required that to close the [Construction L]oan modification the [DOS LAGOS LENDER] (I&G Promenade Shops Lender, LLC having an office at J.P. Morgan Investment Management Inc.) must consent to the modification as well as certain other mezzanine documents which we have asked repeatedly for and you have refused to provide.

58. PLAINTIFFS are informed and believe, and thereon allege, on or about March 30, 2009, JP Morgan (again, in its then capacity as lead negotiating agent for the BANK GROUP), after receiving MCLC's March 25, 2009 response, wrote PMLC a letter responding to the latter concern. In this March 30, 2009 letter, PLAINTIFFS are informed and believe, and thereon allege, JP Morgan directed PMLC to inform "McWhinney" that "[g]iven the identity of the lenders involved, as of January 15, 2009, the [DOS LAGOS LENDER]'s sole member engaged Independent Fiduciary Services, Inc. ("IFS") as an independent fiduciary adviser; IFS is in no way related to or affiliated with any of the [Construction Loan] lenders." The same JP Morgan letter stated, in relevant part, that an "existing intercreditor agreement between the [DOS LAGOS LENDER] and the [Construction Loan] lender governs whether, and the extent to which, the [DOS LAGOS LENDER]'s approval is necessary" for a modification of the Construction Loan. In short, JP Morgan's March 30, 2009 confirmed MCLC's suspicion that "[g]iven the identity of the lenders involved," the $40 MM MEZZ LOAN created enough of a conflict as to compel the DOS LAGOS LENDER's "sole member" (presumably an unnamed JP Morgan affiliate of) to set up a so-called "Chinese wall" via its hiring of an independent fiduciary adviser.

59. At approximately the same time or shortly thereafter, MCLC received an oral invitation to attend a face-to-face meeting with representatives of JP Morgan and PMLC/P&M in Chicago. The Chicago meeting occurred on or about April 9, 2009. During the course of this meeting, MCLC asked whether JP Morgan had previously offered, or would consider offering, a permanent loan to replace the Construction Loan. In response, JP Morgan's representatives adamantly responded "no, no, no." They further explained JP Morgan considered itself to be a "short-term construction lender" and, as such, it was unwilling to offer or negotiate a permanent or long-term credit facility to replace the Construction Loan then in default. At another point during the same April 9, 2009 Chicago meeting, MCLC reiterated its concern that an affiliate of JP Morgan appeared to have made the $40 MM MEZZ LOAN. Hence, MCLC reiterated its concern that the BANK GROUP might be able to exert inappropriate leverage over CENTERRA LLC's sole negotiating agent/managing member, PMLC/P&M, particularly given the DOS LAGOS LENDER's suspected ability (under the above-described "existing intercreditor agreement") to approve or veto any extension or restructuring of the Construction Loan. JP Morgan's representatives neither admitted nor denied such a conflict of interest. PMLC/P&M's representatives that were present, specifically David Selberg and Joshua Poag, adamantly denied that any such conflict or ancillary leverage existed.

60. At some point after the April 9, 2009 Chicago meeting, MCLC learned JP Morgan stepped-down as the lead negotiating agent for the BANK GROUP. At or about the same time, MCLC learned KeyBank stepped in as JP Morgan's replacement.

61. Following the April 9, 2009 Chicago meeting, PMLC/P&M repeatedly and emphatically denied that the $40 MM MEZZ LOAN created any type of conflict of

interest. Further, on multiple occasions, PMLC/P&M informed MCLC the $40 MM MEZZ LOAN was "non-recourse," thereby suggesting the BANK GROUP held no special leverage over PMLC, P&M or other PMLC/P&M subsidiary or affiliate. Specifically, on multiple occasions between February 2009 and August 2009, David Selberg and Joshua Poag, on behalf of PMLC/P&M, told Doug Hill (MCLC's Chief Operating Officer), Chad McWhinney (MCLC's Chief Executive Officer) and Joshua Kane (MCLC's Chief Financial Officer) that:

a. The $40 MM MEZZ LOAN was "non-recourse";

b. The $40 MM MEZZ LOAN was neither a factor nor issue in PMLC's negotiations with JP Morgan;

c. There was conflict of interest preventing PMLC/P&M from negotiating favorable financing terms for CENTERRA LLC; and

d. The proposed deals described in the FIRST PURPORTED PERMANENT LOAN NOTICE and SECOND PURPORTED PERMANENT LOAN NOTICE reflected the best financing terms then available in the marketplace in the absence of any conflict of interest.

62. Even though JP Morgan expressly confirmed on April 9, 2009 the transactions described in the FIRST PURPORTED PERMANENT LOAN NOTICE and SECOND PURPORTED PERMANENT LOAN NOTICE did not involve replacing the Construction Loan with a permanent loan, and thus clearly did not comply with the requirements of Article VII of the CENTERRA OPERATING AGREEMENT, nonetheless the very next day, or on April 10, 2009, PMLC/P&M served MCLC with a defective mandatory capital call ("MANDATORY CAPITAL CALL") purporting to require CENTERRA LLC's members to contribute $2.5 million each to be used to accept and close the high-cost, short-term further extension of the Construction Loan described in the SECOND PURPORTED PERMANENT LOAN NOTICE. The MANDATORY CAPITAL CALL violated both: (1) the terms of the CENTERRA OPERATING AGREEMENT, which terms expressly required approval by both P&M and MCLC of terms in the replacement loan that "do not meet or exceed, in the aggregate, the Parameters" described in the CENTERRA OPERATING AGREEMENT; and (2) the legal requirement for unanimous approval by CENTERRA LLC's members to any modification of the Construction Loan's original terms (*i.e.*, all parties to the original agreement must approve a novation of that agreement). On these bases, MCLC objected to the MANDATORY CAPITAL CALL. Notwithstanding, PMLC/P&M never retracted this purported MANDATORY CAPITAL CALL.

63. As a result of PMLC/P&M's denial that any conflict of interest existed, as well as their continued assurance the $40 MM MEZZ LOAN was "non recourse," MCLC forbore from instituting immediate legal action to protect their rights and those of CENTERRA LLC.

64. On or about August 17, 2009, PMLC/P&M notified MCLC that the BANK GROUP, then represented by KeyBank, would agree to a multiple year further extension of the Construction Loan if MCLC and P&M each contributed another $4.5 million in

new and additional capital to reduce CENTERRA LLC's underwater debt. PMLC/P&M demanded that MCLC approve this novation under threat of a lawsuit.

65. PMLC/P&M were not authorized to negotiate such a deal under the CENTERRA OPERATING AGREEMENT after the January 23 maturity date. Moreover, because the high-cost, short-term loan further extension/modification P&M proposed was a novation, it required the approval of all originally contracting parties, including MCLC. Thus, in threatening legal action if MCLC did not approve a novation that PMLC/P&M were not authorized to negotiate, PMLC/P&M (in particular, P&M) breached its/their fiduciary duties as CENTERRA LLC's managing member.

66. At the same time PMLC/P&M were threatening frivolous lawsuits, MCLC continued to demand that PMLC/P&M disclose all documents memorializing or describing the terms and conditions of the $40 MM MEZZ LOAN. In particular, MCLC demanded disclosure of all documents and information necessary to understand the potential effect of foreclosure on the SHOPS AT CENTERRA with respect to the overall operations and holdings of PMLC, P&M and P&M's parent or affiliate organizations. PMLC/P&M refused to disclose such critically important documents and information, and ultimately (as described below), the SHOPS AT CENTERRA were sold in foreclosure.

