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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT,

Plaintiff,

v. **CASE NO.: 2023-CA-011818-O**

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Defendant.
_____/

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, III, IV, & VI

Plaintiff, Central Florida Tourism Oversight District (the "District"), moves for summary judgment under Florida Rule of Civil Procedure 1.510 on Counts I, II, III, IV, and VI of its Corrected Complaint for Declaratory and Injunctive Relief. For each of these counts, there is no genuine dispute as to any material fact, and the District is entitled to judgment as a matter of law. In support of this motion, the District states as follows:

I. INTRODUCTION

Prior to February 27, 2023, the District was known as the Reedy Creek Improvement District ("RCID"). Mere days before the Florida Legislature reformed RCID and its governance (and changed its name to the District's), RCID and the Defendant, Walt Disney Parks and Resorts U.S., Inc. ("Disney"), entered into the two agreements that are the crux of this case: (1) the 30-year "Walt Disney World Chapter 163 Development Agreement" (the "Development Agreement"); and (2) the related "Declaration of Restrictive Covenants" (the "Restrictive Covenants") (collectively, the "Agreements"). These Agreements were the product of backroom dealings in the face of imminent and sweeping legislative reform. And they were Disney's 11th-

hour attempt to use the RCID board—which Disney had controlled for decades—to insulate itself from the authority of the incoming board.

Shortly after its appointment, the District's new board uncovered these Agreements and the host of procedural and substantive flaws that plagued them. After a public hearing, during which the District heard presentation from counsel regarding the illegality of the Agreements, the District adopted legislative findings detailing the legal defects in the Agreements and concluding that the Agreements are void *ab initio*. Disney, however, continues to insist that the Agreements are valid and enforceable, thereby creating doubt about the District's ability to govern. Consequently, the District filed this lawsuit seeking a declaratory judgment that the Agreements are void and unenforceable and an order enjoining Disney from enforcing them.

The District's operative complaint contains nine counts, each of which *independently* entitles the District to the relief sought. The District now seeks summary judgment on five of those counts:

- **Count I** (Failure to Provide Notice of Public Hearing)
- **Count II** (*Ultra Vires* Act in Violation of § 163.3223, Florida Statutes)
- **Count III** (District Lacked Authority and Jurisdiction to Enter into Development Agreement)
- **Count IV** (Violation of Article VII, Section 12 of the Florida Constitution)
- **Count VI** (Unlawful Delegation of Governmental Authority to Private Entity)

For each of these five counts, the District is independently entitled to judgment as a matter of law.

II. SUMMARY JUDGMENT STANDARD

In 2021, the Florida Supreme Court substantially reformed Florida law by "align[ing] Florida's summary judgment rule with the federal summary judgment standard." *Olsen v. First Team Ford, Ltd.*, 359 So. 3d 873, 877 (Fla. 5th DCA 2023) (citing *In re Amends. To Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021)). Florida's summary judgment rule, which by its terms applies to claim-specific summary judgment, is codified in Florida Rule of Civil Procedure 1.510. It states in pertinent part:

> **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

Fla. R. Civ. P. 1.510(a).

By now, Florida's "new" summary judgment standard is routine. In applying Rule 1.510, courts commonly recite the Florida Supreme Court's directive that maintaining consistency with the federal standard requires recognizing "'the fundamental similarity between the summary judgment standard and the directed verdict standard.'" *Olsen*, 359 So. 3d at 877 (quoting *In re Amends. To Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d at 75). "Both standards focus on whether the evidence presents a sufficient disagreement to require submission to a jury." *Id.* (quotation omitted); *see also Welch v. CHLN, Inc.*, 357 So. 3d 1277, 1278 (Fla. 5th DCA 2023) (explaining that to decide whether a genuine issue of material fact exists, "[t]he court views the evidence in a light most favorable to the non-moving party, and a genuine dispute occurs when the evidence would allow a reasonable jury to return a verdict for that party").

Applying Florida's "new" summary judgment standard to this case, the District is entitled to summary judgment on Counts I, II, III, IV, and VI of its complaint. As explained below, there is no genuine dispute as to any fact material to those counts, and the District is entitled to judgment as a matter of law. *See Olsen*, 359 So. 3d at 876 (citing Fla. R. Civ. P. 1.510(a)).

III. SUPPORTING FACTUAL POSITIONS

Several fundamental and undisputed facts entitle the District to summary judgment on five of the nine counts of its complaint, which is attached as Exhibit 1. The evidence supporting these facts is attached and consists of the following:

- Certified Copy of the Development Agreement (Exhibit 2)
- Certified Copy of the Restrictive Covenants (Exhibit 3)
- Declaration of Glenton Gilzean (Exhibit 4)
- Declaration of Susan Higginbotham (Exhibit 5)
- Declaration of Erin O'Donnell (Exhibit 6)
- Declaration of Lee Pulham (Exhibit 7)

As to the specific facts relevant to this motion, *first*, it is undisputed that RCID failed to mail the statutory notices mandated by section 163.3225, Florida Statutes. *See* Ex. 1, ¶¶ 35-46; Ex. 4, ¶ 3; Ex. 5, Attachment 1. *Second*, it is undisputed that, prior to entering into the Development Agreement, RCID never adopted an ordinance setting out the procedures and requirements for considering and entering into a development agreement, as described in section 163.3223, Florida Statutes. *See* Ex. 1, ¶¶ 47-54; Ex. 4, ¶ 4. *Third*, RCID lacked the legal authority or jurisdiction to assign to Disney the development rights within the City of Bay Lake and the City of Lake Buena Vista. It is undisputed that property within the boundaries of both of these municipalities is subject to the Development Agreement, that neither municipality

conducted public hearings on and signed the Development Agreement, and that the District did not purport to sign the Agreement on their behalf. *See* Ex. 1, ¶¶ 55-63; Ex. 2; Ex. 6, ¶ 3; Ex. 7, Attachment 2, p. 8B-2. *Fourth*, it is undisputed that through the Development Agreement, RCID purported to impose a general debt obligation on the District for capital improvement projects exceeding a twelve-month period without first securing the vote of District property holders as commanded by article VII, section 12 of the Florida Constitution. *See* Ex. 1, ¶¶ 64-70; Ex. 2, p. 3, § II(C) (Provision of Necessary Public Facilities) & Exhibit 3 (Capital Improvements Schedule); Ex. 4, ¶ 4; Exhibit 7, Attachment 2, pp. 9B-8-9. 9B-21-22, and 9B-39; Ex. 5, ¶ 3 & Attachment 1. *Fifth*, and last, it is undisputed that through multiple provisions in both Agreements, RCID purported to delegate government authority to a private entity, Disney, by giving Disney final decision-making authority over all future land use and development in the District. *See* Ex. 1, ¶¶ 105-20; Ex. 2; Ex. 3.

