

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-CIV-24588-RNS

**KOBI KARP ARCHITECTURE & INTERIOR
DESIGN, INC.**, a Florida corporation,

Plaintiff,

v.

**O'DONNELL DANNWOLF AND PARTNERS
ARCHITECTS, INC.**, a Florida corporation, and
KURT JURGEN DANNWOLF, an individual,

Defendants.

**FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT,
TRADEMARK INFRINGEMENT, AND RELATED CLAIMS**

Plaintiff, **KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC.** (hereinafter “KKAID” or “Plaintiff”), hereby brings this action against Defendants, **O'DONNELL DANNWOLF AND PARTNERS ARCHITECTS, INC.** (hereinafter “ODP”) and **KURT JURGEN DANNWOLF** (hereinafter “DANNWOLF”) (collectively, “Defendants”), and alleges the following:

NATURE OF THE ACTION

1. This is an action for copyright infringement pursuant to the United States Copyright Act (17 U.S.C. § 501, *et seq.*); trademark infringement and unfair competition pursuant to the Lanham Act (15 U.S.C. § 1125, *et seq.*); tortious interference with a contractual business relationship; Florida trademark dilution (FLA. STAT. ANN. §

495.151); and trademark infringement and unfair competition pursuant to the common law of the State of Florida.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because this action involves substantial claims arising under the U.S. Copyright Act and the Lanham Act. This Court has jurisdiction over KKAID's related common law claim pursuant to 28 U.S.C. §§ 1338 and 1367.

3. This Court has personal jurisdiction over Defendants because they are residents of the State of Florida and reside in this District.

4. Additionally, the Court has personal jurisdiction over Defendants because they transact business within this District and have sufficient minimum contacts with the State of Florida. Defendants purposefully availed themselves of the benefits of doing business in Florida by actually transacting business in Florida and can reasonably anticipate being haled into court in Florida as a result of those business transactions. The real estate development that is the subject of this lawsuit is to be constructed in the Town of Surfside, Florida.

5. Defendants' principal place of business is located in the State of Florida and in this District.

6. Defendants have copied, caused to be copied, published, and distributed copyrighted technical drawings and architectural works for a development identified as "SURF CLUB 2" within this State (and specifically within this District), have engaged in

acts or omissions within this State causing injury, and have otherwise made contacts with this State sufficient to permit the exercise of personal jurisdiction.

7. This District is a proper venue pursuant to 28 U.S.C. § 1391(b)(1) and (2) because all Defendants reside in this District, a substantial part of the acts or omissions giving rise to KKAID's claims occurred in this District, and because Defendants blatantly infringed KKAID's intellectual property rights in this District, namely in Surfside, Florida, by submitting drawings in ODP's name to the Miami-Dade County Historic Preservation Board, which drawings are identical to those comprising KKAID's Copyrighted Works and which drawings include reference to KKAID's registered trademarks, including both the KKAID name and logo.

THE PARTIES

8. Plaintiff KKAID is a corporation organized and existing under the laws of the State of Florida, having its principal place of business at 2915 Biscayne Blvd., Suite 200, Miami, Florida 33137. KKAID is the record owner of the intellectual property, namely, the copyrights, at issue in the instant action.

9. On information and belief, ODP is a corporation organized and existing under the laws of the State of Florida, having its principal place of business at 2432 Hollywood Boulevard, Hollywood, FL 33020.

10. On information and belief, DANNWOLF is a licensed architect and the President of ODP. According to the records of the Florida Department of Business and Professional Regulations, DANNWOLF's business address is also located at 2432

Hollywood Boulevard, Hollywood, FL 33020. On information and belief, DANNWOLF directed and performed the architectural services at issue in the instant action.

FACTUAL ALLEGATIONS

KKAID and its Renowned Architectural Designs

11. For over three decades, KKAID has offered residential and commercial consumers innovative design solutions in hospitality, retail and residential developments.

12. KKAID's designs have garnered national and international acclaim and, based on KKAID's success, received unsolicited publicity and media coverage in the Wall Street Journal, the New York Times, Miami Herald, Newsweek, and Architectural Digest.

13. Among its many accolades, KKAID has been awarded the AIA Award for Outstanding Young Architect of the Year Award, the American Resort Development Association Gold Award for Hotel Conversion, the Network of the Hospitality Excellence in Design Award, Miami Design Preservation League Merit Awards, and the Dade Heritage Trust Historic Preservation Awards.

