over the last several months, numerous representatives of the CRA have directly and without hesitation communicated to OGP representatives that the CRA intends to refuse to enter into the Development Agreement with OGP unless: (i) OGP agrees to assign its position to another developer (who did not participate in the public solicitation for Block 55); and (ii) agrees to enter into the Development Agreement on the basis of the *design concept of that developer*, which is materially different from that which was the basis of OGP's selected Proposal. These communications have been delivered in such a way as to give the clear impression that the demands come at your direction or with your approval.

Exhibit B

Such demands are shockingly inappropriate and likely violate several laws. We are hopeful that, as the Board-Chair for the CRA, you agree that this cannot continue. A direction was given to negotiate with the expectation that it be done in good-faith and in observance of applicable laws. OGP remains prepared to negotiate and quickly finalize a Development Agreement for Block 55. However, we cannot entertain demands that are inappropriate and illegal.

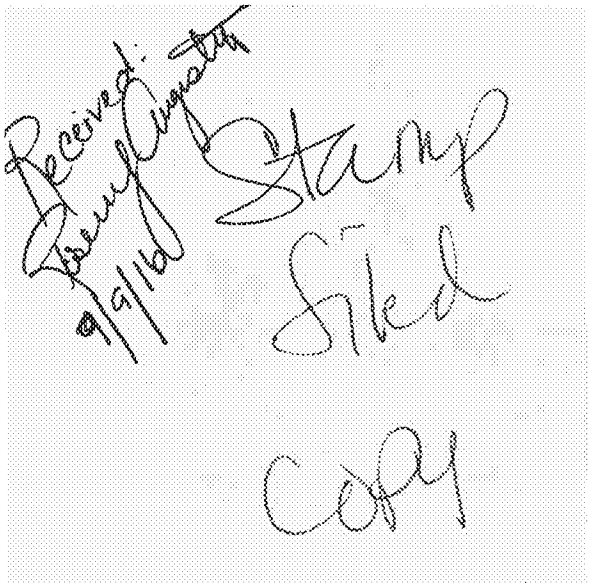
We would request that you take immediate action to direct the CRA representatives to cease making these improper and illegal demands and instead negotiate in good faith to finalize the Development Agreement consistent with the bases upon which OGP had been selected by the CRA. Should this not be corrected immediately, OGP will need to undertake the necessary investigation to identify all violations of the law and ensure that its rights to a fair, legal and impartial process are protected.

Sincerely,

Susan E. Trench

SET:AES
cc: R. Donahue Peebles
Barron Channer

113500994.1



September 16, 2016

Lydecker Diaz Attorneys
1221 Brickell Avenue, 19th Floor
Miami, FL 33131
Attn: Steven H. Johnson

The Peebles Corporation
2020 Ponce de Leon Boulevard
Coral Gables, FL 33134
Attn: Overtown Gateway Partners

Arnstein Lehr, LLP
200 South Biscayne Blvd
Suite 3600
Miami, FL 33131
Attn: Susan E. Trench

Re: Notice of Terminating Negotiations under RFP #13-003 (Block 55)
Proposal submitted by Overtown Gateway Partners, LLC

Dear Ladies and Gentleman:

Please be advised, pursuant to RFP # 13-003 and CRA Resolution CRA R-14-0031 adopted on March 31, 2014, and after over two years of not being able to agree on a Development Agreement, the CRA is invoking its right to terminate negotiations as of the date of this letter.

As you know, on July 23rd, 2013, Overtown Gateway Partners, LLC ("Overtown Gateway") submitted a proposal (the "Overtown Gateway Proposal") in response to the Request for Proposals #13-003 (Block 55) (the "RFP") issued by the Southeast Overtown Park West Community Redevelopment Agency (the "CRA"). The Overtown Gateway Proposal was the highest ranked proposal in response to the RFP. By CRA Resolution CRA R-14-0031 adopted on March 31, 2014 ("the "CRA Resolution") the Board of Commissioners of the CRA directed me to attempt to negotiate a development with Overtown Gateway as the highest ranked proposer for the development of Block 55. The CRA Resolution specifically provided that "This Resolution is not intended to be an award of developments rights or to otherwise create any rights whatsoever in the proposers referenced herein".

Subsequent to the adoption of the CRA Resolution, representatives from Overtown Gateway and my team have attempted to negotiate the terms of the Block 55 Development

Exhibit C

Agreement. For various reasons, despite our good faith efforts, we have not been able to finalize the Block 55 Development Agreement.

