IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No.: 2020-007207-CA-01

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,

Counter-Defendants/Plaintiffs,

v.

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

Counter-Plaintiffs/Defendants.

_____/

DEFENDANTS DOWNTOWN RETAIL ASSOCIATES, LLC'S AND MICHAEL SWERDLOW'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO AMENDED COMPLAINT

Defendants DOWNTOWN RETAIL ASSOCIATES, LLC's ("**DRA**") and MICHAEL SWERDLOW's ("**Swerdlow**") (collectively, "**Defendants**"), by and through undersigned counsel, file their Answer, Affirmative Defenses, and Counterclaim to Plaintiffs', TPC OVERTOWN BLOCK 45, LLC, WW OGP 45, LLC and OVERTOWN GATEWAY PARTNERS, LLC, Amended Complaint, and state:

ANSWER

1. Defendants admit only that this purports to be an action as alleged and deny all other allegations of this paragraph.

2. Defendants are without knowledge of the allegations of this paragraph.[1]

3. Defendants are without knowledge of the allegations of this paragraph.

4. Defendants are without knowledge of the allegations of this paragraph.

5. Defendants are without knowledge of the allegations of this paragraph.

6. Defendants are without knowledge of the allegations of this paragraph.

7. Defendants are without knowledge of the allegations of this paragraph.

8. Defendants are without knowledge of the allegations of this paragraph.

9. Defendants admit the allegations of this paragraph.

10. Defendants admit the allegations of this paragraph.

11. Defendants admit the allegations of this paragraph.

12. Defendants deny the allegations of this paragraph.

13. Defendants are without knowledge of the allegations of this paragraph.

14. Defendants deny the allegations of this paragraph.

15. Defendants deny the allegations of this paragraph.

GENERAL ALLEGATIONS

16. Defendants admit the allegations of this paragraph.

17. Defendants are without knowledge of the allegations of this paragraph.

18. Defendants are without knowledge of the allegations of this paragraph.

19. Defendants are without knowledge of the allegations of this paragraph.

20. Defendants admit the allegations of this paragraph.

21. Defendants admit the allegations of this paragraph.

22. Defendants are without knowledge of the allegations of this paragraph.

[1] All allegations that Defendants aver to be without knowledge are deemed denied as a matter of law and procedure.

23. Defendants are without knowledge of the allegations of this paragraph and further state that the Settlement Agreement itself is the best evidence of its terms.

24. Defendants are without knowledge of the allegations of this paragraph and further state that the Settlement Agreement itself is the best evidence of its terms.

25. Defendants are without knowledge of the allegations of this paragraph and further state that the Declaration of Restrictions itself is the best evidence of its terms.

26. Defendants are without knowledge of the allegations of this paragraph and further state that the Request for Proposal itself is the best evidence of its terms.

27. Defendants are without knowledge of the allegations of this paragraph and further state that the proposal itself is the best evidence of its terms.

28. Defendants are without knowledge of the allegations of this paragraph.

29. Defendants are without knowledge of the allegations of this paragraph.

30. Defendants are without knowledge of the allegations of this paragraph.

31. Defendants are without knowledge of the allegations of this paragraph and further state that the Resolution itself is the best evidence of its terms.

32. Defendants are without knowledge of the allegations of this paragraph and further state that the Resolution itself is the best evidence of its terms.

33. Defendants are without knowledge of the allegations of this paragraph and further state that the Amended and Restated Declaration of Restrictions itself is the best evidence of its terms.

34. Defendants are without knowledge of the allegations of this paragraph.

35. Defendants are without knowledge of the allegations of this paragraph and further state that the Request for Proposal itself is the best evidence of its terms.

36. Defendants are without knowledge of the allegations of this paragraph.

37. Defendants are without knowledge of the allegations of this paragraph except that Defendants admit the allegation that neither of them participated in RFP 13-003.

38. Defendants are without knowledge of the allegations of this paragraph.

39. Defendants are without knowledge of the allegations of this paragraph and further state that the Development Agreement itself is the best evidence of its terms.

40. Defendants are without knowledge of the allegations of this paragraph and further state that the Block 45 Agreement itself is the best evidence of its terms.

41. Defendants are without knowledge of the allegations of this paragraph.

42. Defendants are without knowledge of the allegations of this paragraph and further state that the Third Amendment itself is the best evidence of its terms.

43. Defendants are without knowledge of the allegations of this paragraph.

44. Defendants are without knowledge of the allegations of this paragraph and further state that the Resolution itself is the best evidence of its terms.

45. Defendants are without knowledge of the allegations of this paragraph.

46. Defendants are without knowledge of the allegations of this paragraph.

47. Defendants are without knowledge of the allegations of this paragraph.

48. Defendants are without knowledge of the allegations of this paragraph.

49. Defendants deny the allegations of this paragraph.

50. Defendants admit that Mr. Duffie was a former Miami-Dade employee and are without knowledge of the allegations of this paragraph.

51. Defendants are without knowledge of the allegations of this paragraph and further state that the Fourth Amendment itself is the best evidence of its terms.

52. Defendants are without knowledge of the allegations of this paragraph.

53. Defendants are without knowledge of the allegations of this paragraph.

54. Defendants deny the allegations of this paragraph.

55. Defendants deny the allegations of this paragraph.

56. Defendants are without knowledge of the allegations of this paragraph except that they deny the allegations regarding Swerdlow.

57. Defendants admit that Swerdlow and Channer met and deny all remaining allegations of this paragraph.

58. Defendants deny the allegations of this paragraph.

59. Defendants are without knowledge regarding the allegations of this paragraph.

60. Defendants admit that Channer sent a May 11, 2015, state that the email is the best evidence of its contents, and deny the remaining allegations of this paragraph.

61. Defendants deny the allegations of this paragraph.

62. Defendants are without knowledge of the allegations of this paragraph.

63. Defendants are without knowledge of the allegations of this paragraph.

64. Defendants admit that Swerdlow and Roger LeBlanc spoke, state that the May 16, 2015 email is the best evidence of its contents, and deny all remaining allegations of this paragraph.