IV. MEMORANDUM OF LAW

The violations alleged in Counts I, II, III, IV, and VI involve no genuine dispute as to any material fact, and as explained below, entitle the District to judgment as a matter of law. For any or all of the following reasons, the Court should grant summary judgment in the District's favor and rule that the District is entitled to the requested declaratory and injunctive relief.

Count I: Failure to Provide Notice of Public Hearing

Under Florida law, "[a]greements entered into by public bodies which fail to comply with statutory requirements are void." *Palm Beach Cnty. Health Care Dist. v. Everglades Mem'l Hosp., Inc.*, 658 So. 2d 577, 581 (Fla. 4th DCA 1995); *cf. City of Panama City, Fla. V. T. & A Utils. Contractors*, 606 So. 2d 744, 747 (Fla. 1st DCA 1992) ("[T]axpayers should not be held accountable on a contract unless the contract has been entered into according to the strict letter of

the law. Otherwise, corrupt (or merely inept) public officials could subject the public to untold financial liability.") (explaining the "justification underlying" the Florida Supreme Court's holding in *Ramsey v. City of Kissimmee*, 190 So. 474 (Fla. 1939), that a contract that was not approved in the manner required by the City's charter "had never come into existence"). That black-letter principle dooms the Agreements.

To begin with, the Development Agreement was entered into and is subject to the provisions of the Florida Local Government Development Agreement Act, sections 163.3220-163.3243, Florida Statutes (the "Act"). *See* Ex. 2, pp. 1, 2, & 3, § I(C) (Authority for Agreement). Indeed, the title of the Development Agreement is the "Walt Disney World Chapter 163 Development Agreement," and the parties expressly agreed that the Development Agreement was "entered into pursuant to the authority of the [Act], which consists of Sections 163.3220-163.3243." *Id.* And absent the statutory authority of the Act, the District could not contract away its discretionary legislative power over land use and zoning. *Morgran Co. v. Orange Cnty.*, 818 So. 2d 640, 642-43 (Fla. 5th DCA 2002) (noting that Florida law has long prohibited contract zoning and that Florida allows development agreements only because they are "expressly permitted" by the Development Agreement Act). *See also Hartnett v. Austin*, 93 So. 2d 86, 89 (Fla. 1956) (recognizing "the long-established principle that a municipality cannot contract away the exercise of its police powers") *and* § 163.3220(4), Fla. Stat. ("[The Act's] intent is effected by *authorizing* local governments to enter into development agreements with developers, subject to the procedures and requirements of ss. 163.3220-163.3243.") (emphasis added). Thus, the Act is an affirmative grant of power from the Legislature to local governments, like the District, that authorizes them to contract away some of their legislative

power (subject to the Act's strict guidelines), something that local governments were prohibited from doing prior to the Act.

Most relevant to this count, the Act contains the following mandatory notice provision:

> **163.3225 Public hearings.–**
> (1) Before entering into, amending, or revoking a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, one of the public hearings may be held by the local planning agency.
> (2)(a) Notice of intent to consider a development agreement shall be advertised approximately 7 days before each public hearing in a newspaper of general circulation and readership in the county where the local government is located. ***Notice of intent to consider a development agreement shall also be mailed to all affected property owners before the first public hearing.*** The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

§ 163.3225, Fla. Stat. (emphasis added).

Disney is not the only property owner in the District. *See* Ex. 5, Attachment 1. And by its express terms, the Development Agreement affects these other property owners.

All land within the District's boundaries is subject to the "Maximum Development Program" defined in the Development Agreement. *See* Ex. 2, pp. 2, 3, § II(A) (Land Use and Project Entitlements), 4, Table 1 (Master Development Program), & 6, § II (D) (Master Development Program Changes and Master Development Rights). The Maximum Development Program establishes the maximum allowed additional development for all property located within the District, including the number of additional hotel rooms and office, retail, and restaurant space, regardless of whether that property is owned by Disney or another property owner. *Id.*

Under the terms of the Development Agreement, all development rights established by the Maximum Development Program are vested in Disney for its development of the Walt

Disney World Resort (which the Agreement defines as the "Project"[1]) on the property it owns within the District (which the Agreement defines as the "Property"[2]). Indeed, that is the purpose of the Development Agreement. Ex. 2, p. 3, § I(B) (Purpose). To accomplish this, the Development Agreement provides:

> Master Developer [previously defined in the Development Agreement as Defendant Walt Disney Parks and Resorts, U.S., Inc., and referred to hereafter for clarity as "Disney"] is the master developer for the Project. The Parties agree that all of the development rights and entitlements, including without limitation, those applicable to all additional approved development through 2032, as established by the Master Development Program identified in **TABLE 1** (collectively, the "**Master Development Rights and Entitlements**") are vested in Disney and that Disney owns and controls such Master Development Rights and Entitlements. Disney may assign portions of the Master Development Rights and Entitlements to other landowners and/or ground lessees within the RCID Jurisdictional Lands. Any proposed development that utilizes any of the Master Development Rights and Entitlements requires the prior written approval of Disney. Disney shall be responsible for maintaining an accounting of the Master Development Rights and Entitlements that have been used and the Master Development Rights and Entitlements that are unused and available for use.