14. As a result of KKAID's success, KKAID's designs are widely recognized by the consuming public, particularly in South Florida.

15. KKAID has complied in all respects with the U.S. Copyright Act and with all other laws governing copyright in connection with the protection of its proprietary designs.

16. KKAID is the exclusive owner of, among others, United States Copyright Registrations No. VA 2-074-574 and VA 2-074-583 in technical drawings and

architectural works, all of which were prepared by KKAID for a project located on Collins Avenue in Surfside, Florida (the "Works"). True and correct copies of KKAID's copyright registrations for the Works, along with the deposit materials submitted to the Library of Congress in connection with these applications, are attached hereto as Exhibit A.



17. The Works claimed by KKAID are original works of authorship within the meaning of the U.S. Copyright Act, 17 U.S.C. § 101, and they are protected under the United States copyright law.

18. The protectable elements of the Works include, but are not limited to, the overall layout, form, shape, and arrangement of the structures, the design of open space, and the combination of individual design elements.

19. In addition, while the Copyright Act excludes from protection the "mechanical or utilitarian aspects" of pictorial, graphic, and sculptural works and "the design of a useful article" whose specific features remain inseparable from "the utilitarian aspects of the article," the statutory definition of "useful article" excludes technical drawings. As such, the protectable elements of the Works also include claims in KKAID's technical drawings that are distinct from copyright in the subject of the drawings.

KKAID's Federal Trademark Registrations

20. KKAID is the owner of the entire right, title and interest in and to the following U.S. trademark registrations:

<i>Reg. No.</i>	<i>Depiction of Mark</i>	<i>Registered Services</i>
3,586,971		<p>Real estate development services, namely, site selection and planning, construction planning, construction management and supervision, and construction services, namely, planning, laying out and custom construction of residential, commercial, and mixed-use properties; Real estate development and construction consultation services, in International Class 037.</p> <p>Architectural, engineering, interior design, and landscape architectural design services; architectural, engineering, interior design, and landscape architectural consultation services, in International Class 042</p>
3,586,972		<p>Real estate development services, namely, site selection and planning, construction planning, construction management and supervision, and construction services, namely, planning, laying out and custom construction of residential, commercial, and mixed-use properties; Real estate development and construction consultation services, in International Class 037.</p> <p>Architectural, engineering, interior design, and landscape architectural design services; architectural, engineering, interior design, and landscape architectural consultation services, in International Class 042</p>

21. The foregoing registrations for the **KOBI KARP** and **KK Logo** trademarks (collectively, the “**KKAID** Trademarks”) are valid, subsisting, irrevocable, incontestable, and in full force and effect. True and correct copies of the above registrations are attached hereto as Exhibit B.

22. KKAID maintains strict quality control standards for all of its goods sold, and services offered, in connection with the **KKAID** Trademarks.

23. KKAID has invested significant time, energy, and thousands of dollars in the advertising, promotion, and offering of its goods and services under the **KKAID** Trademarks, which appear on virtually all of KKAID’s architecture-related service offerings. The **KKAID** Trademarks are uniquely associated with KKAID’s brand and have come to symbolize the high quality that consumers can expect from Plaintiff’s services. Accordingly, KKAID enjoys strong consumer loyalty, recognition, and goodwill in the **KKAID** Trademarks.

The Project and KKAID’s Creation of the Copyrighted Works

24. In January 2018, KKAID entered into an Agreement with The Surf Club Apartments Inc. (“TSAI”) (the “Seaway Agreement”). Pursuant to the Agreement, TSAI retained KKAID to provide services in connection with a project defined as follows:

Architect shall provide executive architectural design services for the proposed Project which consists of Two (2) lots East of Collins, for a Total lot area of up to 91,174SF located at 9133-9149 Collins Avenue. The proposed Project East of Collins is a 11 story Residential Development and a 3 story existing historic building. The 11 story Residential Development shall consist of up to 48 residential units (up to ten unit types in total) and 31 hotel keys (up to seven unit types in total). The existing 3 story Residential historic building currently known as “the Seaway” shall partially remain as part of the development and be utilized as Cabanas, beach house, space for a restaurant and/or Amenities.