65. Defendants are without knowledge of the allegations of this paragraph and deny any so-called alleged "back-channel communications."

66. Defendants are without knowledge of the allegations of this paragraph.

67. Defendants are without knowledge of the allegations of this paragraph.

68. Defendants are without knowledge of the allegations of this paragraph.

69. Defendants deny the allegations of this paragraph.

70. Defendants deny the allegations of this paragraph.

71. Defendants are without knowledge of the allegations of this paragraph.

72. Defendants are without knowledge of the allegations of this paragraph.

73. Defendants state that the Confidentiality Agreement is the best evidence of its terms and deny the remaining allegations of this paragraph.

74. Defendants state that the Letter of Intent is the best evidence of its terms and deny the remaining allegations of this paragraph.

75. Defendants state that the Letter of Intent is the best evidence of its terms and deny the allegations of this paragraph.

76. Defendants are without knowledge of the allegations of this paragraph and deny any alleged interference.

77. Defendants are without knowledge of the allegations of this paragraph and deny the alleged representation.

78. Defendants state that the Letter of Intent is the best evidence of its terms and deny the allegations of this paragraph.

79. Defendants are without knowledge of the allegations of this paragraph.

80. Defendants are without knowledge of the allegations of this paragraph and deny the alleged representation.

81. Defendants admit Swerdlow and Peebles spoke prior to execution of the MIPSA, are without knowledge regarding the allegations regarding Peebles, and deny the remaining allegations of this paragraph.

82. Defendants state that the letter of intent is the best evidence of its terms and deny the remaining allegations of this paragraph.

83. Defendants deny the allegations of this paragraph.

84. Defendants are without knowledge as to what was material to Plaintiffs, and deny the allegations of this paragraph.

85. Defendants state that the alleged "LOI" are the best evidence of its terms and deny the remaining allegations of this paragraph.

86. Defendants are without knowledge of the allegations of this paragraph and further state that the MIPSA itself is the best evidence of its terms.

87. Defendants state that the MIPSA itself is the best evidence of its terms and deny the remaining allegations of this paragraph.

88. Defendants state that the MIPSA itself is the best evidence of its terms and deny the remaining allegations of this paragraph.

89. Defendants deny that the MIPSA was "drafted primarily" by counsel to Defendants, admit the allegations of this paragraph that the MIPSA was negotiated between the parties, deny the remaining allegations of this paragraph and further state that the MIPSA itself is the best evidence of its terms.

90. Defendants state that the MIPSA itself is the best evidence of its terms and that the quoted section of the MIPSA is incomplete.

91. Defendants state that the MIPSA itself is the best evidence of its terms and that the quoted section of the MIPSA is incomplete.

92. Defendants state that the MIPSA itself is the best evidence of its terms and that the quoted section of the MIPSA is incomplete.

93. Defendants state that the MIPSA itself is the best evidence of its terms and that the quoted section of the MIPSA is incomplete. Defendants deny the allegations of footnote 4.

94. Defendants state that the MIPSA itself is the best evidence of its terms and deny any allegations to contrary to it.

95. Defendants state that the MIPSA itself is the best evidence of its terms and deny any allegations to contrary to it.

96. Defendants admit that Swerdlow signed a joinder to the MIPSA and state that the Joinder itself is the best evidence of its terms and deny any allegations to contrary to it.

97. Defendants deny the allegations of this paragraph.

98. Defendants admit that any amendments are the best evidence of their terms and deny the remaining allegations of this paragraph.

99. Defendants deny the allegations of this paragraph.

100. Defendants state that any "Fifth Amendment" is the best evidence of its terms and deny the remaining allegations of this paragraph.

101. Defendants state that the Notice of Termination is the best evidence of its terms and are without knowledge of the remaining allegations of this paragraph.

102. Defendants are without knowledge of the allegations of this paragraph.

103. Defendants deny the allegations of this paragraph.

104. Defendants are without knowledge of the allegations of this paragraph.

105. Defendants are without knowledge of the allegations of this paragraph.

106. Defendants deny the allegations of this paragraph.

107. Defendants state that the Termination Agreement is the best evidence of its terms and deny the remaining allegations of this paragraph.

108. Defendants are without knowledge of the allegations of this paragraph.

109. Defendants are without knowledge of the allegations of this paragraph.

110. Defendants state that the referenced amendment is the best evidence of its terms and deny the remaining allegations of this paragraph.

111. Defendants deny the allegations of this paragraph.

112. Defendants state the MIPSA is the best evidence of its terms and deny any allegations inconsistent with it.

113. Defendants are without knowledge of the allegations of this paragraph.

114. Defendants are without knowledge of the allegations of this paragraph.

115. Defendants are without knowledge of the allegations of this paragraph.

116. Defendants are without knowledge of the allegations of this paragraph.

117. Defendants are without knowledge of the allegations of this paragraph.

118. Defendants are without knowledge of the allegations of this paragraph and state that the letter attached as Exhibit B is the best evidence of its terms.

119. Defendants are without knowledge of the allegations of this paragraph.

120. Defendants deny the allegations of this paragraph.

121. Defendants are without knowledge of the allegations of this paragraph and state that the letter attached as Exhibit C is the best evidence of its terms.

122. Defendants are without knowledge of the allegations of this paragraph.

123. Defendants are without knowledge of the allegations of this paragraph and state that the letter attached as Exhibit D is the best evidence of its terms.

124. Defendants admit that Swerdlow and Peebles had communicated and deny the remaining allegations of this paragraph.

125. Defendants are without knowledge of the allegations of this paragraph and state that any alleged resolution is the best evidence of its terms.

126. Defendants are without knowledge of the allegations of this paragraph.

127. Defendants state that any request for proposal are the best evidence of its terms and deny any allegation inconsistent therewith.

128. Defendants state that any proposal to develop Block 55 is the best evidence of its terms and deny any allegation inconsistent therewith.