67. On or about September 16, 2009, after previously objecting to MCLC's participation in PMLC/P&M's negotiations with the BANK GROUP, P&M's counsel agreed in writing to allow MCLC's representatives to meet in person with KeyBank representatives. On information, PLAINTIFFS believe that P&M agreed to this meeting only after KeyBank's representatives demanded MCLC's participation. The meeting took place on September 16, 2009. As a result of this meeting, MCLC learned for the first time that – contrary to PMLC/P&M's adamant prior denials – the $40 MM MEZZ LOAN had been a major inhibiting factor in CENTERRA LLC's negotiations with the BANK GROUP.

68. After the September 16, 2009 meeting, MCLC gave PMLC/P&M the option of mitigating the harm caused to CENTERRA LLC by their reckless, willful and intentional misconduct by loaning CENTERRA LLC the $9 million necessary to secure the high-cost, short-term Construction Loan modification proposed on August 17, 2009. PMLC/P&M refused. Instead, they responded by accusing MCLC of undermining their "negotiations" with KeyBank. This accusation was meritless, as KeyBank had already informed MCLC that all such "negotiations" were effectively over.

69. On or about September 22, 2009, KeyBank's Senior Vice President (Asset Recovery Group), Mark Wright, sent MCLC and P&M an e-mail proposing to discuss the status of the disputes between MCLC and P&M and a proposed Construction Loan restructure. A teleconference was scheduled for September 28, 2009. Before the teleconference, on September 23, 2009, MCLC filed its complaint in ARBITRATION against P&M and CENTERRA LLC, to protect CENTERRA LLC and its interests.

70. On or about September 28, 2009, representatives of MCLC, P&M and KeyBank participated in a teleconference. During that teleconference, MCLC learned P&M had attempted to unilaterally negotiate a short-term further extension of the Construction Loan on terms disadvantageous to MCLC. For example, P&M had unilaterally promoted

a deal that would have obligated MCLC to invest an additional $4.5 million, while the BANK GROUP retained all cash flow. MCLC objected to this sizable capital infusion requirement, at which point KeyBank's representative expressed frustration, claiming P&M had previously led KeyBank to believe this sort of deal would be acceptable to all of CENTERRA LLC's members. In fact, MCLC had not previously approved this capital infusion requirement, at least on the terms P&M was reported to have represented to KeyBank.

a. The September 28th teleconference revealed, among other things, that PMLC/P&M had not faithfully kept MCLC informed of the true nature and status of their negotiations with KeyBank.

71. On or about October 2, 2009, P&M's Chief Financial Officer and Executive Vice President, Josh Poag, sent MCLC's Chief Executive Officer and Co-Founder, Chad McWhinney, and MCLC's Chief Operating Officer and the METRO DISTRICT's Secretary, Doug Hill, an e-mail informing MCLC that P&M had been "pursuing" certain tax appeals ("TAX APPEALS") before the Colorado Board of Assessment Appeals ("BAA") "since early 2008."

a. MCLC subsequently learned that P&M, as manager of CENTERRA LLC, originally filed the TAX APPEALS without the consent of MCLC in two separate "Petitions to State Board of Assessment Appeals" dated July 23, 2009, and August 25, 2008, for tax years 2007 and 2008, respectively, Docket Nos. 50506 and 51594.

b. The TAX APPEALS originally filed by P&M sought to have the Larimer County Assessor's Office reassess the SHOPS AT CENTERRA's tax value to approximately $45,000,000 for 2007 and 2008, which valuation translates to a per square foot value far below the $190 psf threshold specified in Section 6.2(m). MCLC never approved the filing or prosecution of the TAX APPEALS as expressly required by Section 6.2(m). Moreover, as elaborated on below, P&M refused multiple requests by MCLC to withdraw the TAX APPEALS, and even attempted to thwart withdrawal of the TAX APPEALS after P&M was no longer the real party in interest regarding such TAX APPEALS.

72. In that regard, Josh Poag's October 2, 2009 e-mail, in relevant part:

a. Informed MCLC that P&M anticipated settling the TAX APPEALS "quickly" with the Larimer County Attorney;

b. Informed MCLC that the anticipated settlement would lower the assessed value of the SHOPS AT CENTERRA significantly below the $190 psf threshold;

c. Stated, "[p]er our operating agreement, we need unanimous consent for any appeal which tries to reduce the assessed value below $190 psf (operating agreement section 6.2(m))"; and

d. For this reason, belatedly sought MCLC's "authorization to move forward" with the TAX APPEALS.

73. On the same day, October 2, 2009, Mr. Hill sent Mr. Poag a letter responding to this e-mail. Mr. Hill's letter stated, among other things:

a. "[Y]ou do not have MCLC's consent to appeal, or continue to appeal, the assessed value of the property below $190 psf";

b. "As you acknowledge, Section 6.2(m) of the Company's [CENTERRA LLC] Operating Agreement expressly provides that 'causing the Company to contest or seek to lower the assessed value of improved real property owned by the Company to a value less than One Hundred Ninety Dollars ($190.00) per square foot...' must be unanimously approved by the Members"; and

c. "This language was included in the Operating Agreement in recognition of the fact that a tax basis valuation of less than $190 psf would potentially harm the METRO DISTRICT's ability to service the bonds then contemplated, and since issued, to defray the cost of the property's infrastructure development ... In other words, although we acknowledge the potential benefit of a tax reduction flowing to the Company's members and tenants, MCLC owes a fiduciary duty to ensure the continued solvency of the METRO DISTRICT. Again, this is precisely why the Operating Agreement reads the way it does."

d. Finally, Mr. Hill's response complained that P&M was taking "wildly inconsistent positions" regarding the value of the SHOPS AT CENTERRA.

74. PMLC/P&M thereafter refused multiple requests from MCLC requests to withdraw the TAX APPEALS. Instead, PMLC/P&M attempted to "leverage" the TAX APPEALS to gain an ancillary tactical advantage: *i.e.*, PMLC/P&M subsequently offered to withdraw or stay the TAX APPEALS if and only if MCLC first agreed to withdraw MCLC's unrelated claims against P&M for, among other things, breach of other provisions of the CENTERRA OPERATING AGREEMENT and breach of fiduciary duties in the ARBITRATION. When MCLC rejected P&M's attempt to thus blackmail MCLC into dismissing its claims in ARBITRATION, P&M ultimately (falsely) blamed the SHOPS AT CENTERRA's court ordered "RECEIVER" (defined and explained below) for holding up its promised dismissal of the TAX APPEALS.

75. On or about October 13, 2009, KeyBank issued an official notice of default to CENTERRA LLC and P&M. In the October 13 Notice, KeyBank advised that CENTERRA LLC's failure to repay the loan by the January 23, 2009 maturity date along with its "continued failure to repay the Loan within ten (10) days thereafter constitutes an Event of Default under the Loan Agreement and other Loan Documents." As such, KeyBank demanded CENTERRA LLC and P&M pay the Construction Loan in full, "which, as of September 30, 2009, included past-due principal of $112,861,606.23, accrued interest at the Default Interest Rate of $2,113,059.95, aggregate agent fees of $18,750.00, together with attorneys' fees and costs incurred to date...."