(the "Project"). A copy of the Seaway Agreement is attached hereto as Exhibit C.

25. The Seaway Agreement specifically contemplated the preparation and prospective use of drawings prepared by KKAID:

§ 6.1 For purposes of this Agreement, "**Instruments of Service**" shall mean all documents, models, renderings, and other materials to be furnished to the Owner or anyone in connection with this Agreement by or on behalf of the Architect, or by consultants, contractors, or others retained by the Architect, and all modifications made by the Architect to any documents supplied by the Owner to the Architect, and all written information, reports, studies, objects or sources codes, flow charts, diagrams, and other tangible materials which have been created by the Architect in order to provide services pursuant to this Agreement, and all digital forms thereof exclusive of any software used to produce them. The Architect warrants that in transmitting Instruments of Service, and **the Architect and the Owner warrant that in transmitting any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.** If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 6.2 The Architect and the Owner's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and plan notes and shall retain all common law statutory and other reserved rights, including copyrights, except as expressly set forth below.

§ 6.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive, irrevocable license to reproduce and use the Instruments of Service for purposes of constructing, using, maintaining, altering, renovating and completing the Project, **provided that the Owner pays the Architect the compensation for work completed to date due under this Agreement, including all compensation due for Additional Services and Reimbursable Expenses for the preparation of the Instruments of Service. Provided that the Owner has paid amounts due to the Architect,** the license granted to the Owner hereunder shall not be affected in any way by the suspension, termination or breach of this Agreement or any dispute between the Owner and the Architect.

See Exhibit C (emphasis added).

26. In connection with its obligations under the Seaway Agreement, KKAID prepared the drawings and architectural plans that were ultimately registered as the Works with the Copyright Office.

ODP Replaced KKAID and Was Not Authorized to Use the Works.

27. On information and belief, in or around the summer of 2019, Defendant ODP, without KKAID's knowledge, was commissioned by TSAI to act as the successor Architect of Record for the Project. To date, KKAID has not received correspondence from ODP notifying KKAID that ODP is succeeding KKAID as the Architect of Record for the Project.

28. On information and belief, at the time of TSAI's retention of ODP, the Seaway Agreement between TSAI and KKAID remained in full force and effect. In fact, between the time of TSAI's retention and September 19, 2019, when TSAI terminated the Seaway Agreement, KKAID continued to provide architectural services pursuant to the Seaway Agreement.

29. On information and belief, in or about August 2019, ODP submitted an application to the Miami-Dade County Historic Preservation Board ("HPB") seeking, on behalf of TSAI, a Special Certificate of Appropriateness ("Special Certificate") for documentation, demolition, and reconstruction of a substantial portion of the existing historical structure that is part of the Project located at the Property Address and in connection with the Seaway Project (the "Special Certificate Application"). A copy of the conditionally approved Special Certificate Application is attached hereto as Exhibit D.

30. On information and belief, the Special Certificate Application sought the HPB's approval of certain revisions to a prior HPB approval granted in connection with the Project, which prior approval KKAID helped TSAI to obtain in connection with the Project. A copy of the HPB's 2017 approval, issued with KKAID as the Architect of Record for the Project, is attached hereto as Exhibit E.

31. In connection with the Special Certificate Application, ODP submitted KKAID's Works bearing KKAID's title block that includes KKAID's federally registered name and logo as Attachment A thereto. [Exhibit D, Attachment A].

32. Through this submission, ODP engaged in the unauthorized distribution of KKAID's Instruments of Service, as such term is defined in the Seaway Agreement, to the public. Specifically, the Special Certificate Application is a public record available to anyone requesting same from the HPB, including via email transmission of a digital version of the Special Certificate Application and its attachments.

33. In addition to submitting KKAID's copyrighted Works bearing KKAID's registered trademarks, ODP altered KKAID's copyrighted Works, without permission or authorization, during the time that the Seaway Agreement remained in full force and effect:

Copyrighted Photographs:



Infringing Photographs:



34. On information and belief, ODP removed KKAID’s name and logo from the Works and substituted its own in place thereof on the Special Certificate Application.

35. The Special Certificate Application is digitally available from the HPB and includes Attachment A – on which ODP substituted its name and logo in place of KKAID’s:



On information and belief, ODP's removal of KKAID's CMI was available on the Internet or through electronic commerce.