129. Defendants state that the letter attached as Exhibit D is the best evidence of its terms and deny any allegation inconsistent therewith.

130. Defendants admit that the CRA selected DRA as the developer for Block 55 and deny the remaining allegations of this paragraph.

131. Defendants state that the alleged developer agreements are the best evidence of their terms and deny any allegation inconsistent therewith.

132. Defendants admit that DRA and Swerdlow successfully finalized a development agreement with the CRA and deny the remaining allegations of this paragraph.

133. Defendants deny the allegations of this paragraph.

134. Defendants admit that Block 45 has not been developed and deny the remaining allegations of this paragraph.

135. Defendants deny the allegations of this paragraph.

136. Defendants deny the allegations of this paragraph.

137. Defendants deny the allegations of this paragraph.

138. Defendants deny the allegations of this paragraph.

139. Defendants deny the allegations of this paragraph.

140. Defendants are without knowledge of the allegations of this paragraph.

141. Defendants deny the allegations of this paragraph.

142. Defendants deny the allegations of this paragraph.

143. Defendants are without knowledge of the allegations of this paragraph.

COUNT I—BREACH OF CONTRACT (SECTIONS 4.1.1, 4.1.2 AND 4.1.3) AGAINST DOWNTOWN RETAIL AND SWERDLOW

144. Defendants incorporate their responses above to paragraphs 1 through 143 as if fully set forth herein.

145. Defendants deny the allegations of this paragraph.

146. Defendants admit only that the MIPSA has an effective date of January 29, 2016 and are without knowledge of the remaining allegations of this paragraph.

147. Defendants deny the allegations of this paragraph and further state that the MIPSA is the best evidence of its terms.

148. Defendants deny the allegations of this paragraph and further state that the MIPSA is the best evidence of its terms.

149. Defendants deny the allegations of this paragraph.

150. Defendants deny the allegations of this paragraph.

151. Defendants deny the allegations of this paragraph.

152. Defendants deny the allegations of this paragraph.

153. Defendants deny the allegations of this paragraph.

COUNT II—BREACH OF CONTRACT (SECTION 4.3) AGAINST DOWNTOWN RETAIL AND SWERDLOW

154. Defendants incorporate their responses above to paragraphs 1 through 143 as if fully set forth herein.

155. Defendants deny the allegations of this paragraph.

156. Defendants admit only that the MIPSA has an effective date of January 29, 2016 and are without knowledge of the remaining allegations of this paragraph.

157. Defendants state that the MIPSA is the best evidence of its terms, admit the MIPSA was terminated effective on June 13, 2016 and that the referenced 18 month period expired on December 13, 2017, and deny any other allegations of this paragraph.

158. Defendants state that the MIPSA is the best evidence of its terms and deny all other allegations of this paragraph.

159. Defendants deny the allegations of this paragraph and admit only that DRA submitted a proposal to develop Block 55.

160. Defendants deny the allegations of this paragraph and further state that no such notice was required.

161. Defendants deny the allegations of this paragraph.

COUNT III—TORTIOUS INTERFERENCE AGAINST DOWNTOWN RETAIL, SWERDLOW, AND DUFFLE

162. Defendants incorporate their responses above to paragraphs 1 through 143 as if fully set forth herein.

163. Defendants deny the allegations of this paragraph.

164. Defendants deny the allegations of this paragraph.

165. Defendants deny the allegations of this paragraph.

166. Defendants deny the allegations of this paragraph.

167. Defendants deny the allegations of this paragraph.

168. Defendants deny the allegations of this paragraph.

169. Defendants deny the allegations of this paragraph.

170. Defendants deny the allegations of this paragraph.

171. Defendants deny the allegations of this paragraph.

172. Defendants deny the allegations of this paragraph.

173. Defendants deny the allegations of this paragraph.

174. Defendants deny the allegations of this paragraph.

175. Defendants deny the allegations of this paragraph.

176. Defendants deny the allegations of this paragraph.

177. Defendants deny the allegations of this paragraph.

178. Defendants deny the allegations of this paragraph.

179. Defendants deny the allegations of this paragraph.

COUNT IV—CONSPIRACY AGAINST SWERDLOW AND DUFFLE

180. Swerdlow incorporates his responses above to paragraphs 1 through 143 and 164 through 179 as if fully set forth herein.

181. Swerdlow denies the allegations of this paragraph.

182. Swerdlow denies the allegations of this paragraph.

183. Swerdlow denies the allegations of this paragraph.

184. Swerdlow admits the allegations of this paragraph except is without knowledge as to the allegation directed to Duffie.

185. Swerdlow denies the allegations of this paragraph.

186. Swerdlow denies the allegations of this paragraph.

COUNT V—FRAUD IN THE INDUCEMENT AGAINST SWERDLOW

187. Swerdlow incorporates his responses above to paragraphs 1 through 143 as if fully set forth herein.

188. Swerdlow denies the allegations of this paragraph.

189. Swerdlow denies the allegations of this paragraph.

190. Swerdlow denies the allegations of this paragraph and states that the Letter of Intent is the best evidence of its terms.

191. Swerdlow denies the allegations of this paragraph.

192. Swerdlow denies the allegations of this paragraph except Swerdlow admits he met Peebles some time in 2015.

193. Swerdlow denies the allegations of this paragraph.

194. Defendants deny the allegations of this paragraph and affirmatively states that any Letter of Intent is the best evidence of its terms.

195. Swerdlow denies the allegations of this paragraph.

196. Swerdlow denies the allegations of this paragraph.

197. Swerdlow denies the allegations of this paragraph.

198. Swerdlow denies the allegations of this paragraph.

199. Swerdlow denies the allegations of this paragraph.

200. Swerdlow denies the allegations of this paragraph.

201. Swerdlow denies the allegations of this paragraph.

202. Swerdlow denies the allegations of this paragraph.

203. Swerdlow denies the allegations of this paragraph.

204. Swerdlow denies the allegations of this paragraph.

AFFIRMATIVE DEFENSES

First Affirmative Defense: Plaintiffs fail to state a cause of action in Count I for breach of contract.