Ex. 2, p. 6, § II(D)(2) (emphasis in original). As it expressly acknowledges, TABLE 1 of the Development Agreement copies the Maximum Additional Approved Development table in RCID's comprehensive plan, and it covers every additional hotel room, office space, retail space, and restaurant that can be developed within the entire jurisdiction of the District (the "RCID Jurisdictional Lands"). *See* Ex. 2, p. 3, § II(A) & p. 4, TABLE 1; Ex. 7, Attachment 1, p. 2A-12.

Thus, the Development Agreement purports to vest in Disney and give Disney ownership and control of all of the future development rights within the District's boundaries *to the exclusion of any other property owner*. *See* Ex. 2, p. 6, § II(D)(2). Pursuant to the Development Agreement, any other property owner in the District that wants to further develop its land must

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1. Exhibit 2, p. 2.

2. *Id.*, p.1 & Exhibits 1 (Legal Description of the Property) and Exhibit 2 (Location Map of the Property).

first obtain an assignment of development rights from Disney and then obtain written approval from Disney before using those development rights. *Id.* In other words, any property owner that wants to add even one more hotel room or one more square foot of retail space during the next thirty years cannot do so without first getting Disney's permission to do so. The Development Agreement clearly affects the interests of the other property owners besides Disney, such as the Four Seasons Resort owned by HHR FSO LLC. *See* Ex. 5, Attachment 1.

Nevertheless, before holding its first public hearing on the Development Agreement on January 25, 2023, RCID violated § 163.3225's mandatory notice provision. Specifically, RCID did not mail notice of intent to consider a development agreement to these other property owners. *See* Ex. 4, ¶ 3. By the plain terms of the statute, therefore, the Development Agreement is void and unenforceable. *See* § 163.3225(2)(a).

Florida decisions addressing comparable mandatory statutory notice requirements underscore that the prior board's failure to strictly comply with the statutory notice requirements renders the Agreement void *ab initio*. *See, e.g.*, *Parsons v. City of Jacksonville*, 295 So. 3d 892, 895 (Fla. 1st DCA 2020) (defining "void ordinances" to include "ordinances adopted without proper notice or legislative authority"); *Coleman v. City of Key West*, 807 So. 2d 84, 86 (Fla. 3d DCA 2001) (holding an ordinance that failed to comply with the applicable statutory notice requirements was "null and void"); *City of Jacksonville v. Huffman*, 764 So. 2d 695, 696 (Fla. 1st DCA 2000) ("[S]trict compliance with statutory notice requirements is mandatory . . . ."); *Webb v. Town Council of Town Hilliard*, 766 So. 2d 1241, 1244 (Fla. 1st DCA 2000) ("Attempts of local government to grant zoning changes without compliance with procedural requirements have been deemed invalid and void."). Because it is undisputed that RCID failed to mail the

required notice to all affected property owners before the first public hearing on the proposed Development Agreement, that Agreement is void and unenforceable.

Turning to the Restrictive Covenants, by their own terms, the Restrictive Covenants expressly and entirely depend upon the Development Agreement. Indeed, the only consideration for the Restrictive Covenants consists of "the commitments made by [Disney] under the Development Agreement." *See* Ex. 3, p. 2. Because the Development Agreement is void and unenforceable, the Restrictive Covenants are likewise void and unenforceable. *See, e.g.*, *La Rosa Del Monte Express, Inc. V. G.S.W. Enter. Corp.*, 483 So. 2d 472, 473 (Fla. 3d DCA 1986) (recognizing that when "the consideration wholly fail[s]" "the contract [is] invalid") (applying *Marks v. Fields*, 36 So. 2d 612 (Fla. 1948)).

The District is therefore entitled to judgment as a matter of law on Count I.

Count II: *Ultra Vires* Act in Violation of § 163.3223, Florida Statutes

The Act provides that "[a]ny local government may, *by ordinance*, establish procedures and requirements, as provided in ss. 163.3220-163.3243, to consider and enter into a development agreement." § 163.3223, Fla. Stat. (emphasis added). The title of § 163.3223, "Applicability," itself indicates that the Act only *applies* when each of the conditions in § 163.3223 is satisfied, including the local ordinance establishing procedures and requirements. *State v. Demons*, 351 So. 3d 10, 16 (Fla. 4th DCA 2022) ("The 'title-and-headings' canon means that 'the title of a statute or section can aid in resolving an ambiguity in the legislation's text.'" (quoting *I.N.S. v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 189 (1991)). Thus, reading this provision in context of the Act, *see Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 946-47 (Fla. 2020), confirms that a local government's enactment of procedures is a

condition precedent to a local government having the authority to enter into a development agreement.

To be clear, the Act does not compel a local government to enter into development agreements—or even to enter negotiations with a developer who seeks a development agreement. But if a local government decides that it wants to apply the Act and thereby take advantage of the Legislature's authorization of development agreements as an exception to the default prohibition on contract zoning, the local government must satisfy all the conditions in § 163.3232 and "by ordinance, establish procedures and requirements . . . to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction." In other words, a local government cannot enter into a development agreement on an *ad hoc* basis, as RCID did here, but instead must establish and follow a pre-existing set of procedures and requirements unique to that local government that provides consistency and transparency in the approval process.