76. On or about December 2, 2009, MCLC sent a letter to PMLC/P&M stating MCLC was interested in possibly purchasing the defaulted Construction Loan from the BANK GROUP. PMLC/P&M responded that they would vigorously object to any attempt by MCLC to purchase the Construction Loan on the grounds any such attempt would constitute a breach MCLC's duty of loyalty and present a conflict of interest under

Section 6.6 of the CENTERRA OPERATING AGREEMENT. MCLC disagreed with this position. Moreover, future events would demonstrate PMLC/P&M never held a good-faith belief in the position's merit but, rather, advanced it to stall MCLC while PMLC/P&M looked to cut their own deal. Unaware of PMLC/P&M's duplicity, MCLC abstained from pursuing the purchase of the defaulted Construction Loan.

77. As a result of the defaulted Construction Loan, on or about December 7, 2009, a receiver ("RECEIVER") was appointed for the SHOPS AT CENTERRA by order of the Larimer County District Court in *KeyBank v. Centerra Lifestyle Center, LLC*, Case No. 09CV1251 (the "RECEIVERSHIP ACTION").

78. On or about December 8, 2009, in an effort to halt continued improper prosecution of the TAX APPEALS, the METRO DISTRICT as plaintiff filed a verified complaint against defendants P&M, CENTERRA LLC and DOES 1 through 50, inclusive, in the matter captioned Centerra Metropolitan District No. 1 v. Poag & McEwen Lifestyle Centers – Centerra, LLC, Larimer County District Court, Case No. 2009 CV 1263 (the "LARIMER COUNTY ACTION").

79. On or about January 27, 2010, PMLC/P&M informed MCLC by telephone they had unilaterally entered into talks with a third party investor, Mr. Gary Dragul (a reported principal of GDA Real Estate and THF Realty), and had decided to support Mr. Dragul's desire to purchase the defaulted Construction Loan. Moreover, PMLC/P&M stated Mr. Dragul would simultaneously acquire a majority equity stake in CENTERRA LLC and/or future income to be produced by CENTERRA LLC's Property. Finally, PMLC/P&M inquired as to whether MCLC would waive a conflict of interest that would otherwise prevent Mr. Dragul and/or his companies from using MCLC's long-time legal counsel, Brownstein Hyatt Farber & Schreck LLP, to pursue these negotiations. Thus, PMLC/P&M had taken advantage of MCLC's abstention from seeking to purchase the default Construction Loan by lining up a third party financial partner to pursue a deal beneficial to PMLC/P&M, but harmful to CENTERRA LLC and MCLC.

80. On or about January 29, 2010, MCLC responded in writing to the January 27, 2009 letter. MCLC expressed frustration at PMLC/P&M having objected to MCLC's December 2009 proposal to explore a possible purchase of the defaulted Construction Loan, while having engaged in its own unilateral efforts to obtain its own proxy purchaser for the Construction Loan. MCLC further noted PMLC/P&M appeared to have engaged in marketing a significant portion of CENTERRA LLC's equity to one or more third party investors in violation of the express provisions of the CENTERRA OPERATING AGREEMENT. Finally, MCLC refused to waive the conflict of interest barring Mr. Dragul from hiring MCLC's long-time attorneys.

81. On or about February 9, 2010, the BAA granted the RECEIVER's January 27, 2010 application to substitute in as petitioner in the TAX APPEALS. From that point forward, the RECEIVER – who, at this point, was also a named defendant in the LARIMER COUNTY ACTION – repeatedly affirmed to the METRO DISTRICT its intent to proceed with prosecuting the TAX APPEALS. Similarly, with the RECEIVER in place as the petitioner in the TAX APPEALS, PMLC/P&M thereafter took the position in its discourse with MCLC that PMLC/P&M had no control over the continued prosecution of the TAX APPEALS.

82. In April 2010, during discovery in the ARBITRATION, P&M, for the first time, produced a copy of the $40 MM MEZZ LOAN and related documents. The $40 MM MEZZ LOAN documents disclosed that effective April 23, 2007, Centerra & Dos Lagos Venture, LLC (*i.e.*, the " DOS LAGOS BORROWER") as borrower entered into the $40 MM MEZZ LOAN with I&G, Promenade Shops Lender, LLC ("I&G") as lender. The $40 MM MEZZ LOAN further described the DOS LAGOS BORROWER as an "owner" of P&M, and disclosed P&M had pledged its entire ownership interest in CENTERRA as partial collateral for the $40 MM MEZZ LOAN.

83. Also on April 23, 2007, P&M, as pledgor on the $40 MM MEZZ LOAN, entered into the P&M DOS LAGOS PLEDGE (a/k/a "Pledge and Security Agreement (Centerra)") with I&G as lender. The P&M DOS LAGOS PLEDGE acknowledged P&M's status as a wholly owned subsidiary of the DOS LAGOS BORROWER, and that P&M "agreed to pledge and grant a first priority security interest in the Collateral as security for the Obligations" under the $40 MM MEZZ LOAN.

a. The P&M CORONA DOS LAGOS PLEDGE, also executed as effective April 23, 2007, contained similar language regarding P&M CORONA's status as a wholly owned subsidiary of the DOS LAGOS BORROWER in connection with the pledge of its first priority security interest.

84. In addition, pursuant to the P&M DOS LAGOS PLEDGE, P&M pledged and granted I&G as collateral, among other things, all "Pledged Interests...." P&M DOS LAGOS PLEDGE § 2(i). The Pledged Interests were defined to include, among other things, "all limited liability company membership interests, capital stock or other equity interests of, and all other right, title and interest now owned or hereafter acquired by, Pledgor in and to, Property Owner together with...."

85. On or about April 30, 2010, MCLC's counsel sent a letter to PMLC/P&M's counsel addressing rumors that PMLC/P&M were attempting to purchase the defaulted Construction Loan note with help from third party funding sources. The letter also noted, among other things, the disconnect between PMLC/P&M's rejection of MCLC's attempt to purchase the Construction Loan, while PMLC/P&M were attempting to solicit investors to do essentially the same thing.

86. On or about May 3, 2010, P&M's counsel responded to the April 30th letter, admitting:

> [P&M], as Managing Member of Centerra Lifestyle Center, LLC [CENTERRA LLC] has been attempting to negotiate a business solution and avoid foreclosure on the Property
>
> . . .
>
> [P&M], on behalf of the LLC [CENTERRA LLC] has been working continuously since January 2010, through discussions with Bank Group and GDA [the Dragul Group] as well as other potential investors, hoping that some non-foreclosure resolution could be reached. These efforts have been in the best interest and for the benefit of the LLC [CENTERRA LLC] as a whole

...

[¶] [P&M], with the best interest of the LLC [CENTERRA LLC] as a whole in mind and with continuing disclosure to McWhinney, has sought out an investor who might be able to assist in salvaging at least some portion of the LLC's has (sic) ownership interest.

87. On or about May 28, 2010, PMLC/P&M's Bob Rogers told MCLC's Doug Hill by phone that there was no written documentation memorializing any of PMLC/P&M's discussions with KeyBank, Gary Dragul, Walton Street Capital or any other investor over the course of the past several months.

88. After the telephone call, Mr. Rogers sent Mr. Hill a follow up e-mail, in which he said, among other things:

As you and I have previously discussed, there is no existing agreement between Centerra Lifestyle Center, LLC and Walton Street Capital, LLC regarding their potential purchase of the Construction Loan. However, Walton Street is currently negotiating with KeyBank and recent conversations with this investor indicate they may be willing to extend a prospective business deal to Centerra Lifestyle Center, LLC on the following terms:

...

[¶] 1) WSC [Walton Street Capital] would purchase the note for $80MM. All equity would come from WSC.

...

[¶] 8) P&M will continue to manage and lease the Property.