Second Affirmative Defense: Plaintiffs fail to state a cause of action in Count II for breach of contract.

Third Affirmative Defense: Plaintiffs fail to state a cause of action in Count IIII for tortious interference.

Fourth Affirmative Defense: Plaintiffs fail to state a cause of action in Count IV for conspiracy.

Fifth Affirmative Defense: Plaintiffs fail to state a cause of action in Count VI for fraud in the inducement.

Sixth Affirmative Defense: Plaintiffs claims are barred in part or in whole by Plaintiffs' prior breaches.

Seventh Affirmative Defense: Plaintiffs' claims are barred in part or in whole by Plaintiffs' tortious conduct and/or unclean hands.

Eight Affirmative Defense: Plaintiffs' claims are barred by Plaintiffs' frustration of the MIPSA.

Ninth Affirmative Defense: Defendants assert that they are entitled to a set off as a result of the damages that Plaintiffs caused Defendants to sustain.

Tenth Affirmative Defense: Defendants assert that they are entitled to recoup from Plaintiffs the amount of damages that Plaintiffs caused Defendants to sustain.

Eleventh Affirmative Defense: Defendants assert that their conduct was justified and permitted.

Twelfth Affirmative Defense: Defendants asserts that Plaintiffs' non-contract claims are barred by the independent tort doctrine.

Thirteenth Affirmative Defense: Plaintiffs' claims are barred in part or in whole by their failure to mitigate their damages.

Fourteenth Affirmative Defense: Overtown Gateway Partners, LLC is not entitled to the relief sought in the Amended Complaint because it lacks standing to bring a cause of action under the MISPA and in tort.

Fifteenth Affirmative Defense: Overtown Gateway Partners, LLC is not entitled to the relief sought in the Amended Complaint because it is not a party to the MIPSA.

Sixteenth Affirmative Defense: Plaintiffs are not entitled to the relief sought in the Amended Complaint because the plain language of the MIPSA and Exhibit E to the Amended Complaint negate the allegations of the Amended Complaint's claims for breach of contract. *See Harry Pepper & Assoc. v. Lassetter*, 247 So. 2d 736, 737 (Fla. 3d DCA 1971).

Seventeenth Affirmative Defenses: Plaintiffs' claims are barred in whole or in part because Plaintiffs are estopped from asserting their claims.

Eighteenth Affirmative Defense: Plaintiffs claims are barred in whole or in part because Plaintiffs consented to Defendants' conduct.

Nineteenth Affirmative Defense: Plaintiffs' claims are barred in whole or in part because Plaintiffs' conduct was legal in itself.

Twentieth Affirmative Defense: Plaintiffs' claims are barred in whole or in part because Defendants' supposed conduct and actions as alleged by Plaintiffs were not the proximate cause of the CRA terminating its negotiations and agreements with OGP with respect to Block 45 and 55.

Twenty-First Affirmative Defense: Plaintiffs' claims are barred in whole or in part because Plaintiffs' actions and conduct were not intentional.

Twenty-First Affirmative Defense: Plaintiffs' claims are barred in whole or in part because Plaintiffs' supposed actions and conduct was lawful competition.

Twenty-Second Affirmative Defense: Count IV of the Amended Complaint is barred because there was no tortious interference with an advantageous business relationship, as alleged in Count III.

Twenty-Third Affirmative Defense Count IV of the Amended Complaint fails to state a cause of action because it fails to clearly, positively and specifically allege the terms of any supposed conspiratorial agreement.

Twenty-Fourth Affirmative Defense: Count IV of the Amended Complaint fails to state a cause of action because it fails to clearly, positively and specifically allege that the supposed conspirators committed any unlawful act in pursuance of a conspiracy.

WHEREFORE, Defendants demand that judgment be entered in their favor, and that they be awarded their attorneys' fees and costs and such other and further relief as this Court deems just and proper.

COUNTERCLAIM

Defendants/Counter-Plaintiffs, DOWNTOWN RETAIL ASSOCIATES, LLC ("**DRA**"), and MICHAEL SWERDLOW ("**Swerdlow**"), sue Plaintiff/Counter-Defendants, TPC OVERTOWN BLOCK 45, LLC ("**TPC**"), WW OGP 45 LLC ("**WW OGP 45**"), and allege as follows:

PARTIES, PERSONAL JURISDICTION AND VENUE

1. This is a civil action for declaratory relief within the jurisdiction of this Court.[2]

2. Defendant/Counter-Plaintiff, DRA, is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

3. Defendant/Counter-Plaintiff, Swerdlow, is an individual residing in Miami-Dade County, Florida.

4. Plaintiff/Counter-Defendant, TPC, is a Florida limited liability company licensed to do business in Florida, with its principal place of business in Miami-Dade County, Florida.

5. Plaintiff/Counter-Defendant, 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.

6. Jurisdiction and venue are proper in Miami-Dade County, Florida pursuant to Fla. Stat. Ch. 47 because (a) the acts and omissions described herein and giving rise to this lawsuit occurred in Miami-Dade County, Florida, (b) the causes of action alleged herein accrued in Miami-Dade County, Florida; (c) TPC and WW OGP 45 transact business in Miami-Dade County, Florida; and (d) the principal place of business of TPC and WW OGP 45 is in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

A. The MIPSA

[2] Counter-Plaintiffs are filing these limited Counterclaims in an attempt to bring this matter before the Court and mitigate their damages, which are extraordinary, and continue to grow and accrue by the day. Such damages, well into the nine figures, are a direct result of Plaintiffs' willful and intentional filing of their complaint on the eve of a closing, which they likely expected would result in the termination of the lender's financing commitment. All Defendants and Counter-Plaintiffs expressly reserve all their rights and privileges to allege these additional counter-claims, which will likely add additional parties in pursuit of the damages caused to Defendants.