36. The drawings submitted as Attachment A to the Special Certificate Application also included images of KKAID's registered trademarks:



37. At the time of ODP's actions related to KKAID's Works, KKAID and TSAI remained parties to the Seaway Agreement.

38. On or about September 18, 2019, ODP, through DANNWOLF and other ODP representatives, appeared at a HPB meeting to discuss the Special Certificate Application. A true and correct copy of the transcript of the September 18, 2019 HPB meeting is attached hereto as Exhibit F.

39. As part of the Special Certificate Application process, including ODP's presentation at the HPB meeting, ODP retained the services of Ms. Kathleen Kauffman, a former HPB member who specializes in historic preservation matters. During the HPB meeting, Ms. Kauffman confirmed that she was appearing on behalf of ODP in connection with the Special Certificate Application. *See Exhibit F*, at p. 9, l. 18-25.

40. During the HPB meeting, ODP, through DANNWOLF and others, represented to the HPB that KKAID was no longer the architect of record for the Project and that ODP had replaced KKAID as the architect of record:

MS. SOLERA: Let me ask the question in a slightly different manner.

MR. LOPEZ: Sure.

MS. SOLERA: **Is Kobi Karp no longer the design architect or the architect design --**

MR. DANNWOLF: **He's no longer the architect.**

MS. SOLERA: Ah-ha. **So, therefore, you have become now the architect in record.**

MR. LOPEZ: **We are now.**

MS. SOLERA: And you are in theory going to mimic -- mimic is not the right word, you're going to continue the concept.

MR. DANNWOLF: The design architect remains the same.

See Exhibit F, at p. 20, l. 7-20 (emphasis added). At the HPB meeting, the HPB conditionally approved the Special Certificate Application and, the following day, September 19, 2019, entered a Resolution confirming its conditional approval. A copy of the Resolution is attached hereto at pages 2-5 of Exhibit D. Attached to the Resolution are copies of KKAID's Works and the **KKAID** Trademarks.

41. At the time of ODP's representations to the HPB, KKAID remained the Architect of Record for the Project. In fact, as of the filing of this action, the records of the Town of Surfside, where the Project is located, identify KKAID as the Architect of Record on all approvals issued in connection with the Project. In February 2018, the Town of Surfside passed a Resolution approving KKAID's site plan for the Project (the "Resolution"). Correspondence from TSAI's counsel leading up to the passage of the Resolution confirmed KKAID's role as the Architect for the Project. According to the records of the Town of Surfside, no additional submissions have been made in connection with the Project since February 2018, when KKAID was the Architect of Record for the Project and the Town of Surfside passed the Resolution approving KKAID's site plan. Copies of the Resolution, TSAI's counsel's correspondence, and communication from the Town of Surfside confirming the lack of additional submissions since the time that KKAID was the Architect of Record for the Project are attached hereto as composite Exhibit G.

42. On September 19, 2019, TSAI terminated the Seaway Agreement, providing KKAID 14 days' notice as required under the Seaway Agreement. A true and

correct copy of the termination letter, in which TSAI expressed that its termination was effective October 4, 2019, is attached hereto as Exhibit H.

43. Subsequent to TSAI's transmission of the Seaway Agreement termination letter, KKAID sent TSAI its final invoice for services rendered in connection with the Project. As provided in Paragraph 6.3 of the Seaway Agreement, any license potentially available to TSAI (and, in turn, ODP) is subject to the provision **“that the Owner pays the Architect the compensation for work completed to date due under this Agreement, including all compensation due for Additional Services and Reimbursable Expenses for the preparation of the Instruments of Service. Provided that the Owner has paid amounts due to the Architect,** the license granted to the Owner hereunder shall not be affected in any way by the suspension, termination or breach of this Agreement or any dispute between the Owner and the Architect.” (Emphasis added). To date, KKAID's invoice remains unpaid, as a result of which TSAI and ODP are not licensed to use KKAID's Works.