89. This e-mail demonstrates PMLC/P&M were acting in their own self-interest in trying to protect PMLC/P&M's management fee.

90. Although originally scheduled for March 17, 2010, the foreclosure sale on the SHOPS AT CENTERRA was delayed multiple times. On June 24, 2010, P&M's Josh Poag and Bob Rogers told MCLC's Doug Hill over the phone that they understood the BANK GROUP no longer wished to foreclose, but rather wished to sell the distressed Construction Loan note to a third party. During the same call, Josh Poag and Bob Rogers confirmed P&M was continuing to promote Walton Street's proposed purchase of the Construction Loan without MCLC's consent.

91. Despite the foregoing assertions to the contrary, on June 28, 2010, MCLC learned an "assignee" of KeyBank had submitted a pre-foreclosure sale bid to purchase the defaulted Construction Loan for approximately $84.99 million.

92. Ultimately, on or about June 30, 2010, the SHOPS AT CENTERRA were sold in a foreclosure sale for approximately $84.993 million to CLC REO, LLC ("CLC"), a Delaware limited liability company, as KeyBank's assignee and as agent for the BANK GROUP.

93. Thus, as a result of PMLC/P&M's wrongdoing, the sole asset of CENTERRA LLC – *i.e.*, the SHOPS AT CENTERRA – was lost through foreclosure.

94. On or about October 6, 2010, the Denver District Court, in the matter captioned *Centerra Metropolitan District v. Colorado Board of Assessment Appeals et al.*, District Court, City and County of Denver, Colorado, Case Number 2010 CV 2261 (the "JUDICIAL REVIEW ACTION") granted a stipulated order between the METRO DISTRICT and the BAA, which order allowed the METRO DISTRICT to intervene in the TAX APPEALS.

95. Effective December 1, 2010 – just months after the METRO DISTRICT secured the right to intervene in the TAX APPEALS – the METRO DISTRICT, the RECEIVER and CLC entered into a settlement agreement concerning, among other things, the TAX APPEALS, THE JUDICIAL REVIEW ACTION and the LARIMER COUNTY ACTION.

96. As such, on or about December 3, 2010, the RECEIVER filed a motion with the Receivership Court (*i.e.*, the Larimer County District Court) to approve settlement and dismissal of the TAX APPEALS. That motion made clear that part of the reason the RECEIVER had refused to settle with the METRO DISTRICT earlier – and correspondingly, withdraw the TAX APPEALS earlier – was that PMLC/P&M had engaged in a litigation strategy designed to prevent that from happening earlier by threatening the RECEIVER with a lawsuit. Specifically, the RECEIVER's motion stated, in relevant part:

> The Receiver has been threatened with claims by parties to the Larimer County Action in the event he settles the dispute with the METRO DISTRICT. These threats include, without limitation, a claim by one of the defendants are in the Larimer County Action, Poag & McEwen Lifestyle Centers – Centerra, LLC [P&M], which is the managing member of Defendant Centerra LLC. [P&M] has threatened to bring suit against the Receiver for damages sought by the METRO DISTRICT against [P&M] due to the Receiver's continued prosecution of the TAX APPEALS. As the Receiver understands the threatened claims, they are based upon the premise that the Receiver should not have continued prosecution of the TAX APPEALS that [P&M] commenced, lacked authority to do so, and/or caused certain damages as a result of his prosecution of the same....
>
> Accordingly, the Receiver seeks an Order from this Court (i) approving the Receiver's entering into the Settlement Agreement as described above and dismissing the TAX APPEALS....

ALLEGATIONS GENERALLY PERTAINING TO THE FAILED REPAYMENT OF THE $12 MM LOAN

97. The improper filing and maintenance of the TAX APPEALS interfered with the normal distribution of funds within the above-described public-private partnership, as

well as delayed the METRO DISTRICTS' ability to refinance their debt with new bond offerings, and thus materially interfered with the METRO DISTRICT's ability to timely repay the above-described "short-term" $12 MM LOAN. Specifically:

a. As alleged above, the TAX APPEALS sought to reduce the assessed value of the SHOPS AT CENTERRA to $45 million (or approximately half its originally assessed value), thus jeopardizing the METRO DISTRICT's future flow of assigned property tax revenue.

b. This threatened radical reduction in the METRO DISTRICT's primary source of income, combined with the TAX APPEALS' request for a substantial refund of previously collected property tax revenue (which refund, if any, would have had to been paid by the METRO DISTRICT), threatened the financial model on which the entire above-described public-private partnership was based.

c. The cumulative effect of this threat was to "cloud" the METRO DISTRICT's financial future and diminish the METRO DISTRICT's creditworthiness.

d. To combat the threat to their economic survival, the METRO DISTRICT was required to expend a significant amount of money in attorneys' fees, court and administrative expenses pursuing, and ultimately obtaining, the unconditional dismissal of the TAX APPEALS.

98. On information and belief, PLAINTIFFS allege the METRO DISTRICT's diminished creditworthiness proximately delayed the METRO DISTRICT's ability to negotiate the terms of a new bond issuance. Even though other factors later arose that PLAINTIFFS understand independently delayed the new bond issuance, on information and belief, PLAINTIFFS allege those factors would never have impacted on the timing of the new bond issuance but for the original delay caused by the TAX APPEALS.

99. As a result of the foregoing, as a result of the METRO DISTRICT's diversion of funds to secure dismissal of the TAX APPEALS, and as a result of restrictions on their ability to disburse funds to repay private debt, the METRO DISTRICT lacked the available resources to timely repay the $12 MM LOAN.

100. In the latter regard, the METRO DISTRICT, PIC and RSF CORP have different degrees of flexibility in terms of which entity can repay what classification of debt to whom and when.

a. The METRO DISTRICT is the least flexible in its payment options, with much of its payment priorities defined by statute and agreement. For example, per the MFA the METRO DISTRICT must first repay "URA Obligation" and "District Debt."

b. The PIC has more flexibility than the METRO DISTRICT, but considerably less than RSF CORP. For example, under the MFA's waterfall provisions, the PIC must first disburse PIF for administrative expenses, METRO DISTRICT debt and debt service reserve before it disburses PIF to Constructors, including "Affiliates" of CWP such as SMP4. As such, when the METRO DISTRICT lacked adequate funds to pay District Debt (as was the case during the pendency of the TAX APPEALS), the PIC was required to distribute PIF to the

METRO DISTRICT for that purpose, thus depriving the PIC of the ability to use the same monies for another purpose: *e.g.*, to timely repay CPW or SMP4.

i. Hence, the METRO DISTRICT's lack of liquidity during the pendency of the TAX APPEALS caused the METRO DISTRICT to receive greater PIF distributions from the PIC, and correspondingly deprived the PIC of the ability to repay CPW and SMP4 their share of the $12 MM LOAN.

c. Because it is a private nonprofit corporation, RSF CORP is the most flexible regarding who, when and what it can pay. Nevertheless, because the TAX APPEALS impacted the METRO DISTRICT's and the PIC's liquidity, RSF CORP was also deprived of liquidity. This is because, among other things, RSF CORP received less money over a longer period of time than it normally would have from the METRO DISTRICT. This, in turn, correspondingly delayed RSF CORP's ability to repay the McWHINNEY affiliates their portion, or approximately one-half, of the $12 MM LOAN.