7. Effective as of January 29, 2016, TPC and WW OGP 45, on the one hand, and DRA, on the other, entered into a Limited Liability Company Membership Interest Purchase and Sale Agreement (the "**MIPSA**"). A copy of the MIPSA is attached as **Exhibit "A."**

8. TPC and WW OGP 45 are defined collectively in the MIPSA as the "**Seller**." DRA is defined in the MIPSA as the "**Purchaser**." MIPSA §§ 1.1

9. In the MIPSA, the Seller represented that they owned one hundred percent (100%) of the issued and outstanding limited liability company membership interests of Overtown Gateway Partners, LLC. Overtown Gateway Partners, LLC is referred to and defined in the MIPSA as the "**Subsidiary**."

10. The MIPSA contemplated a transaction whereby, subject to certain conditions and other requirements, the Seller would sell and transfer to DRA as Purchaser all of the Seller's right, title and interest in their Membership Interests (as defined in the MIPSA) of the Subsidiary. MIPSA §§ 1.1 and 1.2

11. Pursuant to the MIPSA, the total purchase price to be paid by DRA for the Seller's membership interests in the Subsidiary was Fifteen Million Dollars ($15,000,000) plus an amount equal to all actual, out-of-pocket third party predevelopment costs for services in furtherance of the development of two parcels of property, known as Block 45 and Block 55. MIPSA § 3.1.

12. Swerdlow, individually, signed a limited Joinder to the MIPSA consenting to its transactions and "agreeing to be bound by the provisions of Sections 4, 6.5, 11.2 and 17.4" of the MIPSA (emphasis in original). Swerdlow's joinder is found behind the MIPSA signature pages.

I. The Confidentiality Provisions Under the MIPSA

13. The MIPSA contains confidentiality provisions that protected the Plaintiffs, but those provisions terminated based upon certain benchmark occurrences described and incorporated in the MIPSA.

14. Liability provisions for breach of the *MIPSA's confidentiality provisions* are contained in Sections 4.1.2 and 4.1.3. They provide that "[e]xcept with respect to written claims made" prior to certain dates, any potential liability for breach of the confidentiality provisions "***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 negotiations involving the Block 55 Development Agreement ***is/are terminated***." (emphasis added).

15. On May 24, 2016,[3] the CRA terminated Plaintiffs' Block 45 Development Agreement.

16. On June 13, 2016, DRA terminated the MIPSA.[4]

17. On September 16, 2016, the CRA provided written notice of the termination of its discussions with the Sellers and the Subsidiary regarding Block 55 and stated its intent to re-issue a request for proposal for the development of Block 55.[5]

18. Thus, any potential liability for breach of the confidentiality provisions regarding either Block 45 or 55 terminated on **November 20, 2016**, as that date is the earliest of **(i) clause**

[3] Plaintiffs acknowledge the date of the termination at paragraphs 101 and 104 of the Amended Complaint.

[4] Swerdlow's request to extend the MIPSA's Due Diligence Period was refused by Seller and resulted in DRA's termination of the MIPSA on June 13, 2016. Plaintiffs acknowledge DRA's termination of the MIPSA on June 13, 2016 at paragraphs 111 and 157 of the Amended Complaint.

[5] Plaintiffs acknowledge that on September 16, 2016, the CRA provided written notice of its termination of its discussions with the Sellers and the Subsidiary regarding Block 55. *See*, paragraph 121 and Exhibit C of the Amended Complaint.

"(z)," 180 days from May 24, 2016 (the CRA's termination of Plaintiffs' Block 45 Development Agreement) (i.e., on **November 20, 2016**), (ii) 180 days from June 13, 2016 (termination of the MIPSA) (i.e., on December 10, 2016), or (iii) 180 days from September 16, 2016 (the CRA's termination of the Block 55 discussions) (i.e., March 15, 2017) unless written claims for breach were made before then. No such written claims for breach were made before then and *the confidentiality provisions therefore terminated as of* ***November 20, 2016***.[6]

19. For ease of reference, the MIPSA's three confidentiality clauses are quoted here, in pertinent part:

> Confidentiality. [DRA] acknowledges that, . . ., prior to the expiration of the Due Diligence Period, [DRA] will not have any contact or communications with the CRA or any other governmental and nongovernmental entities regarding the Development Agreements and the Property [Blocks 45 and 55] 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 [DRA] or its representatives to contact or communicate with the CRA or other governmental or non-governmental entities (but, as to communications with the CRA, [DRA] shall notify Seller of any intended communications and Seller shall have the right to participate in same)....

MIPSA § 4.1.1 (emphasis added).

> [DRA'S] 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:** * * * (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

[6] Even if the latest possible date was used (i.e., March 15, 2017), any liability for potential breach of the confidentiality provisions would have terminated and Plaintiffs would still have no such claims.

> Permitted Communication Party)), then, . . . Seller shall have the right to seek additional damages from Swerdlow for such Confidentiality Breach as follows . . . (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 claim 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 45 Development Agreement and/or 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.

Id. at § 4.1.2 (emphasis added).

> Purchaser or Swerdlow's Liability for Permitted Communication Party Confidentiality Breach. **In the event of a Confidentiality Breach** . . . Seller shall have the right to seek damages from Swerdlow for such breach as follows: . . . (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 claim 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 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.

Id. § 4.1.3 (emphasis added).

20. The confidentiality clauses in the MIPSA also contained limitations on Plaintiffs' right to seek damages. Thus, pursuant to Sections 4.1.2 and 4.1.3 of the MIPSA, if DRA or Swerdlow breached the confidentiality provisions, and there was a subsequent termination of the

Block 45 Development Agreement and/or the negotiations involving the draft Block 55 Agreement, then Seller may only seek damages that "**shall in no event exceed $7,500,000.00 for the Block 45 Property and $7,500,000.00 for the Block 55 Property**." *Id.* (emphasis added).

II. The Non-Circumvention Provision Under the MIPSA

21. The MIPSA contains a non-circumvention provision that protected the Plaintiffs, but that provision terminated based upon certain benchmark occurrences described and incorporated in the MIPSA.