44. At no time prior to (or since) October 4, 2019 did ODP notify KKAID that, pursuant to Rule 61G1-18.002 of the Florida Administrative Code, issued by the Florida Department of Business and Professional Regulation's Board of Architecture and Interior Design, that ODP was succeeding KKAID as the architect of record for the Project. In connection with this Rule, ODP has not notified KKAID as follows:

- (a) ODP has not notified KKAID that it has taken all professional and legal responsibility for the documents bearing ODP's name in connection with the Seaway Project;
- (b) ODP has not notified KKAID that it has, as required, removed KKAID's information from the documents; and

- (c) ODP has not, to date, notified KKAID by certified letter of its intention to use or reuse KKAID's work, notwithstanding that it has indeed done so, nor has ODP taken full responsibility for KKAID's plans as though they were ODP's original product.

Defendants' Infringing Conduct

45. On information and belief, Defendants have copied, caused to be copied, published, and distributed architectural drawings and plans for the Project that embody the Works (the "Infringing Plans").

46. The set of KKAID plans that ODP submitted to the HPB in or about August 2019 is a set of plans in which KKAID owns copyright.

47. On information and belief, in or about August 2019, Defendants submitted exact reproductions of KKAID's copyrighted plans to the HPB in connection with the Special Certificate Application.

48. The Infringing Plans are identical to KKAID's Works in that they are an actual copy of the Works.

49. KKAID's Works and Defendants' Infringing Plans incorporate common revision and submission notations. Notably, the Infringing Plans include KKAID's unique Job Number – 1497 – for its work on the Project and a September 2016 date that precedes ODP's involvement in the Project by approximately three (3) years. It is indisputable that Attachment A to ODP's Special Certificate Application is a direct copy of KKAID's copyrighted Works.

50. On information and belief, Defendants were also familiar with and had access to the Works when they copied, caused to be copied, published, and distributed the Infringing Plans. TSAI, with whom both KKAID and Defendants shared a working

relationship in connection with the Project, was in possession of the Works and, on information and belief, provided the Works to Defendants.

51. On information and belief, Defendants' Infringing Plans and the Works are so similar that an average lay observer would recognize that the Infringing Plans were appropriated from the Works.

52. KKAID's and Defendants' shared relationship with TSAI and the substantial similarity between the Works and the Infringing Plans, taken together, are sufficient to circumstantially evidence copying.

53. On information and belief, Defendants intentionally infringed the Works by copying, causing to be copied, publishing, and distributing the Infringing Plans, which are not only substantially similar but identical to the Works, without KKAID's consent or authorization. The lack of consent or authorization from KKAID to Defendants is established through the absence of an executed agreement between KKAID and the Defendants, and the unsatisfied conditions of a potential license from KKAID to TSAI.

54. On information and belief, Defendants will continue to unlawfully use the Infringing Plans in connection with the Project unless enjoined by the Court, blatantly disregarding KKAID's copyrights in the Works.

55. As a result of Defendants' Infringing Plans, KKAID has lost and will continue to lose substantial revenues.

56. Defendants' malicious conduct has proximately damaged KKAID's business interests and caused ongoing financial harm.

57. Unless enjoined by this Court, Defendants are free to continue their course of conduct and will wrongfully use, infringe upon, and otherwise profit from KKAID's Works and any works derived from the Works, and cause injury to KKAID's business interests.

58. As a direct result of the acts of Defendants alleged herein, KKAID has suffered irreparable damage and has sustained lost profits. KKAID will continue to suffer irreparable damage and sustain a loss in profits until Defendants' alleged actions are enjoined by this Court.

FIRST CLAIM FOR RELIEF
(Federal Copyright Infringement Against Defendants)

59. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

60. KKAID owns United States Copyright Registrations No. VA 2-074-574 and VA 2-074-583 for the Works. *See Exhibit A.*

61. KKAID has complied in all respects with the Copyright Act and with all other laws governing copyright in connection with its registered Works. KKAID is the proprietor of all rights, title, and interest to the Works.

62. As the owner of the Works, KKAID is entitled to several exclusive rights, including the right to reproduce the Works, to prepare derivative works based upon the Works, and to distribute copies of the Works.

63. Defendants' Infringing Plans demonstrate direct copying of the Works.

64. Defendants had a reasonable opportunity to view or to copy the Works and, on information and belief, Defendants have knowingly infringed upon the Works by

copying, causing to be copied, publishing, and distributing identical and/or substantially similar copies of the Works in violation of 17 U.S.C. § 501.

65. Defendants' Infringing Plans mimic non-functional, original design elements from the Works, including the overall layout, form, shape and arrangement of the structures and the interior architecture (i.e., the design of open space), as well as the combination of individual design elements. *See* Attachment A to Exhibit D.