101. On information and belief, PLAINTIFFS allege the delayed/thwarted repayment of $12 MM LOAN had the threefold effect of:

a. Depriving MCWHINNEY and its affiliates of the necessary liquidity to make a winning post-foreclosure bid that might have allowed MCWHINNEY to purchase the SHOPS AT CENTERRA from CLC through foreclosure;

b. Correspondingly, depriving MCWHINNEY and its affiliates of revenue they could have received through ownership and/or later sale the SHOPS AT CENTERRA; and

c. Enabling the December 2010 purchase of the SHOPS AT CENTERRA by G&I VI PROMENADE, LLC ("G&I"), a Delaware Limited Liability Company whose competing bid was supported by PMLC/P&M.

i. In return, on information and belief PLAINTIFFS allege G&I contracted with POAG, for a fee, to manage the SHOPS AT CENTERRA.

ii. Moreover, although PLAINTIFFS have yet to ascertain all the relevant facts, PLAINTIFFS believe there may be a connection between G&I and the maker of the above-described $40 MM MEZZ LOAN, thus a connection between PMLC/P&M's support for G&I's purchase the SHOPS AT CENTERRA and the resolution of PMLC/P&M's reported default on the $40 MM MEZZ LOAN.

FIRST CAUSE OF ACTION

(Breach of CENTERRA OPERATING AGREEMENT)

102. PLAINTIFFS refer to, and incorporate by reference, paragraphs 1 through 101, as though set forth fully herein.

103. McWHINNEY, MCLC, PMLC and P&M entered into a valid and binding contract evidenced by the CENTERRA OPERATING AGREEMENT and April 23, 2007 First Amendment thereto.

104. Pursuant to the terms and conditions of the CENTERRA OPERATING AGREEMENT, as amended, and in particular Article VII thereof, P&M, as CENTERRA LLC's sole managing member, was at all relevant times obligated, among other things, to timely arrange and submit terms to MCLC for a permanent loan to replace the Construction Loan prior to the Construction Loan's maturity.

105. MCLC fully performed all conditions, covenants and promises required on its part pursuant to the CENTERRA OPERATING AGREEMENT, except for such conditions, covenants and promises excused by PMLC/P&M's antecedent breaches thereof.

106. A set forth in greater detail in the general allegations above, the METRO DISTRICT, RSF CORP, MCWHINNEY and its affiliated entities – including CPW and SMP4 – are all intended third-party beneficiaries of the CENTERRA OPERATING AGREEMENT. In particular, they are all intended third-party beneficiaries of Section 6.2 (m)'s limitation on PMLC/P&M's right to file and prosecute tax appeals seeking to reduce the assessed value of the SHOPS AT CENTERRA below $190.00 per square foot.

107. PMLC/P&M breached the CENTERRA OPERATING AGREEMENT by, among other things:

a. Failing to timely arrange and submit the terms for a proposed permanent loan before the Construction Loan's maturity;

b. Putting its own financial interests above those of CENTERRA LLC and PLAINTIFFS in refusing to look for, or arrange, a permanent loan as mandated by Article VII of the CENTERRA OPERATING AGREEMENT;

c. Putting its own financial interests above those of CENTERRA LLC and MCLC in unilaterally seeking to change the business plan described in Article VII of the CENTERRA OPERATING AGREEMENT;

d. Unilaterally deciding to pursue a speculative, and therefore inherently risky, alternative financial strategy in the absence of MCLC's consent and approval as required by the CENTERRA OPERATING AGREEMENT;

e. Concealing their above-described "double agenda" and conflict of interest impairing their ability to effectively negotiate market-rate refinancing of the Construction Loan in the best interests of CENTERRA LLC (as opposed to in the best interests of themselves);

f. Affirmatively misrepresenting their true goals and intentions in their negotiations with the BANK GROUP;

g. Failing to recuse themselves from the BANK GROUP negotiations;

h. Failing to diligently and timely gather and disclose information requested by MCLC related to the financial merits of the high-cost, short-term further extension of the Construction Loan favored by PMLC/P&M;

i. Falsely and in a bad faith mischaracterizing their proposals for a high-cost, short-term further extension of the Construction Loan as a "Permanent Loan" in an attempt to force MCLC's acceptance of the same under Article VI of the CENTERRA OPERATING AGREEMENT;

j. Anticipatorily breaching the unanimous consent requirement applicable to Construction Loan terms that fail to "meet or exceed" the "Parameters" set forth in the CENTERRA OPERATING AGREEMENT: *i.e.*, repudiating and/or denying MCLC's express right to disapprove any Construction Loan terms requiring MCLC to invest more than a certain, pre-approved "maximum amount of equity contribution";

k. Breaching Section 6.2(m) by filing and prosecuting TAX APPEALS seeking to reassess the value of the SHOPS AT CENTERRA far below $190 per square foot without MCLC's consent, and thereafter, among other things, refusing to withdraw the TAX APPEALS after belatedly admitting the TAX APPEALS had been improperly filed without MCLC's consent.

l. Further breaching Section 6.2(m) and the implied covenant of good faith and fair dealing by encouraging the continued maintenance and prosecution of the TAX APPEALS (by, among other things, threatening the RECEIVER with litigation if the RECEIVER dismissed the TAX APPEALS);

m. Generally putting their own financial interests above those of CENTERRA LLC and PLAINTIFFS; and

n. Delaying, failing or refusing to timely prepare and/or deliver accounting, tax and other financial reports per the requirements of the CENTERRA OPERATING AGREEMENT.

As a direct and proximate result of PMLC/P&M's breach of the CENTERRA OPERATING AGREEMENT, PLAINTIFFS and CENTERRA LLC have incurred general, special and consequential damages in amounts to be proven at the time of trial.

SECOND CAUSE OF ACTION

(Fraudulent Concealment Regarding PMLC/P&M's "Double Agenda")

108. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 107, as though set forth fully herein.

109. As described hereinabove, PMLC/P&M intentionally concealed and failed to disclose facts that they had a contractual, statutory and common law duty to disclose including, among others:

a. The fact that PMLC/P&M had a "double agenda" as a result of a conflict of interest that inhibited PMLC/P&M's ability to effectively negotiate a market-rate restructuring of the Construction Loan with the BANK GROUP;

b. The fact that PMLC/P&M's true intentions in negotiating the deals described in the FIRST PURPORTED PERMANENT LOAN NOTICE and SECOND PURPORTED PERMANENT LOAN NOTICE were to protect PMLC/P&M's own financial interests in connection with the $40 MM MEZZ LOAN;

c. The fact that the $40 MM MEZZ LOAN was, contrary to PMLC/P&M's representations, in effect fully "recourse" against PMLC and/or its subsidiaries or affiliates by virtue of what PLAINTIFFS are now informed and believe, and thereon allege, was a pledge of assets, guarantee or similar arrangement;

d. The fact that the $40 MM MEZZ LOAN was a substantial factor affecting PMLC/P&M's negotiations with both JP Morgan and KeyBank;

e. The fact that the $40 MM MEZZ LOAN, and associated pledge of assets, guarantee or similar arrangement, gave the BANK GROUP special leverage over PMLC, P&M and P&M's parent or affiliate organizations; and

f. The fact that PMLC/P&M was secretly working with one or more financial partners – *e.g.*, Walton Street Capital, LLC and G&I – to purchase the Construction Loan in default, thereby further undercutting PMLC/P&M's ability to concurrently negotiate a market-rate restructuring of the same distressed credit facility on behalf of CENTERRA LLC.

110. The facts concealed by PMLC/P&M were at all times material and important to CENTERRA LLC's on-going operations, financial health and viability.