This reading of the plain text and context of § 163.3232 avoids reducing the statutory provision to mere surplusage, which courts may not do. *See Hechtman v. Nations Title Ins. of New York*, 840 So. 2d 993, 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage."). It is also consistent with the overwhelming scholarship on this issue[3] and the practice of many

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3. *See* Julian C. Juergensmeyer, 3 FLORIDA LAND USE LAW 3 & n.11, 5 n.14 (2d ed. 1998) (referring to Section 163.3223 as the "actual authorization" for local governments to enter into development agreements and concluding that Section 163.3223 "implies that [a] local government must enact ordinances establishing procedures and requirements it will follow when entering into development agreements if it wishes to enter into agreements under the Act"); Patricia Grace Hammes, *Development Agreements: The Intersection of Real Estate Finance and Land Use Controls*, 31 U. BALT. L. REV. 119, 155 n.192 (1993) (concluding that Section

local governments since the Act became law in 1986. *See, e.g.*, Orange County Code Sec. 30-1[4]; Hillsborough County Land Development Code Part 5.05.00[5]; Pompano Beach Zoning Code 155.2428.[6] And Florida courts have long held that, in the context of a statutory instruction to a government official to act, the word "may" is mandatory.[7]

163.3223 "requir[es] that [a] local government establish ordinances regulating procedures and requirements governing development agreements"); David L. Callies & Julie A. Tappendorf, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining For Public Facilities After Nollan And Dolan*, 51 CASE W. RES. L. REV. 663, 682-83 & n.83 (2001) ("[T]he Hawaii, California, and Florida statutes appear to require that local governments desiring to negotiate development agreements first pass a local resolution or ordinance to that effect."); David L. Callies & Glenn H. Sonoda, *Providing Infrastructure For Smart Growth: Land Development Conditions*, 43 IDAHO L. REV. 351, 392-93 & n.240 (2007) (same); 27 & n.138 Michael B. Kent, Jr., *Forming a Tie That Binds: Development Agreements in Georgia and the Need For Legislative Clarity*, 30 ENVIRONS ENVTL. L. & POL'Y J. 1 (2006) (citing to Section 163.3223 as an example of legislation which "require[s] that local governments, in advance of entering into development agreements, adopt an 'enabling ordinance'" in order to "activate the local government's authority" and "minimize the danger of ad hoc transactions").

4. Available at: https://library.municode.com/fl/orange_county/codes/code_of_ordinances?nodeId=PTIIORCOCO_CH30PLDE_ARTXICOPLVERI_DIV1GE_S30-341COPOPLUT

5. Available at: https://library.municode.com/fl/hillsborough_county/codes/land_development_code?nodeId=ARTVDEOP_PT5.05.00DEAG&showChanges=true&wdLOR=c014BE32A-5E36-E646-A64F-C57DDF0EB033

6. Available at: [redacted]

7. *E.g., Jones v. State*, 17 Fla. 411, 417 (1880) ("According to the established rules for construing statutes this [use of 'may'] is mandatory. When a statute says a thing may be done, which is for the public benefit by public officers, it shall be construed that it must be done."); *Mitchell v. Duncan*, 7 Fla. 13, 21 (1857) ("Where a statute directs the doing of a thing for the sake of justice, the word may means the same as shall."); *Matos v. State*, 359 So. 3d 794, 798 (Fla. 4th DCA 2023) ("[T]he use of the word 'may' in the beginning of the subsection does not provide the trial court with discretion as to what sentence to impose where the Legislature has mandated a specific sentence."); *Agile Assurance Grp., Ltd. v. Palmer*, 147 So. 3d 1017, 1018 (Fla. 2d DCA 2014) (recognizing the word "may" is "not always" read as permissive and that reading the contractual language "*may* be *instituted* exclusively" "to be mandatory gives effect to both [of the emphasized] terms") (emphasis added). *See also* § 57:12. Directions to public

Applying these principles here, the statutory phrase "may, by ordinance," can only be fairly read in context to *require* that any local government that chooses to consider and enter into development agreements under the Act *must* first adopt an ordinance that establishes the procedures and requirements, as prescribed by the Act itself, for doing so. Reading the statute at issue here as authorizing a local government to consider and enter development agreements under the Act without first having adopted the ordinance as mandated by the Act would impermissibly fail to give effect to all statutory terms as they are used in the context of the statute—contrary to Florida law. *See Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 33 (Fla. 1st DCA 2008) ("[I]f reading 'may' as permissive leads to an unreasonable result or one contrary to legislative intent, courts may look to the context in which 'may' is used and the legislature's intent to determine whether 'may' should be read as a mandatory term.").

It is undisputed that RCID purported to enter into the Development Agreement under the Act, *see* Ex. 2, p. 3, § I(C) (Authority for Agreement), but never enacted an ordinance as required by the Act that establishes the procedures and requirements to be followed by the District in considering and entering a development agreement. *See* Ex. 4, ¶ 4. Accordingly, RCID lacked authority to enter into the Development Agreement, making the Development Agreement *ultra vires* and thus void. *See Edwards v. Town of Lantana*, 77 So. 2d 245, 246 (Fla. 1955) ("Inasmuch as the contract was ultra vires [because "the town acted beyond its prescribed power"] it was wholly void."); *P.C.B. P'ship v. City of Largo*, 549 So. 2d 738, 740 (Fla. 2d DCA 1989) (recognizing that an *ultra vires* contract is unenforceable); *see also Black's Law*

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officers, 3 Norman J. Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 57:12 (8th ed.) ("Consequently, statutes usually are mandatory where they provide that public officers do certain acts or exercise certain power or authority and private rights or the public interest require the doing of such acts or the exercise of such power or authority, *whether they are phrased in imperative or permissive terms*." (emphasis added)).

Dictionary (11th ed. 2019) (defining "ultra vires" to mean "[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law").

And, as noted above, because the Restrictive Covenants, by their own terms, expressly and entirely depend upon the illegal Development Agreement, *see* Ex. 3, p. 2, they are likewise void and unenforceable. *See, e.g.*, *La Rosa*, 483 So. 2d at 473 (applying *Marks*, 36 So. 2d 612).

Accordingly, the District is entitled to judgment as a matter of law on Count II.

Count III: District Lacked Authority and Jurisdiction to Enter into the Development Agreement for Property Within Municipalities

The Development Agreement purports to vest in Disney all of the development rights within the District so that Disney can use them for the continued development of the Walt Disney World Resort on the property that Disney owns within the District. The Development Agreement also provides that any local laws and policies governing development in effect on the date of its execution (i.e., February 8, 2023) govern development under the Agreement for its duration. *See* Ex. 2, p. 7, § IV (Governing Laws and Policies).