66. Defendants' plans submitted to the HPB share virtual identity with KKAID's copyrighted plans. The material derived from KKAID's preexisting works was taken without the consent or authorization of KKAID, the copyright owner and, as such, Defendants prepared unauthorized reproductions of the Works. Through their conduct, Defendants engaged in the unauthorized distribution of the Works, including the Instruments of Services identified in the Seaway Agreement, to the public, as the Special Certificate Application is a public record.

67. On information and belief, Defendants' acts of infringement are willful, intentional, and purposeful, exhibiting a complete disregard of KKAID's rights.

68. On information and belief, Defendants copied the Works to capitalize upon the value of KKAID's creative and thoughtful architectural designs, specifically created for the Project.

69. On information and belief, Defendants copied the Works due to their unfamiliarity with the process for obtaining approval of plans associated with historic buildings, further evidenced by their retention of a former HPB member to assist them with the Special Certificate Application.

70. On information and belief, the aforesaid infringements by Defendants of the Works occurred and continue to occur with Defendants' knowledge that the Works constitute copyrighted designs and Defendants, in committing the acts complained of herein, have willfully infringed upon KKAID's rights under the Copyright Laws of the United States, Title 17 U.S.C. § 101, *et seq.*

71. Upon information and belief, ODP's acts were done with full knowledge of DANNWOLF, who directed and controlled such acts.

72. Defendants' infringement of the Works irreparably damages KKAID, and KKAID is informed and believes that Defendants will continue such infringement unless enjoined by this Court.

73. KKAID has suffered a loss of profits and other damages, and Defendants have earned illegal profits in an amount to be proven at trial, as the result of the aforesaid acts of Defendants.

74. Defendants' acts have damaged and will continue to damage KKAID and KKAID has no adequate remedy at law.

75. In light of the foregoing, KKAID is entitled to injunctive relief prohibiting Defendants from using any of KKAID's copyrighted works, including the Works.

76. In addition, Defendants are liable for KKAID's actual damages and Defendants' additional profits, pursuant to 17 U.S.C. § 504(b), or statutory damages, pursuant to 17 U.S.C. § 504(c), at KKAID's election, in addition to full costs and a reasonable attorney's fee, pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
(Intentional Removal of Copyright Management Information)

77. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

78. This is a claim for intentional removal or alteration of KKAID’s Copyright Management Information (“CMI”), in violation of 17 U.S.C. §§ 1202(b) and 1203.

79. KKAID’s Works, on each page, include KKAID’s signature block, including KKAID’s name, logo, and other information identifying KKAID as the author and copyright owner of the Works.

80. Defendants, in their Special Certificate Application to the HPB, intentionally removed KKAID’s CMI from KKAID’s copyrighted Works in violation of 17 U.S.C. § 1202(b)(1):



81. Defendants, through their submission to the HPB, knowingly and intentionally distributed copies of KKAID’s copyrighted Works with KKAID’s CMI removed therefrom, in violation of 17 U.S.C. § 1202(b)(2).

82. Defendant's intentional removal of KKAID's CMI and knowing distribution of the Works without KKAID's CMI caused, and continues to cause, KKAID damage.

83. Defendants removed KKAID's CMI for the improper purpose of claiming ownership of the Works and to conceal their infringement of KKAID's exclusive rights in the Works, and Defendants knew that their removal of KKAID's CMI was improper.

84. In light of the foregoing, KKAID is entitled to injunctive relief prohibiting Defendants from using any of KKAID's copyrighted works, including the Works, and to recover from Defendants all damages, including attorneys' fees, that KKAID has sustained and will continue to sustain as a result of such infringing acts, and all gains, profits and advantages obtained by Defendants as a result thereof, in an amount not yet known pursuant to 17 U.S.C. § 1203(c), as well as the costs of this action pursuant to 17 U.S.C. § 1203(b) or statutory damages pursuant to 17 U.S.C. § 1203(c), and attorneys' fees and treble damages pursuant to 17 U.S.C. § 1203(b).

THIRD CLAIM FOR RELIEF
(Federal Trademark Infringement Against Defendants)

85. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

86. Defendants' use of confusingly similar imitations of the **KKAID** Trademarks is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' services are offered in a manner that suggests they are offered or provided by KKAID, or associated or connected with KKAID, or have the sponsorship, endorsement, or approval of KKAID.