111. P&M, as CENTERRA LLC's sole managing member, and PMLC, as P&M's principal, alter ego, co-conspirator and/or agent, at all times had statutory and common law duties to carry out their express and implied contractual duties to CENTERRA LLC and PLAINTIFFS as fiduciaries: *e.g.*, to deal with PLAINTIFFS in accordance with the principles of absolute candor, good faith, loyalty and fair dealing. As such, PMLC/P&M at all times had a duty to fully and timely disclose the above-described facts to PLAINTIFFS.

112. PMLC/P&M also had a common law duty to speak the whole truth, and not to deceive PLAINTIFFS with partial, incomplete or misleading information.

113. PMLC/P&M breached their duty of candor and full disclosure. Specifically, PMLC/P&M concealed the foregoing facts to convince PLAINTIFFS that PMLC/P&M were acting in CENTERRA LLC's best interests and that PMLC/P&M did not have an economic interest or business agenda that conflicted with the interests of PLAINTIFFS or CENTERRA LLC as a whole.

114. PMLC/P&M concealed these facts to induce MCLC to forebear from taking immediate action to preserve its rights, and those of CENTERRA LLC.

115. PLAINTIFFS, given their non-managerial/passive investor status, necessarily and reasonably relied on PMLC/P&M's continuing representations regarding PMLC/P&M's professed intentions and ability to effectively represent the interests of CENTERRA LLC in negotiations with the BANK GROUP. Further, MCLC necessarily and reasonably relied on PMLC/P&M's implicit representation that they had fully disclosed all material facts necessary for PLAINTIFFS to understand the status and progress of those negotiations.

116. PLAINTIFFS in fact detrimentally relied on the limited, incomplete and inherently false information provided by PMLC/P&M.

117. PLAINTIFFS' reliance was justified given PMLC/P&M's contractual and legal status as fiduciaries. PLAINTIFFS' reliance was further justified given PMLC/P&M's self-professed expertise in the development and management of similar "lifestyle" retail properties, and their adamant assurances that the $40 MILLION MEZZ LOAN was "non-recourse" and thus did not provide the BANK GROUP any special leverage.

118. As a result of PMLC/P&M's fraudulent concealment of the true facts, false representation of the matters stated above, and PLAINTIFFS' good faith reliance thereon, MCLC forbore from instituting immediate legal action to protect its rights and those of CENTERRA LLC. PLAINTIFFS would not have done so had it known the true facts. Similarly, PLAINTIFFS would not have forborne from negotiating with the BANK GROUP to directly purchase the Construction Loan in default had known the true facts.

119. As a direct and proximate result of the above-described fraudulent concealment, PLAINTIFFS and CENTERRA LLC have been damaged. The precise amount of such damages will be proven at the time of trial.

120. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duties)

121. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 120, as though set forth fully herein.

122. At all times herein mentioned, PMLC/P&M have acted as fiduciaries and, as such, have owed CENTERRA LLC and PLAINTIFFS the duties of a fiduciary as prescribed by statute and common law. These include, among others, the duties of due care, diligence, undivided loyalty, absolute candor and good faith.

123. PMLC/P&M breached their fiduciary duties to CENTERRA LLC and PLAINTIFFS by, among other things:

a. Failing to timely investigate and pursue commercially available terms to replace and refinance the Construction Loan with a Permanent Loan as required by Article VII of the CENTERRA OPERATING AGREEMENT;

b. Failing to timely arrange and submit the terms for a proposed Permanent Loan as required by Article VII of the CENTERRA OPERATING AGREEMENT;

c. Putting their own financial interests above those of CENTERRA LLC and PLAINTIFFS in unilaterally refusing to look for, or arrange, a permanent loan as required by Article VII of the CENTERRA OPERATING AGREEMENT;

d. Putting their own financial interests above those of CENTERRA LLC and PLAINTIFFS in unilaterally seeking to change the business plan proscribed by Article VII of the CENTERRA OPERATING AGREEMENT;

e. Unilaterally deciding to pursue a speculative, and therefore inherently risky, alternative financial strategy in the absence of MCLC's consent and approval as required by the CENTERRA OPERATING AGREEMENT;

f. Concealing their above-described conflict of interest and resulting "double agenda";

g. Affirmatively misrepresenting their true goals and intentions in their negotiations with the BANK GROUP;

h. Failing to recuse themselves from CENTERRA LLC's ongoing negotiations with the BANK GROUP;

i. Failing to diligently and timely gather and disclose information requested by PLAINTIFFS related to the financial merits of the high-cost, short-term further extension of the Construction Loan proposed by PMLC/P&M;

j. Falsely mischaracterizing a high-cost, short-term further extension of the Construction Loan to be a permanent loan in a bad faith attempt to force MCLC's acceptance of the same under Article VI of the CENTERRA OPERATING AGREEMENT;

k. Anticipatorily breaching the unanimous consent requirement applicable to Construction Loan terms that fail to "meet or exceed" the "Parameters" set forth in the CENTERRA OPERATING AGREEMENT: *i.e.*, repudiating and/or denying MCLC's express right to disapprove any Construction Loan terms requiring MCLC to invest more than a certain, pre-approved "maximum amount of equity contribution";

l. Filing and prosecuting TAX APPEALS seeking to reassess the value of the SHOPS AT CENTERRA far below $190 per square foot without MCLC's consent, and thereafter, among other things, refusing to withdraw the TAX

APPEALS after belatedly admitting the TAX APPEALS had been improperly filed without MCLC's consent.

m. Encouraging the continued maintenance and prosecution of the TAX APPEALS (by, among other things, threatening the RECEIVER with litigation if the RECEIVER dismissed the TAX APPEALS);

n. Generally putting their own financial interests above those of CENTERRA LLC and PLAINTIFFS; and

o. Delaying, failing or refusing to timely prepare and/or deliver accounting, tax and other financial reports per the requirements of the CENTERRA OPERATING AGREEMENT.

124. PMLC/P&M further breached its fiduciary duties to CENTERRA LLC and PLAINTIFFS by, on multiple occasions between February 2009 and August 2009, informing PLAINTIFFS that:

a. The $40 MM MEZZ LOAN was non-recourse;

b. The $40 MM MEZZ LOAN was not a factor or an issue in PMLC/P&M's negotiations with JP Morgan;

c. PMLC/P&M's did not have a conflict of interest preventing it from negotiating favorable financing terms for CENTERRA LLC; and

d. The proposed deals described in PMLC/P&M's FIRST PURPORTED PERMANENT LOAN NOTICE and SECOND PURPORTED PERMANENT LOAN NOTICE reflected the best financing terms then available in the marketplace in the absence of any conflict of interest.

125. As a direct and proximate cause of PMLC/P&M's various breaches of fiduciary duties, CENTERRA LLC and PLAINTIFFS have been damaged. The precise amount of such damages will be proven at the time of trial.

126. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

FOURTH CAUSE OF ACTION

(Indemnity)

127. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 126, as though set forth fully herein.

128. At all times herein mentioned, P&M was CENTERRA LLC's sole managing member and, in doing the acts herein alleged, acted, or purported to act, within the course and scope of that position of responsibility.