Two municipalities—the City of Bay Lake and the City of Lake Buena Vista—are located within the District's boundaries. *See* Ex. 7, Attachment 1, p. 8B-2. The majority of the property located within the District—including the majority of Disney's property—is located within the municipalities' boundaries. *See id.* & pp. 2B-6, 2B-8; *see also* Ex. 2, Exhibit 2 (Location Map). When RCID approved and executed the Development Agreement, Bay Lake and Lake Buena Vista had exclusive authority over comprehensive planning, land development regulations, development orders, and building permitting within their boundaries, while RCID had exclusive authority over the same matters *within* the District's boundaries but *outside* of

these municipalities' boundaries.[8] Thus, when it executed the Development Agreement, RCID had no authority or jurisdiction to approve or regulate development-related activities on property located within the municipalities' boundaries.

Yet, as noted, the Development Agreement purports to apply to property located *inside* the municipal boundaries of Bay Lake and Lake Buena Vista and purports to assign to Disney all of the development rights within the District—regardless of whether such rights are held or regulated by the District, by Bay Lake, or by Lake Buena Vista. *See* Ex. 2, p. 1 & Exhibits 1 and 2, & pp. 2-7, §§ I (Purpose and Authority) and II (Approved Land Use and Development Rights). Neither Bay Lake nor Lake Buena Vista held public hearings on and signed the Development Agreement; neither joined in the Development Agreement as a party thereto; and RCID did not sign the agreement on their behalf. *See* Ex. 2.

Because RCID lacked authority and jurisdiction to approve or regulate proposed development within the boundaries of Bay Lake or Lake Buena Vista, and because these municipalities did not conduct public hearings on and join as parties to the Development Agreement, the Development Agreement and the Restrictive Covenants that depend upon it are void and unenforceable as a matter of law. *See supra* p. 5-14 (strict compliance with the Act is necessary; *ultra vires* acts are void).

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8. The act governing RCID that was in effect at the time of the Development Agreement authorized RCID to exercise its planning, building code, development, and zoning powers within the city limits of any municipality within RCID, but further provided that where a municipality has "like powers" under its charter or law, "*the authority of such municipal governing body with respect to the matters herein provided for shall be exclusive within such city limits*." Ch. 67-764, §23(2), Laws of Fla. (emphasis added).

The charters of the City of Bay Lake and the City of Buena Vista each provide that the municipality has power over comprehensive planning, zoning, land development regulation, development orders, building permits, and building codes within their respective city limits. Ch. 67-1104, §§ 56, 61, Laws of Fla. (City of Bay Lake); ch. 67-1965, §§ 56, 61, Laws of Fla. (City of Lake Buena Vista).

Moreover, the Development Agreement's severability provision, *see* Ex. 2, p. 8, § XI (Severability), cannot salvage the Agreement. The severability provision provides:

> XI. SEVERABILITY. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court (or other government body) of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

Id. By its plain terms, the severability provision cannot even apply because it is only triggered if a "provision" "or the application [of a provision] to any person or circumstances" is "held invalid or unenforceable." In this case, the entire Development Agreement is an illegal assertion of jurisdiction and authority by RCID over property lying within the municipalities' borders. Thus, it is the Development Agreement in its entirety, not merely a "provision . . . or the application thereof," that is invalid and unenforceable.

But even if the severability provision arguably could be triggered on the facts of this case, Florida law precludes using a severability provision to gut a contract. The Florida Supreme Court has "set the following general standard for determining whether a[n] [illegal] contractual provision is severable from the whole":

> As to when an illegal portion of a bilateral contract may or may not be eliminated leaving the remainder of the contract in force and effect, the authorities hold generally that a contract should be treated as entire when, by a consideration of its terms, nature, and purpose, each and all of its parts appear to be interdependent and common to one another and to the consideration. Stated differently, a contract is indivisible where the entire fulfillment of the contract is contemplated by the parties as the basis of the arrangement. On the other hand, a bilateral contract is severable where the illegal portion of the contract does not go to its essence, and where, with the illegal portion eliminated, there still remains of the contract valid legal promises on one side which are wholly supported by valid legal promises on the other.

> Whether a contract is entire or divisible depends upon the intention of the parties. And this is a matter which may be determined by a fair construction of the terms and provisions of the contract itself, and by the subject matter to which it has reference.

Shotts v. OP Winter Haven, Inc., 86 So. 3d 456, 475 (Fla. 2011); *see also Gold, Vann & White, P.A. v. Friedenstab*, 831 So. 2d 692, 696 (Fla. 4th DCA 2002) ("A bilateral contract is severable where the illegal portion of the contract does not go to its essence and, where, with the illegal portion eliminated, there still remain valid legal promises on one side which are wholly supported by valid legal promises on the other.").

Applying this rule, it is apparent from the terms and provisions of the Development Agreement that the property subject to the municipalities' jurisdiction cannot be severed from the Development Agreement without gutting the essence of the Agreement itself. The "essence" of the Development Agreement is its purpose, which the Development Agreement defines as follows:

> The purpose of this Agreement is three-fold:
>
> 1) It will provide a binding written agreement between the Parties for the long-term development of the Property and Project in order to vest the Maximum Development Program and to provide Certainty to Master Developer [i.e., Disney]; and
>
> 2) It will stipulate the provision of necessary public facilities by RCID that will be in place concurrent with the demand of the Maximum Development Program as it is constructed; and
>
> 3) It will provide clarification for how the Comprehensive Plan and RCID LDRs will apply to the Project, both now and in the future.