Detrimental to a meeting of the minds in this matter and symbolic of where negotiations were, Overtown Gateway wrote a letter dated September 9, 2016 (actually hand delivered on September 12, 2016) from Susan E. Trench, Esq. and addressed to Board Chairman Keon Hardemon that contained false allegations, insults, and legal threats. Given the current status of the negotiations and the time that has lapsed since the CRA Resolution was passed authorizing negotiations, I have determined that it is in the best interest of the CRA to terminate negotiations with Overtown Gateway with respect to Block 55 and proceed to issue a new request for proposals for the development of this property.

Sincerely yours,

Clarence E. Woods, III
Executive Director

cc: Chairman Keon Hardemon
William R. Bloom, Esq.
Renée A. Jadusingh, Esq.

KEON HARDEMON
Board Chair

CLARENCE E. WOODS, III
Executive Director

October 4, 2016

Arnstein & Lehr LLP
c/o Susan E. Trench
200 South Biscayne Boulevard
Miami, FL 33131

Re: Response to hand delivered letter dated September 9, 2016

Dear Ms. Trench:

As a practicing lawyer, I am familiar with the solicitous banter amongst attorneys—particularly when posturing themselves for their client. However, I have never encountered a letter as abrasive, divisive, and derisive until I read the September 9, 2016 letter that you had hand delivered to my office. To be clear, I do not have any knowledge of the purported allegations that you suggested in your letter.

Moreover, I unequivocally deny any such participation or knowledge of any "inappropriate" or "illegal" conduct allegedly done by or through any member of the Southeast Overtown/Park West Community Redevelopment Agency. Your assertion that I have, through the actions of "CRA representatives", implicitly participated in a bullying tactic assailed against your client is completely inaccurate. The mere proposition is a farce. Thus, I reject your offer and wish your clients the best with their business endeavors.

Sincerely,

Keon Hardemon
Chairman
SEOPW CRA

Cc: Clarence Woods
Renee Jadusingh, Esq.

Exhibit D

Paul S. Figg
(954) 712-5104
pfigg@bergersingerman.com

December 13, 2017

VIA HAND DELIVERY

Downtown Retail Associates LLC
2901 Florida Avenue
Coconut Grove, FL 33133
Attn: Michael Swerdlow
E-mail: MSwerdlow@swerdlow.com and
R.Alston@swerdlow.com

Re: Written Notice of Claims Pursuant to Sections 4.1.1 and 4.3 of that certain Limited Liability Company Membership Interest Purchase and Sale Agreement dated January 29, 2016

Dear Mr. Swerdlow:

This firm serves as counsel for TPC Overtown Block 45, LLC ("TPC Seller") and WW OGP 45, LLC ("WW Seller"). This letter constitutes written notice of claims to Downtown Retail Associates LLC ("Downtown LLC") and Michael Swerdlow ("Swerdlow") pursuant to Sections 4.1.1 and 4.3 of that certain Limited Liability Company Membership Interest Purchase and Sale Agreement by and among TPC Seller, WW Seller and Downtown LLC dated January 29, 2016, as amended (the "P & S Agreement"). As set forth above, "claim" means any known or potential violation of Section 4.1.1 and/or 4.3 of the P & S Agreement, whether described below or otherwise occurring on or before the date of this letter.

TPC Seller and WW Seller (collectively, "Seller") have become aware of Downtown LLC's and/or Swerdlow's involvement in and response to RFP No.: 17-02 (the "RFP") for the Disposition and Development of Block 55 Plat Book "B" Page 41 ("Block 55") issued by the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA").

Downtown LLC's and/or Swerdlow's involvement in and response to the RFP violate Section 4.3, and potentially Section 4.1.1 of the P & S Agreement. Any response or expression of interest in the RFP by Downtown LLC, Swerdlow and/or an affiliated entity of Downtown LLC or Swerdlow constitutes an offer to acquire and/or develop Block 55 that can be accepted at any time by the CRA. The requirements of Section 4.3 are broad and apply to direct or indirect transactions with the CRA. To the extent Downtown LLC and/or Swerdlow have disclosed any Confidential Information, as defined by the P & S Agreement, to any party in connection with the RFP or otherwise, such disclosure constitutes a violation of Section 4.1.1.

GOVERN YOURSELF ACCORDINGLY.

Sincerely,

Berger Singerman LLP

Paul S. Figg

cc: John Dellagloria, Esq.
P.O. Box 560333
Miami, FL 33156
Email: Johndellagloria@johndellaglorialaw.com

Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, Florida 3330
Attn: Marshall J. Emas
Fax: 954-888-3065
E-mail: memas@shutts.com

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