129. PLAINTIFFS, an, in particular, MCLC, are in no way legally responsible for the acts, events or omissions alleged herein or the damages sustained by CENTERRA LLC or itself.

a. PMLC/P&M are responsible by reason of their actual fraud, gross negligence or willful misconduct, or by reason of their above-described attempts to derive improper personal benefit from their ongoing negotiations with the BANK GROUP.

b. Similarly, PMLC, P&M and/or POAG are responsible by reason of their actual fraud, gross negligence or willful misconduct, or by reason of their above-described attempts to derive improper personal benefit by facilitating a situation that initiated improper TAX APPEALS and forced them to remain pending into January 2011, and thus, correspondingly, caused POAG to become the post-foreclosure manager – for a fee – of the SHOPS AT CENTERRA.

130. DEFENDANTS therefore have both a contractual and equitable duty to indemnify and hold PLAINTIFFS and CENTERRA LLC harmless for all damages incurred as a result of PMLC's, P&M's and/or POAG's above-described misconduct.

FIFTH CAUSE OF ACTION

(Intentional Interference with Contractual Obligations)

131. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 130, as though set forth fully herein.

132. PLAINTIFFS had certain contracts with third parties of which defendants were aware.

133. In that regard, DEFENDANTS knew or reasonably should have known of the following contracts:

a. CPW entered into the MFA with the City, the LURA, the METRO DISTRICT, the PIC and the PID. Pursuant to the MFA, funds (such as TIF and PIF) were assigned, pledged and/or to be disbursed to the METRO DISTRICT so that the METRO DISTRICT could pay for, among other things, certain URA Obligations and METRO DISTRICT debt (a/k/a "District Debt").

b. CPW and SMP4 entered into promissory notes with the METRO DISTRICT to facilitate loans to pay for the development and construction of the Centerra Parkway and/or other infrastructure related to the SHOPS AT CENTERRA. To date, approximately $5.875 million remains due and owing from the METRO DISTRICT on such promissory notes.

c. RSF CORP entered into loan agreements with MCWHINNEY affiliated entities and the METRO DISTRICT that facilitated loans from MCWHINNEY affiliated entities to RSF CORP, and then to the METRO DISTRICT, of approximately $6 million.

134. DEFENDANTS by words or conduct, or both, intentionally interfered with the assignment, pledge and/or disbursement obligations called for in the MFA, thus thwarted, delayed and/or prevented the METRO DISTRICT from timely repaying the $12 MM LOAN to CPW, SMP4 and RSF CORP. In so doing, DEFENDANTS interfered with the performance MFA, the foregoing promissory notes and/or loan agreements.

135. DEFENDANTS' interference with the foregoing contracts was improper.

136. As a direct and proximate result of DEFENDANTS' interference with the foregoing contracts, PLAINTIFFS have incurred general, special and consequential damages in amounts that will be proven at the time of trial.

137. Unlike the CENTERRA OPERATING AGREEMENT (which has a Delaware choice of law provision), the MFA's "Applicable Law" provision applies the laws of the State of Colorado. MFA § 17.2.

138. MFA Section 17.21, captioned Attorneys' Fees, states: "In any proceeding brought to construe, interpret or enforce any of the terms or provisions of this Agreement, the Court shall award to the Party that substantially prevails in such litigation reasonable attorney's fees, actual court costs and other expenses incurred in such litigation."

139. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

SIXTH CAUSE OF ACTION

(Intentional Inducement of Breach of Contract)

140. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 139, as though set forth fully herein.

141. The $12 MM LOAN is the product of contracts arising out of the above-described public-private partnership, which contracts take the form of promissory notes and/or other loan agreements between, by and/or among CPW, SMP4, RSF CORP and the METRO DISTRICT, among others.

142. Because the public-private partnership was at all times an integral component of PLAINTIFFS and DEFENDANTS' above-described real estate development joint venture, DEFENDANTS knew, or through the exercise of reasonable diligence should have known, about the $12 MM LOAN and underlying contracts.

143. DEFENDANTS intended to, and did, engage in wrongful and unprivileged conduct that prevented timely performance of the $12 MM LOAN and underlying contracts. Among other things, DEFENDANTS (1) wrongfully filed and prosecuted the TAX APPEALS; (2) wrongfully refused to dismiss the TAX APPEALS even after conceding that they had been filed without MCLC's written consent as expressly required in the CENTERRA OPERATING AGREEMENT; (3) threatened the RECEIVER with litigation if the RECEIVER dismissed the TAX APPEALS; and (4) otherwise engaged in acts and/or omissions designed to threaten the financial model on which the entire public-private partnership was based.

144. DEFENDANTS knew, or through the exercise of reasonable diligence should have known, that the natural and reasonably foreseeable consequence of their wrongful and unprivileged conduct would be to interfere with the timely performance of the $12 MM LOAN and underlying contracts.

145. As a direct and proximate result of the foregoing, PLAINTIFFS have incurred general, special and consequential damages in amounts to be proven at the time of trial.

146. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

SEVENTH CAUSE OF ACTION

(Fraud In The Inducement)

147. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 146, as though set forth fully herein.

148. As stated above, at all relevant times the public-private partnership concept was an integral part of PLAINTIFFS and DEFENDANTS' jointly conceived business plan. This is because, among other things, the business plan depended on:

a. The willingness and ability of the above-mentioned public agencies to approve those things necessary to enable the METRO DISTRICT's formation and timely sale of multiple bond offerings to raise funds (in excess of $85 million) to build, operate and maintain the specific Public Improvements described in, among other things, the Centerra Lifestyle Center Contribution Agreement and Improvements Agreement; and

b. The willingness of McWHINNEY and its affiliates to make short-term loans to the then-to-be formed METRO DISTRICT to ensure timely construction of certain key public infrastructure improvements necessary for the SHOPS AT CENTERRA's timely construction: *e.g.*, the entrance drive off US Highway 34, now known as Centerra Parkway.

149. But for the inclusion of bargained-for protection for the METRO DISTRICT's income and concomitant ability to issue, sell and service bonds via the METRO DISTRICT's intended pledge or hypothecation of its income as a condition to the bond issuances, McWHINNEY and its subsidiaries would never have agreed to make short-term loans to the METRO DISTRICT. Similarly, but for the inclusion of such bargained-for protection for the financial model on which the entire public-private partnership was based, McWHINNEY and its subsidiaries would never have entered into the joint venture with DEFENDANTS.

150. DEFENDANTS knew, or through the exercise of reasonable diligence should have known, of PLAINTIFFS' reliance on DEFENDANTS' good faith performance of all those duties and responsibilities necessary to protect the METRO DISTRICT's future income stream and creditworthiness. DEFENDANTS further knew, or through the exercise of reasonable diligence should have known, of PLAINTIFFS' reliance on the METRO DISTRICT's ability to timely repay short-term loans including, but not limited to, the $12 MM LOAN.

EIGHTH CAUSE OF ACTION

(Fraudulent Concealment regarding CENTERRA OPERATING AGREEMENT Section 6.2(m))

151. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 150, as though set forth fully herein.

152. In negotiating the CENTERRA OPERATING AGREEMENT Section 6.2(m) $190 per square foot threshold requirement regarding the pursuit of tax appeals, DEFENDANTS (in particular, PMLC and/or P&M) concealed and/or failed to disclose certain facts that they had a duty to disclose. Among other things, DEFENDANTS failed to disclose the facts concerning their true intent regarding Section 6.2(m). That true intent was that, if pursuit of tax appeals in violation of Section 6.2(m) would secure a perceived need, interest and/or business advantage for DEFENDANTS with respect to the transactions involving the SHOPS AT CENTERRA and/or any unrelated business venture of DEFENDANTS, DEFENDANTS would wholly disregard and actively breach Section 6.2(m) to the detriment of PLAINTIFFS.