87. Defendants have used a mark confusingly similar to one or more of KKAID's federally registered marks in violation of 15 U.S.C. § 1114, and Defendants' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public and, additionally, injury to KKAID's goodwill and reputation as symbolized by the federally registered the **KKAID** Trademarks, for which KKAID has no adequate remedy at law.

88. Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with KKAID's federally registered **KKAID** Trademarks to KKAID's great and irreparable injury.

89. Upon information and belief, by its acts, Defendants have made and will make substantial profits and gains to which they are not in law or in equity entitled.

90. Defendants have caused and are likely to continue causing substantial injury to the public and to KKAID, and KKAID is entitled to injunctive relief and to recover Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

FOURTH CLAIM FOR RELIEF
(Federal Unfair Competition Against Defendants)

91. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

92. KKAID is the sole author of the Works. *See Exhibit A.*

93. Defendants represented that they were the authors of the Works when they submitted the Infringing Plans, which embody the Works, to the HPB in connection with the Special Certificate Application.

94. Defendants further represented that they were the authors of the Works by removing KKAID's seals from the Works and replacing them with ODP's seals.

95. These representations are false because they imply that Defendants created the architectural element combinations and arrangements in the Works when Defendants were in no way involved in the creation of the Works.

96. Defendants have misappropriated the Works without acknowledging KKAID's ownership rights, and without receiving authorization or consent from KKAID.

97. Defendants' slavish duplication of the Works in their Infringing Plans is likely to result in confusion, deception or mistake on the part of the consuming public because the public will assume that Defendants, not KKAID, created the Works used in the construction of the Project.

98. KKAID is damaged by this misrepresentation because Defendants have and will continue to wrongly receive payments in connection with their exploitation of the Works that are rightfully owed KKAID.

99. Defendants further misrepresented to the public, at the September 18, 2019 HPB meeting, that they had replaced KKAID as the Architect of Record in connection with the Project when, in fact, ODP has taken no action whatsoever to comply with Florida Administrative Code provisions for successor architects and KKAID

remains the Architect of Record for the Project according to the records of the Town of Surfside.

100. As a direct result of Defendants' violation of 15 U.S.C. §1125(a), KKAID has sustained, and will continue to sustain, substantial injury, loss, and damages in an amount to be proven at trial.

101. KKAID is further entitled to recover gains, profits, and advantages obtained by Defendants as a result of their violation of the Lanham Act in an amount to be proven at trial.

102. As a direct and proximate result of the foregoing acts and conduct, KKAID has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which no adequate remedy at law exists. Unless enjoined by the Court, Defendants will continue to infringe KKAID's rights, and, therefore, KKAID is entitled to a permanent injunctive relief.

FIFTH CLAIM FOR RELIEF
(Tortious Interference With Contractual Relationship Against Defendants)

103. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

104. KKAID has a contractual relationship with TSAI memorialized in the Seaway Agreement.

105. Upon information and belief, ODP and DANNWOLF knew of the contractual relationship between KKAID and TSAI.

106. Upon information and belief, ODP and DANNWOLF intentionally and unjustifiably interfered with the Seaway Agreement between KKAID and TSAI by

soliciting TSAI to engage ODP as its architect in connection with the Project, actions which resulted in TSAI's termination of the Seaway Agreement with KKAID.

107. Defendants' interference damaged the relationship between KKAID and TSAI. By encouraging and inciting TSAI to terminate the Seaway Agreement, Defendants intentionally disrupted the contractual relationship between KKAID and TSAI in order to secure a competitive advantage for themselves, as a result of which KKAID suffered damage.

108. Absent Defendants' improper interference in the contractual relationship between KKAID and TSAI, it is unknown whether TSAI would have terminated the Seaway Agreement.

109. Defendants' conduct in improperly interfering with the contractual relationship between KKAID and TSAI was without justification or privilege.

110. KKAID has suffered damages as a result of Defendants' unlawful interference in the contract between KKAID and TSAI.

111. As a direct and proximate result of the foregoing acts and conduct, KKAID has sustained and will continue to sustain substantial, immediate, and irreparable injury.