22. The *MIPSA's non-circumvention clause is* contained in Section 4.3. It provides that liability for breach of the non-circumvention provisions requires that Defendants must "***consummate[] any transaction with the CRA*** . . .in violation of" Section 4.3 "***within eighteen (18) months after termination or expiration of this Agreement***. . . ." (emphasis added). As noted above, the MIPSA was terminated on June 13, 2016. Thus, any possible liability for breach of the non-circumvention provision results only if DRA consummated a transaction with the CRA within 18 months thereafter, ***or on or before*** **December 13, 2017**. No such transaction was consummated before then.

23. For ease of reference Section 4.3 is quoted in pertinent part below

> 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 [after termination or expiration of this Agreement], 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 AGREE THAT (1) THE FOREGOING AMOUNTS ARE REASONABLE ESTIMATES OF SELLER'S DAMAGES . . . AND (2) THE FOREGOING AMOUNTS ARE INTENDED NOT AS A FOREFIETURE OR PENALTY . . . BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.**

MIPSA § 4.3 (bold, capitalization in original) (other emphasis added).

24. Thus, Sellers may only seek damages for a claimed breach of Section 4.3 if DRA does not Purchase the Seller's Membership Interests, and Swerdlow or DRA "***consummates*** any transaction with the CRA" within "eighteen (18) months after termination or expiration of" the MIPSA. (emphasis added).

25. DRA terminated the MIPSA on June 13, 2016.

26. Eighteen months from June 13, 2016 is December 13, 2017.

27. Sellers are not entitled to any damages for breach of Section 4.3 because DRA did not (a) consummate any transaction with the CRA (b) by December 13, 2017, within eighteen months after termination of the MIPSA.

28. Even assuming, *arguendo*, that DRA or Swerdlow consummated a transaction with the CRA within "eighteen (18) months after termination" the MIPSA in alleged violation of Section 4.3, Seller would only be entitled to receive **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." The parties further agreed that "if a single transaction in breach of Section 4.3 involved 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." *Id.* (emphasis added).

29. Thus, for Seller to be entitled to $15,000,000, DRA and/or Swerdlow would have had to consummate a transaction with the CRA during an eighteen month period following the termination of the MIPSA as to both the Block 45 Property and the Block 55 Property.

30. For the Seller to be entitled to $7,500,000.00, DRA and/or Swerdlow would have had to consummate a transaction with the CRA during an eighteen month period following the termination of the MIPSA for either of the Block 45 Property or the Block 55 Property.

31. Neither DRA nor Swerdlow consummated any such transactions regarding Block 45 or Block 55.

B. The CRA's Reissuance Of A Proposal to Develop Block 55

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

33. On July 26, 2017, the CRA issued Request for Proposal No. 17-02 ("**RFP 17-02**") for the development of Block 55.

34. On October 17, 2017, DRA submitted a proposal to the CRA for the development of Block 55.

35. On December 13, 2017, Sellers, through counsel, sent correspondence to DRA and Swerdlow giving them notice of their alleged violation of Section 4.3 "and potentially Section 4.1.1" of the MIPSA (the "**Alleged Violation Notice**"). This was the first and only notice ever sent by Seller relating to any alleged breach of the MIPSA by DRA or Swerdlow. A copy of the Alleged Violation Notice is attached to the Amended Complaint as Exhibit E. The so-called "Notice" was months later than the time limits noted above that were required by the MIPSA.

36. On March 1, 2018, the CRA selected DRA as the preferred developer for Block 55.

37. On September 24, 2018, the CRA Board approved a developer agreement with DRA. Amended Complaint ¶ 131.

38. In October 2018, a Development Agreement for Block 55 (the "**Block 55 Agreement")** was executed between the CRA and the DRA.

39. DRA scheduled a loan closing for March 30, 2020 in connection with its purchase of Block 55 from the CRA (the "**Closing**").

40. On March 26, 2020, two business days before the Closing, in what was either an obvious attempt to derail DRA's loan closing or simply a remarkable coincidence, TPC, WW OGP 45, and OGP filed the instant action against DRA, Swerdlow and Alben Duffie ("**Duffie**").

41. Plaintiffs allege that DRA and Swerdlow breached Section 4.1.1 of the MIPSA when they, according to Plaintiffs, allegedly contacted and communicated with the CRA

regarding Block 45 and Block 55 without Plaintiffs' prior written consent.[7] Amended Complaint ¶¶ 145 – 151.

42. Plaintiffs further claim that as a result of these alleged confidentiality breaches, the CRA terminated the Block 45 Agreement with Seller and the Subsidiary and its negotiations with Seller and the Subsidiary pertaining to the draft Block 55 Agreement.

43. Thus, Plaintiffs allege in Count I of the Amended Complaint that DRA and Swerdlow breached Sections 4.1.1, 4.1.2, and 4.1.3 of the MIPSA, the confidentiality provisions, and are therefore jointly and severally liable in the combined amount of $15,000,000.00 relating to alleged breaches regarding Block 45 and Block 55.

44. Further, Plaintiffs allege in Count II of the Amended Complaint that DRA and Swerdlow breached Section 4.3 of the MIPSA, the non-circumvention provision, regarding Block 55, and that DRA and Swerdlow are liable to them in an amount "in excess of $90,000,000.00."

45. Plaintiffs' claims fly directly in the face of the express terms of the MIPSA. The MIPSA explicitly provides that even if DRA or Swerdlow breached Section 4.1.1 and there is a subsequent termination of the Block 45 Agreement and/or the negotiations involving the Draft Block 55 Agreement, Seller would only be entitled to make a claim for damages prior to November 20, 2016, otherwise Seller's rights under Sections 4.1.2 and 4.1.3 terminate.

46. Seller never made any such written claim on DRA pursuant to either Section 4.1.2 or 4.1.3 prior to November 20, 2016. Thus, pursuant to the express language of the MIPSA, Seller's rights to seek damages pursuant to Sections 4.1.2 and 4.1.3, for breaches of Section 4.1.1, contractually terminated.