153. The fact was material, because, among other things:

a. Its concealment in the negotiation of the CENTERRA OPERATING AGREEMENT led MCLC to enter into the CENTERRA OPERATING AGREEMENT based on reasonable reliance in the belief that PMLC/P&M would comply with Section 6.2(m).

b. MCWHINNEY and MCLC helped to facilitate the establishment of the METRO DISTRICT based on reasonable reliance in the belief that the METRO DISTRICT would have an adequate revenue stream from property taxes based on the threshold in Section 6.2(m).

c. On information and belief, PLAINTIFFS allege that the METRO DISTRICT, as an intended third party beneficiary of Section 6.2(m) incurred debt obligations based on reasonable reliance in the belief that DEFENDANTS would not pursue improper tax appeals thwarting the METRO DISTRICT'S ability to repay those debt obligations.

d. RSF CORP and MCWHINNEY affiliated entities CPW and SMP4 made loans, including the $12 MM LOAN, based on reasonable reliance in the belief that compliance Section 6.2(m) would help ensure repayment of the same.

154. DEFENDANTS concealed and/or failed to disclose their true intent regarding Section 6.2(m), thereby creating a false impression of the actual facts in the mind of the PLAINTIFFS.

155. DEFENDANTS concealed and/or failed to disclose their true intent regarding Section 6.2(m) with the intent that PLAINTIFFS would take a course of action PLAINTIFFS might not take if PLAINTIFFS knew the actual facts, *i.e.*, that DEFENDANTS had no intention of complying with Section 6.2(m) if, at any time, doing so did not suit their perceived need, interest and/or business advantage.

156. PLAINTIFFS took such action and/or decided not to act relying on the assumption that the concealed and/or undisclosed fact of DEFENDANTS' true intent regarding Section 6.2(m) did not exist or was different from what it actually was.

157. PLAINTIFFS' reliance was justified.

158. As a direct and proximate result of PLAINTIFFS' justified reliance, PLAINTIFFS have incurred general, special and consequential damages in amounts to be proven at the time of trial.

159. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

NINTH CAUSE OF ACTION

(Civil Conspiracy)

160. PLAINTIFFS refer to, and incorporate by this reference, paragraphs 1 through 159, as though set forth fully herein.

161. DEFENDANTS agreed among each other, by words or conduct, to accomplish an unlawful goal and/or accomplish a goal through unlawful means.

162. One or more unlawful acts were performed to accomplish the goal and/or one or more acts were performed to accomplish the unlawful goal, including, but not limited to, and as more fully described in the claims and causes of action above:

a. DEFENDANTS' concealment of their conflict of interest arising from the $40 MM MEZZ LOAN;

b. DEFENDANTS' improper pursuit of the TAX APPEALS in violation of CENTERRA OPERATING AGREEMENT Section 6.2(m); and

c. DEFENDANTS' acts and omissions designed to stifle and/or otherwise limit the liquidity of MCWHINNEY and its affiliate entities in order to prevent their post-foreclosure purchase of the SHOPS AT CENTERRA, and secure a management position for the same for POAG with the new owner G&I.

163. As a direct and proximate result of DEFENDANTS' conspiracy, PLAINTIFFS have incurred general, special and consequential damages in amounts to be proven at the time of trial.

164. On information and belief, PLAINTIFFS allege that DEFENDANTS' conduct was fraudulent, malicious, willful and/or wanton. Accordingly, if, after the parties' initial Colorado Rules of Civil Procedure rule 26 disclosures, PLAINTIFFS determine there is prima facie proof of a triable issue regarding punitive damages, PLAINTIFFS intend to amend this complaint pursuant to C.R.S. section 13-21-102(1.5)(a) to include a claim that PLAINTIFFS are therefore entitled to an award of punitive damages against DEFENDANTS in an amount sufficient to punish DEFENDANTS and to serve as an example to others.

PRAYER

WHEREFORE, PLAINTIFFS pray for an award in their favor and against DEFENDANTS as follows:

ON THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT REGARDING THE OPERATING AGREEMENT

1. For general, special and consequential damages in an amount to be determined at trial.

ON THE SECOND CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT REGARDING "DOUBLE AGENDA"

2. For general, special and consequential damages in an amount to be determined at trial.

ON THE THIRD CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTIES

3. For general, special and consequential damages in an amount to be determined at trial.

ON THE FOURTH CAUSE OF ACTION FOR INDEMNITY

4. For an order that DEFENDANTS must indemnify PLAINTIFFS for all damages incurred as a result of the breach of fiduciary duties as described herein.

ON THE FIFTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL OBLIGATIONS

5. For general, special and consequential damages in an amount to be determined at trial.

ON THE SIXTH CAUSE OF ACTION FOR INTENTIONAL INDUCEMENT FOR BREACH OF CONTRACT

6. For general, special and consequential damages in an amount to be determined at trial.

ON THE SEVENTH CAUSE OF ACTION FOR FRAUD IN THE INDUCEMENT

7. For general, special and consequential damages in an amount to be determined at trial.

ON THE EIGHTH CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT REGARDING CENTERRA OPERATING AGREEMENT SECTION 6.2(M)

8. For general, special and consequential damages in an amount to be determined at trial.

ON THE NINTH CAUSE OF ACTION FOR CIVIL CONSPIRACY

9. For general, special and consequential damages in an amount to be determined at trial.

ON ALL CAUSES OF ACTION

10. For reasonable attorney fees as allowed by contract, statute or other otherwise, including, but not limited to, pursuant to C.R.S. § 13-17-101, *et seq.*;

11. For reasonable costs of suit incurred herein;

12. For all interest as allowed by law; and

13. For such other and further relief as the Court may deem just and proper.

DATED: May __, 2011

By: S/_____

Charles Norton, Esq., #10633
J. Michael Keane, Esq., #35858
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JURY DEMAND

PLAINTIFFS demand a trial by a jury of six persons for all claims so triable.

- McWhinney Holding Company, LLLP's address is 2725 Rocky Mountain Ave., Suite 200, Loveland, CO 80538.
- McWhinney Centerra Lifestyle Center, LLC 's address is 2725 Rocky Mountain Ave., Suite 200, Loveland, CO 80538.
- Centerra Properties West, LLC's address is 2725 Rocky Mountain Ave., Suite 200, Loveland, CO 80538.
- SMP4 Investments, Inc.'s address is 2725 Rocky Mountain Ave., Suite 200, Loveland, CO 80538.
- Centerra Retail Sales Fee Corporation's address is 2725 Rocky Mountain Ave., Suite 200, Loveland, CO 80538.

Verification

I, Douglas Hill, as Chief Operating Officer of McWhinney Real Estate Services, Inc., a Colorado Corporation, as Manager of McWhinney Centerra Lifestyle Center, LLC, a Colorado Limited Liability Company, being of lawful age and being first duly sworn, upon oath, hereby verify that I have read the foregoing Complaint and that the allegations contained therein are true and correct to the best of my knowledge and belief.

Douglas Hill
Chief Operating Officer
McWhinney Real Estate Service, Inc., a Colorado Corporation, as Manager of McWhinney Centerra Lifestyle Center, LLC, a Colorado Limited Liability Company

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing Verified Complaint was subscribed and sworn before me on May 26, 2011, by Douglas Hill.

WITNESS my hand and official seal.

Notary Public

My commission expires: June 21, 2013

PALMER ANNE HAVINS NOTARY PUBLIC STATE OF COLORADO
My Comm. Expires June 21, 2013