Ex. 2, p. 3, § I(B) (Purpose). And it accomplishes that purpose by, among other things: (1) vesting in Disney all of the development rights under the Maximum Development Program for Disney to develop the Walt Disney World Resort, to the exclusion of all other property owners within the District's boundaries, *see, e.g.* Ex. 2, p. 6, § II(D) (Master Development Program

Changes and Master Developer Rights); (2) obligating the District to fund, design and construct "necessary public facilities" to meet the demand of the Maximum Development Program as it is constructed by Disney, *see, e.g.*, Ex. 2, p. 3, § II(C) (Provision of Necessary Public Facilities); and (3) providing that the Development Agreement will control over any conflict between its terms and the District's comprehensive plan and land development regulations. *See, e.g.*, Ex. 2, p. 7, § IV (Governing Laws and Policies).

Vesting in Disney the universe of development rights within the District, committing the District to finance and construct infrastructure relating to Disney's development activities, and removing the District's regulatory discretion over all of Disney's property located within the District is the purpose of the Development Agreement. Inclusion of the property within the municipalities' boundaries is nondivisible from that purpose and not subject to severability. *Cf. Wilderness Country Club P'Ship, Ltd. v. Groves*, 458 So. 2d 769, 772 (Fla. 2d DCA 1984) (holding that a condominium recreational facilities sublease with an invalid rent escalation clause was "nondivisible" and reasoning that the periodic increases under the illegal escalation clause plus the base rent that would be left without the clause "relate to one object or purpose, the use and enjoyment of all recreational facilities"). This is underscored by the undisputed fact that the vast majority of Disney's property (i.e., the "Property" referred to in the Development Agreement), including the four primary theme parks, two water parks, and most of Disney's hotels, lies within the boundaries of Bay Lake and Lake Buena Vista, *see supra* at 14-15. There can be no serious debate that severing that portion of Disney's property from the Development Agreement vitiates the essence of the Agreement. Simply put, the land within the boundaries of Bay Lake and Lake Buena Vista cannot be severed from the Development Agreement without

defeating the express "three-fold" purpose of the Development Agreement. Ex. 2, p. 3, § I(B) (Purpose).

As the Restrictive Covenants expressly and entirely depend upon the unconstitutional Development Agreement, *see* Ex. 3, p. 2, they are likewise void and unenforceable. *See, e.g.*, *La Rosa*, 483 So. 2d at 473 (applying *Marks*, 36 So. 2d 612).

Accordingly, the District is entitled to judgment as a matter of law on Count III.

Count IV: Violation of Article VII, Section 12 of the Florida Constitution

The Development Agreement requires the District to levy and collect ad valorem taxes from District taxpayers to finance new general obligation bonds used to fund certain capital improvement projects exceeding a twelve-month period. *See* Ex. 2, p. 3, § II(C) (Provision of Necessary Public Facilities) & Exhibit 3 (Capital Improvements Schedule). The Development Agreement's Capital Improvement Schedule is a copy of the "Capital Improvement Element of the [District's] Comprehensive Plan" and is "incorporated" into the Development Agreement. *Id.*; *see also* Ex. 7, Attachment 1, Part 9 (Capital Improvement Element). The infrastructure projects listed in Capital Improvement Schedule "will be funded, designed and constructed or caused to be constructed" by the District "[i]n order to facilitate the implementation of and provide adequate levels of service for the Maximum Development Program." Ex. 2, p. 3, § II(C).

For example, Table 9-7 of the Capital Improvement Schedule is a schedule of the road projects that the Development Agreement obligates the District to fund, design, and construct or cause to be constructed. Table 9-7 lists the "Funding Source" for each project; all the projects on Table 9-7 will be funded using bond funds, and Projects 4, 5, 6, and 7 (all of which are to start in fiscal year 2025) will be funded with new bond funds. The total amount of new bond funds

required for Projects 4, 5, 6, and 7 is $304,000,000.00 through fiscal year 2027, with an additional $240,000,000.00 projected in fiscal years beyond that. In its Comprehensive Plan, the District acknowledged that it would have to issue additional general obligation bonds secured by its ad valorem tax revenue in order to pay for these road projects. *See* Ex. 7, Attachment 2, pp. 9B-8-9, 9B-21-22, and 9B-39.

Article VII, section 12 of the Florida Constitution allows the District to issue such general obligation bonds to finance capital projects that are payable from the District's ad valorem taxation and that mature more than twelve months after their issuance—but only when approved by "vote of the electors who are owners of freeholds therein not wholly exempt from taxation." Art. VII, § 12, Fla. Const. And while the District's Comprehensive Plan sets forth a *plan* to issue such bonds, the District always retained the discretion to proceed forward with that plan.

Now, however, the Development Agreement purports to require the District to fund, design, and construct these road projects. And that can only be done by requiring the District to issue new general obligation bonds secured by the District's ad valorem tax revenues. Because the Development Agreement would eliminate the District's "full budgetary flexibility" and instead "compel" the District to pledge ad valorem taxes to comply with the Agreement, it creates a general obligation debt of the District for capital improvement projects exceeding a twelve-month period. *Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So. 2d 1012, 1026 (Fla. 2000) (quotations omitted) (recognizing that a nonsubstitution clause in a long-term agreement pledging funds from ad valorem taxes entered into without voter referendum violates article VII, section 12 and is unenforceable); *see also City of Oldsmar v. State*, 790 So. 2d 1042, 1051 (Fla. 2001) (recognizing the City's ability to raise, in a proceeding separate from a statutory bond

validation proceeding, "the issue of whether the [Joint Project Agreement between the City and the Florida Department of Transportation] is a long-term bond or certificate of indebtedness subject to and violative of article VII, section 12 of the Florida Constitution"). RCID, however, failed to obtain the vote required to comply with article VII, section 12. *See* Ex. 4, ¶ 4; Ex. 5, ¶ 3 & Attachment 1.