[7] Notwithstanding Plaintiffs' allegations, Section 4.1.1 only requires consent from the Sellers. No consent from OGP was required.

47. Plaintiffs additionally allege that DRA and Swerdlow violated Section 4.3 of the MIPSA, claiming entitlement to "all damages that reasonably flow from those breaches proximately caused by [DRA and Swerdlow], including in excess of $90,000,000 in compensatory damages related to Block 55." Amended Complaint, Count II.

48. Plaintiffs' allegations regarding Section 4.3 of the MIPSA are also inconsistent with its express terms. First, the MIPSA provides that Plaintiffs may seek damages under Section 4.3 only if DRA and/or Swerdlow "consummate a transaction" with the CRA on or before December 13, 2017. No transaction was consummated between the CRA and DRA before December 13, 2017. Indeed, no such transaction can even be argued to have occurred until the earliest of March 1, 2018 (the date the CRA selected DRA as the preferred developer for Block 55), September 24, 2018 (the date the CRA Board approved a developer agreement between the CRA and DRA) or in October 2018 (when the Block 55 Agreement was executed); in all events well after the December 13, 2017 deadline.

49. DRA's October 17, 2017 submission of its proposal to the CRA for development of Block 55 in response to RFP 17-02 was not a "consummation" of a transaction between DRA and the CRA, as it was simply a response to a public request for bids that were contingent on being approved by the CRA and subsequently accepted by the CRA Board.

50. Second, even assuming, *arguendo*, that DRA and/or Swerdlow "consummated" a transaction with the CRA on or before December 13, 2017, the Seller is limited to damages no greater than $7,5000,000 related to the Block 55 Property, as there was *never* a transaction contemplated or consummated between DRA/Swerdlow and the CRA pertaining to the Block 45 Property.

51. DRA and Swerdlow have retained the undersigned law firms to represent them in this action, and are obligated to pay reasonable attorneys' fees and costs in exchange for their counsel's services.

52. All conditions precedent to the maintenance of this action have occurred, been waived, or have otherwise been satisfied, performed or excused.

COUNT I – DECLARATORY JUDGMENT

Defendants/Counter-Plaintiffs, adopt and reallege the allegations set forth in paragraphs 1 through 52 above, as if fully and expressly set forth herein, and further allege as follows:

53. This is an action for a Declaratory Judgment pursuant to Chapter 86, Florida Statutes.

54. There is a present, *bona fide* dispute between the parties.

55. More specifically, an actual controversy has arisen, and now exists, between DRA and Swerdlow on the one hand, and TPC and WW OGP 45 as Seller on the other hand, with respect to the liabilities imposed by Sections 4.1.2 and 4.1.3 for confidentiality breaches of the MIPSA.

56. TPC and WW OGP 45 contend that pursuant to Sections 4.1.2 and 4.1.3 of the MIPSA, DRA and Swerdlow are jointly and severally liable in the amounts of $7,500,000 for Block 45 and $7,500,000 for Block 55 because they allege DRA and Swerdlow breached confidentiality provisions of the MIPSA.

57. DRA and Swerdlow contend that that even if there was a breach of any confidentiality provision in the MIPSA and a subsequent termination of the Block 45 Agreement and/or the negotiations involving the Draft Block 55 Agreement, TPC and WW OGP 45 are only entitled to seek damages for such breaches if they provided written notice prior to **November 20,**

2016, otherwise any right TPC and WW OGP 45 may have had to seek damages for confidentiality breach under Sections 4.1.1, 4.1.2 or 4.1.3 terminated.

58. DRA and Swerdlow further contend that because TPC and WW OGP 45 never made any written claims for any confidentiality breach pursuant to any section of the MIPSA on DRA prior to **November 20, 2016** any rights TPC and WW OGP 45 may have had to seek damages for such breaches have expired.

59. As a result of the foregoing, DRA and Swerdlow are "interested [in the MIPSA] or may be in doubt about [their rights] under" the MIPSA, *see* Fla. Stat. 86.021, and specifically regarding whether TPC and WW OGP 45 are contractually barred from seeking damages against DRA and Swerdlow under Sections 4.1.1, 4.1.2 and 4.1.3 of the MIPSA.

60. DRA and Swerdlow are in need of a judicial determination and to have any doubts about their rights under the MIPSA removed, and to have a declaration that TPC and WW OGP 45's right to damages against DRA and Swerdlow under Sections 4.1.1, 4.1.2 and/or 4.1.3 expired on **November 20, 2016**.

61. Unless the Court makes these declarations, DRA and Swerdlow will suffer considerable and continuing economic and other harm.

62. There is a bona fide, actual, present, and practical need for declaratory relief based on the existing controversy alleged herein.

63. The declaratory relief sought is based on a presently ascertainable state of facts and controversy and the rights of DRA and Swerdlow are dependent upon the resolution of this controversy.

64. The relief sought is not merely the giving of an advisory opinion or legal advice.

65. The antagonistic parties are before the Court and are entitled to have their rights, status, powers or privileges resolved.

WHEREFORE, Defendants/Counter-Plaintiffs, DOWNTOWN RETAIL ASSOCIATES, LLC and MICHAEL SWERDLOW, respectfully request that this Court advance this cause on the Court's calendar, and enter a judgment:

(a) declaring (i) that TPC and WW OGP 45 are only entitled to seek damages for breaches of Sections 4.1.1, 4.1.2 and 4.1.3 if any such claim was made prior to **November 20, 2016**, otherwise TPC and WW OGP 45's rights to seek damages under Sections 4.1.1, 4.1.2 and 4.1.3 terminate,

(ii) that TPC and WW OGP 45 did not timely comply with Sections 4.1.1, 4.1.2, or 4.1.3, and that any such rights under sections 4.1.1, 4.1.2, and 4.1.3 of the MIPSA were previously terminated,

(iii) that TPC and WW OGP 45 have no viable claims or damages under those sections of the MIPSA, and

(iv) that Swerdlow and DRA did not breach sections 4.1.1, 4.1.2 or 4.1.3;

(b) awarding DRA and Swerdlow their attorneys' fees and costs, and damages if any as supplemental relief pursuant to Chapter 86, Fla. Stat., plus interest and costs; and

(c) for such other and further relief as this Court deems just and proper.