SIXTH CLAIM FOR RELIEF
(Florida Trademark Dilution and Injury to Business Reputation)

112. KKAID repeats and incorporates Paragraphs 1 through 58 inclusive as if set forth verbatim herein.

113. Since at least as early as 1996, KKAID has continuously advertised, promoted, and offered architectural and interior design services in the State of Florida under the **KKAID** Trademarks.

114. As a result of KKAID's extensive and continuous use, the **KKAID** Trademarks have become well-known, distinctive and famous trademarks.

115. Upon information and belief, Defendants are offering or causing to be advertised, sold and offered for sale, architectural services in connection with a mark and name that is confusingly similar to the **KKAID** Trademarks.

116. Defendants are causing and will continue to cause irreparable injury to KKAID's goodwill and business reputation, and dilution of the distinctiveness and value of KKAID's famous and distinctive **KKAID** Trademarks in violation of Florida law, FLA. STAT. ANN. § 495.151. KKAID therefore is entitled to injunctive relief, damages and costs, as well as, if appropriate, enhanced damages and reasonable attorneys' fees.

SEVENTH CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

117. KKAID repeats and incorporates paragraphs 1 through 58 inclusive as if set forth verbatim herein.

118. KKAID has continuously advertised, promoted, offered for sale and sold its architectural and interior design services in the State of Florida under the **KKAID** Trademarks.

119. Upon information and belief, Defendants offered, or caused to be advertised, promoted, sold and offered for sale, their architectural services in connection with a name and mark that is confusingly similar to KKAID's name and **KKAID**

Trademarks, by reproducing the **KKOID** Trademarks on materials distributed and displayed to the public in connection with the Special Certificate Application.

120. The acts of Defendants complained of herein are in violation of the common law of the State of Florida, in that Defendants' use in Florida of the **KKOID** Trademarks, in connection with the provision, promotion, or sale of architectural services, has caused and will continue to cause a likelihood of confusion among the public that Defendants' services are affiliated with, associated with, or otherwise approved by **KKOID**, as evidenced by the HPB's inquiry as to **KKOID**'s ongoing affiliation with the Project during the September 18, 2019 meeting.

121. As a result, Defendants have been and are now being unjustly enriched by their wrongful misappropriation of the **KKOID** Trademarks and the goodwill symbolized by **KKOID**'s trademarks.

122. As a result of Defendants' acts, **KKOID** has been damaged in an amount not as yet determined or ascertainable. At a minimum, however, **KKOID** is entitled to injunctive relief, to an accounting of Defendants' profits, to damages, and to costs.

PRAYER FOR RELIEF

WHEREFORE **KKOID** demands relief and judgment against Defendants as follows:

- a. An injunction permanently enjoining and restraining Defendants, their officers, agents, employees, and all other persons in active concert or participation with Defendants, from further infringement upon the

Works and KKAID Trademarks in any manner, from misrepresenting that the Works were authored by Defendants, or otherwise continuing any and all acts as alleged in this Complaint;

- b. An award of damages, including lost profits sustained by KKAID due to Defendants' willful infringement of the Works, tortious interference, and unjust enrichment;
- c. An accounting for all gains, profits, and advantages derived by Defendants' willful infringement of the Works, tortious interference, and unjust enrichment;
- d. An award of statutory damages for Defendants' willful acts of copyright infringement and CMI removal;
- e. An award of the costs of this action and attorneys' fees;
- f. An award for interest and prejudgment interest; and
- g. Such other and further relief as this Court deems just and equitable.

DATED: January 8, 2020

Respectfully submitted,

/s/David K. Friedland
David K. Friedland
Florida Bar No. 833479
Email: dkf@friedlandvining.com
Jaime Rich Vining
Florida Bar No. 030932
Email: jrv@friedlandvining.com
9100 S. Dadeland Blvd., Suite 1620
Miami, FL 33156
(305) 777-1720 – telephone
(305) 456-4922 – facsimile

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the above referenced date, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the Manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

BROOKS MILLER, ESQ.

bmillier@grsm.com

ANDREW R. SCHINDLER, ESQ.

aschindler@grsm.com

GORDON REES SCULLY

MANSUKHANI LLP

100 SE 2nd Street, Suite 3900

Miami, Florida 33131

Attorneys for Defendants

Service via CM/ECF

/s/David K. Friedland

David K. Friedland