Moreover, because the Development Agreement's unconstitutional pledge is inseparable from the Agreement's express purpose to provide for the "long-term development of the Property and Project in order to vest the Maximum Development Program and to provide certainty to [Disney]" and to provide "necessary public facilities by RCID that will be in place concurrent with the demand of the Maximum Development Program as it is constructed," Ex. 2, p. 3, § I(B) (Purpose), the entire Development Agreement is unenforceable. *See Frankenmuth*, 769 So. 2d at 1026 n.15 (recognizing that if the provision of an agreement that violates article VII, section 12 "is not severable from the remainder of the agreement, then the entire agreement must be invalidated as violative of article VII, section 12"). There is no other way to parse the Development Agreement. Not only are these capital improvement projects identified as the purpose of the Development Agreement, but the Agreement further provides that the projects are "necessary" to "facilitate the implementation of and provide adequate levels of service for the Maximum Development Program." Ex. 2, p. 3, § II(C) (Provision of Necessary Public Facilities).

As the Restrictive Covenants expressly and entirely depend upon the unconstitutional Development Agreement, *see* Ex. 3, p. 2, they are likewise void and unenforceable. *See, e.g.*, *La Rosa*, 483 So. 2d at 473 (applying *Marks*, 36 So. 2d 612).

Accordingly, the District is entitled to judgment as a matter of law on Count IV.

Count VI: Unlawful Delegation of Governmental Authority to Private Entity

As noted above, Florida law prohibits a local government from contracting away its discretionary legislative power. *See Morgran Co. v. Orange Cnty.*, 818 So. 2d at 643; *see also Hartnett*, 93 So. 2d at 89 (recognizing "the long-established principle that a municipality cannot contract away the exercise of its police powers"). Thus, for example, the practice of "contract zoning"—whereby a local government agrees with a private landowner to "rezone property for consideration"—"has long been disapproved." *Morgran*, 818 So. 2d at 643; *see also P.C.B. P'ship*, 549 So. 2d at 741 (holding contract purporting to restrict City's decision-making authority on development issues was *ultra vires* and therefore unenforceable). Addressing the prohibited practice of contract zoning in the context of a development agreement, the Fifth District held in *Morgran* that by obligating itself to support the private landowner's rezoning request, the County had "invalidly contracted away its discretionary legislative power as the final decision-making authority." 818 So. 2d at 643; *see also Hartnett*, 93 So. 2d at 89 ("If each parcel of property were zoned on the basis of variables that could enter into private contracts then the whole scheme and objective of community planning and zoning would collapse."); *Chung v. Sarasota Cnty.*, 686 So. 2d 1358, 1360 (Fla. 2d DCA 1996) (explaining that hearings on zoning amendments would not satisfy due process and instead "would be a pro forma exercise since the County has already obligated itself to a decision" by entering a settlement agreement that obligated it to rezone the private landowner's property).

Here, Disney's Agreements are even more egregious than contract zoning, which Florida courts hold impermissible. The Agreements do not merely freeze in place existing land development regulations applicable to Disney's property. Instead, they substitute Disney for the District as the final authority on all land use decisions for all landowners within the District

(including the District itself)—for the next 30 years. And because the very point of the Agreements is to cede the entirety of the District's authority to Disney and simultaneously remove all the District's discretion, *see* Ex. 2, §§ I, II & IV, severability is not available. *See Shotts*, 86 So. 3d at 475. As a result, the Agreements are void and unenforceable.

A. The Development Agreement

The Development Agreement violates this black-letter law by purporting to give Disney final decision-making authority in three main ways—any of which constitutes an unlawful delegation that voids the agreement and entitles the District to judgment as a matter of law.

First, the Development Agreement elevates itself above binding legislative acts by providing that it "shall prevail" if there is any conflict between the Development Agreement and the joint comprehensive plan or the District's land development regulations. Ex. 2, p. 7, § IV (Governing Laws and Policies). In doing so, the Development Agreement also runs afoul of the statutory requirement for any development agreement to be "consistent with the local government's comprehensive plan and land development regulations." § 163.3227(1)(g), Fla. Stat.

Second, the Development Agreement cedes to Disney governmental functions that the Florida Legislature expressly authorized RCID to perform, including the power to regulate every other landowner within the District. For example, the Development Agreement assigns "all of the development rights and entitlements . . . applicable to all additional approved development through 2032" within the District to Disney. Ex. 2, p. 6, § II(D)(2). As a result, the Development Agreement purports to require any other landowner in the District to first obtain, at Disney's discretion, the necessary development rights from Disney and then obtain Disney's "prior written approval" before undertaking any such development. *Id.* But the Florida

Legislature empowered RCID to "[r]egulate, restrict and determine . . . the density of population" and "the use of buildings, structures, land and water for . . . any and all other purposes." Ch. 67-764, § 23(8)(a), Laws of Fla.[9] The Development Agreement further gives Disney the authority to set maximum building heights for all landowners in the District. *See* Ex. 2, p. 3, § II(B) (Maximum Building Heights). Yet the Florida Legislature empowered RCID to set building heights. *See* ch. 67-764, § 23(8)(a), Laws of Fla. ("[T]he Board of Supervisors shall have the power to: . . . Regulate, restrict and determine the location, *height*, number of stories . . . of buildings and other structures . . . .") (emphasis added).[10] The Development Agreement thus purports to make Disney the zoning authority for itself and all other property owners within the District, thereby expressly exceeding the permissible scope of development agreements, which only allow a local government and a developer to specify "development uses … and building intensities and height" for any real property in which the developer has "a legal or equitable interest." §§ 163.3223, 163.3225(2)(b), 163.3227(1)(c), Fla. Stat.

Third, the Development Agreement eliminates the District's authority to periodically reassess its planned projects. Instead, it requires the District to "fund[], design[] and construct[]" public facilities to accommodate Disney's future growth, and it further requires the District to commit future ad valorem tax revenues to do so. Ex. 2, p. 3, § II(C) and *supra* at 19-20. And it does so contrary to Florida law mandating the periodic reassessment by local governments of their planned projects. For example, section 163.3177(3)(b), Florida Statutes, requires the District to review the capital improvements element of its comprehensive plan "on an annual

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9. The District's new charter likewise empowers it to perform the same functions. *See* ch. 2023-5, § 9(a), Laws of Fla.