COUNT II – DECLARATORY JUDGMENT

Defendants/Counter-Plaintiffs, adopt and reallege the allegations set forth in paragraphs 1 through 52 above, as if fully and expressly set forth herein, and further allege as follows:

66. This is an action for a Declaratory Judgment pursuant to Chapter 86, Florida Statutes.

67. There is a present, *bona fide* dispute between the parties.

68. More specifically, an actual controversy has arisen, and now exists, between DRA and Swerdlow on the one hand, and TPC and WW OGP 45 as Seller on the other hand, with respect to the conditions imposed by Section 4.3 of the MIPSA on DRA and/or Swerdlow.

69. TPC and WW OGP 45 contend that pursuant to Section 4.3 of the MIPSA, DRA's October 17, 2017 submission of a *proposal* to the CRA for development of Block 55, made in response to the CRA's Request for Proposal 17-02 and prior to the expiration of the 18-month period contained in the MIPSA, was a violation of Section 4.3 of the MIPSA entitling Plaintiffs to all damages that it contends reasonably flow from that alleged breach proximately caused by DRA and Swerdlow (alleged in the Amended Complaint to be $90,000,000.00).

70. Conversely, DRA and Swerdlow contend that for either of them to be liable under Section 4.3, DRA or Swerdlow would have had to (i) consummate a transaction with the CRA (ii) on or before December 13, 2017.

71. DRA and Swerdlow further contend that DRA's October 17, 2017 submission of its *proposal* to the CRA for development of Block 55 in response to RFP 17-02 was not the "consummation" of a transaction between DRA and the CRA, but simply a response to a bid that was contingent on being approved by the CRA, subsequently accepted by the CRA Board, and only consummated in a formal agreement more than 18 months after termination of the MIPSA.

72. In short, DRA and Swerdlow contend that no transaction was consummated as required under the MIPSA until after December 13, 2017 and therefor Section 4.3 does not impose any liability on DRA and/or Swerdlow.

73. Alternatively, DRA and Swerdlow contend that even if DRA's October 17, 2017 submission of its proposal to the CRA for development of Block 55 in response to RFP 17-02

was deemed to be the "consummation" of a transaction with CRA under the MIPSA, TPC and WW OGP 45 are in all events limited to liquidated damages under the MIPSA in the agreed-upon amount of $7,500,000 related solely to the Block 55 Property.

74. As a result of the foregoing, DRA and Swerdlow are "interested [in the MIPSA] or may be in doubt about [their rights] under" the MIPSA, *see* Fla. Stat. 86.021, and specifically regarding (a) whether DRA's submission of a proposal to the CRA prior to the expiration of the 18-month period contained in the MIPSA for development of Block 55 in response to RFP 17-02 was the "consummation" of a transaction, and (b) even if it was, that TPC and WW OGP 45's liquidated damages under the MIPSA are limited to $7,500,000 for any such breach.

75. DRA and Swerdlow are in need of a judicial determination and to have any doubts about their rights under the MIPSA removed, and to have a declaration that (a) for DRA and Swerdlow to have any potential liability pursuant to Section 4.3 of the MIPSA, that DRA and Swerdlow would have had to consummate a transaction with the CRA on or before December 13, 2017; (b) that DRA's October 17, 2017 submission of its proposal to the CRA for development of Block 55 in response to RFP 17-02 was not a "consummation" of a transaction between DRA and the CRA, and therefore not a breach of the MIPSA, and (c) that even if DRA's October 17, 2017 submission of its proposal to the CRA for development of Block 55 in response to RFP 17-02 was the "consummation" of a transaction, that TPC and WW OGP 45's damages are limited to $7,500,000 in accord with the liquidated damage provisions contained in Section 4.3 of the MIPSA.

76. Unless the Court makes these declarations, DRA and Swerdlow will suffer considerable and continuing economic and other harm.

77. There is a bona fide, actual, present, and practical need for declaratory relief based on the existing controversy alleged herein.

78. The declaratory relief sought deals with a presently ascertainable state of facts and controversy and the rights of DRA and Swerdlow are dependent upon the resolution of this controversy.

79. The relief sought is not merely the giving of an advisory opinion or legal advice.

80. The antagonistic parties are before the Court and are entitled to have their rights, status, powers or privileges resolved.

WHEREFORE, Defendants/Counter-Plaintiffs, DOWNTOWN RETAIL ASSOCIATES, LLC and MICHAEL SWERDLOW, respectfully request that this Court advance this cause on the Court's calendar, and enter a judgment:

(a) declaring that under Section 4.3 of the MIPSA:

(i) DRA and Swerdlow can only be liable under Section 4.3 if they consummated a transaction with the CRA (or any entity which enters or has entered into a transaction with the CRA) on or before December 13, 2017,

(ii) DRA's October 17, 2017 submission of a proposal to the CRA for development of Block 55 in response to RFP 17-02 was not the "consummation" of a transaction with the CRA (or any entity which enters or has entered into a transaction with the CRA) as set Section 4.3 of the MIPSA,

(iii) If DRA's October 17, 2017 submission of its proposal to the CRA for development of Block 55 in response to RFP 17-02 is deemed the "consummation" of a transaction between DRA and the CRA, that TPC and

WW OGP 45's damages are limited to $7,500,000 in accord with the liquidated damage provisions of Section 4.3 of the MIPSA, and

(iv) DRA and Swerdlow did not breach the MIPSA;

(b) awarding DRA and Swerdlow their attorneys' fees and costs, and damages if any, as supplemental relief pursuant to Chapter 86, Fla. Stat., plus interest and costs; and

(c) for such other and further relief as this Court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was e-filed and served through the Florida Court's E-Filing Portal on May 26th, 2020, to counsel of record on the service list below.

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