10. *Id.*

basis," and authorizes the District to update the 5-year capital improvement schedule by way of ordinance, rather than by amendment to the comprehensive plan itself. The Development Agreement's decades-long lock-in of the District's capital improvement schedule and use of future ad valorem tax revenue violates this statutory review and updating schedule.

Further, section 163.3191(1), Florida Statutes, directs a local government to "evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements" "[a]t least once every 7 years." The same statute contains another provision that before July 1, 2023, "encouraged" but now *requires* local governments "to comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions." *Compare* § 163.3191(3), Fla. Stat. (2022) ("Local governments *are encouraged to* comprehensively evaluate and, as necessary, update comprehensive plans . . . .") (emphasis added), *with* ch. 2023-31, § 2, Laws of Fla. ("Local governments *shall* comprehensively evaluate and, as necessary, update comprehensive plans . . . .") (emphasis added). But instead of preserving the District's ability to adjust its planned projects as needed, the Development Agreement requires the District to give priority to Disney's growth and impermissibly yields basic land use functions to Disney.

B. The Restrictive Covenants

Like the other Counts addressed above, the invalidity of the Development Agreement extends to the Restrictive Covenants that, by their own terms, expressly and entirely depend upon the validity of the Development Agreement. *See* Ex. 3, p. 2. But, with respect to Count VI, the Restrictive Covenants are independently void because they also unlawfully delegate governmental authority to Disney in several ways. Specifically, they restrict the use of the District's property to the uses previously agreed to by Disney. *See* Ex. 3, p. 3, § 2.1 (Permitted

Uses). They allow Disney to censor the District by precluding the District from engaging in speech on its own property about anything other than the District. *Id.*, p. 3, § 2.2 (Prohibited Uses). And they prohibit the District from altering its own property absent Disney's review and consent. *Id.*, pp. 3-4, § 3 (Design Review of Improvements and Alterations). In other words, Disney now purports to control what the government can do with and say on its own property.

Because by their plain terms the Agreements improperly delegate governmental authority to Disney in direct contravention of black-letter Florida law, they are void, and the District is entitled to summary judgment on Count VI.

V. CONCLUSION

That Disney, a private entity, effectively governed itself through RCID for decades does not change the fact that RCID was a local government. As such, RCID was required to comply with Florida constitutional, statutory, and common law in exercising its governmental functions. The undisputed facts show that RCID failed to so in several key respects that render the Agreements void and unenforceable as a matter of law. Accordingly, the District respectfully requests that the Court enter summary judgment on Counts I, II, III, IV, and VI of the District's Corrected Complaint for Declaratory and Injunctive Relief, and any other relief that the Court deems just and proper.

Dated: August 15, 2023

Respectfully submitted,

/s/ Alan Lawson

ALAN LAWSON (FBN: 709591)
PAUL C. HUCK JR. (FBN: 968358)
JASON GONZALEZ (FBN: 146854)
LAWSON HUCK GONZALEZ, PLLC
215 S. Monroe Street, Suite 320
Tallahassee, Fl 32301
850-825-4334
alan@lawsonhuckgonzalez.com
paul@lawsonhuckgonzalez.com
jason@lawsonhuckgonzalez.com

DAVID THOMPSON
PETE PATTERSON
JOSEPH MASTERMAN (FBN: 1004179)
MEGAN WOLD
COOPER & KIRK
1523 New Hampshire Ave., N.W.,
Washington, D.C. 20036
202-220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
jmasterman@cooperkirk.com
mwold@cooperkirk.com

MICHAEL A. NARDELLA (FBN: 51265)
JOHN J. BENNETT, JR. (FBN: 98275)
NARDELLA & NARDELLA, PLLC
135 W. Central Blvd., Ste. 300
Orlando, FL 32801
407-966-2680
mnardella@nardellalaw.com
jbennett@nardellalaw.com
nmacdougall@nardellalaw.com

Counsel for Central Florida Tourism Oversight District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of Court on August 15, 2023, by using the Florida Courts eFiling Portal, which will provide electronic notification to all counsel of record in this action, as set forth herein:

Adam Losey (FBN: 69658)
M. Catherine Losey (FBN: 69127)
LOSEY PLLC
1420 Edgewater Drive
Orlando, Florida 32804
alosey@losey.law
closey@losey.law
docketing@losey.law

Alan Schoenfeld (NY Bar No: 4500898)
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 1007
alan.schoenfeld@wilmerhale.com

Daniel M. Petrocelli (CA Bar No.: 97802)
O'MELVENY & MYERS LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
dpetrocelli@omm.com

Jonathan D. Hacker (DC Bar No.: 456553)
Stephen D. Brody (DC Bar No.: 459263)
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, D.C. 20006
jhacker@omm.com
sbrody@omm.com

David Thompson
Pete Patterson
Joseph Masterman (FBN: 1004179)
Megan Wold
COOPER & KIRK
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
jmasterman@cooperkirk.com
mwold@cooperkirk.com

Alan Lawson (FBN: 709591)
Paul C. Huck Jr. (FBN: 968358)
Jason Gonzalez (FBN: 146854)
LAWSON HUCK GONZALEZ, PLLC
215 S. Monroe Street, Suite 320
Tallahassee, Fl 32301
alan@lawsonhuckgonzalez.com
paul@lawsonhuckgonzalez.com
jason@lawsonhuckgonzalez.com
leah@lawsonhuckgonzalez.com
stephanie@lawsonhuckgonzlez.com
michelle@lawsonhuckgonzalez.com

Michael A. Nardella (FBN: 51265)
John J. Bennett, Jr. (FBN: 98275)
NARDELLA & NARDELLA, PLLC
135 W. Central Blvd., Ste. 300
Orlando, FL 32801
mnardella@nardellalaw.com
jbennett@nardellalaw.com
nmacdougall@nardellalaw.com

/s/ Alan Lawson
ALAN LAWSON