

CAUSE NO. DC-19-17958

DAN LOWE , an individual, VENTURE	§	
WEST DEVELOPMENT, LLC , a Kansas	§	
limited liability company, and VENTURE	§	
WEST II, LC , a Missouri limited liability	§	
company,	§	
	§	
PLAINTIFFS,	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	
MICHAEL EBERT , an individual, SCOTT	§	DALLAS COUNTY, TEXAS
REHORN , an individual, RED	§	
DEVELOPMENT, LLC , a Missouri limited	§	
liability company, RED CONSOLIDATED	§	
HOLDINGS, LLC , a Delaware limited	§	
liability company, RED PRINCIPALS, LLC ,	§	____TH JUDICIAL DISTRICT
a Delaware limited liability company, RED	§	
DPF CORPORATE HOLDINGS, INC. , a	§	
Delaware corporation, RED DPF	§	
HOLDINGS, LLC , a Delaware limited	§	
liability company, E&R HOLDINGS, LLC , a	§	
Delaware limited liability company, and DOES	§	
1-25 ,	§	
	§	
DEFENDANTS.	§	

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiffs Dan Lowe (“Lowe”), Venture West Development, LLC (“Venture West”), and Venture West II, LC (“Venture II,” and together with Venture West, the “Venture West Entities,” and collectively with Lowe, “Plaintiffs”), by and through their undersigned counsel, file this Original Petition (the “Petition”) against Defendants Michael Ebert (“Ebert”); Scott Rehorn (“Rehorn”); RED Development, LLC (“RED Development”); RED Consolidated Holdings LLC (“RCH”); RED Principals, LLC (“RED Principals”); RED DPF Corporate Holdings, Inc. (“RDCH”); RED DPF Holdings, LLC (“RDH”); E&R Holdings, LLC (“E&R”); and DOES 1 through 25 (collectively, “Defendants”). Plaintiffs respectfully allege as follows:

I. NATURE OF THE ACTION

1. This is an action by the founder of a company who has seen his \$62.9 million stake in the company he built dwindle to approximately \$14.5 million in just seven years. During that time, his former partners have refused to provide documents or information that might explain this precipitous decline in value—documents and information that the founder is entitled to under contract and applicable law. The reason for this stonewalling has only recently come to light: those former partners, Defendants Michael Ebert and Scott Rehorn, are self-dealing with company assets to unjustly enrich themselves, to the detriment of the founder, Plaintiff Dan Lowe, and others. In furtherance of their scheme, Ebert and Rehorn have set into motion a fraud involving at least three prominent commercial real estate projects—including one here in Dallas—that are owned or being developed by RED Development and its affiliated entities, in which Lowe and his Venture West Entities are equity owners. Lowe and the Venture West Entities accordingly seek relief from this Court for damages, injunctive, and other relief against Ebert, Rehorn, and the other Defendants for breach of contract, breach of fiduciary duty, attorneys’ fees, and other claims.

2. Almost thirty years ago, Lowe, Ebert, and Rehorn founded RED Development, a commercial real estate acquisitions, management, development, and leasing company. RED Development operates across the United States, including in Dallas, Texas, where it has a significant investor in the Dallas Police and Fire Pension System (“DPF”) and recently developed a mixed-use project: The Union Dallas on North Field Street.

3. Lowe was a Managing Partner of RED Development until 2012, when he decided to leave his active role at the company. Because he still owned a substantial interest in RED Development—approximately 14% of the business, or over \$62 million at that time—Lowe and Defendants negotiated a comprehensive employment separation agreement: the “Omnibus Agreement.” Under that agreement, Lowe would continue to (1) receive documents and

information—including financials—provided to other owners, (2) receive distributions with the other owners, and (3) be treated the same as the other owners, among other promises. In return, Lowe would modify his director role at RED Development and agree not to seek reimbursement of certain personal investments and funds that he had contributed to the business.

4. Though Plaintiffs abided by their obligations under the Omnibus Agreement, Defendants have not abided by theirs. Defendants have refused to provide documents and information to which Lowe is entitled under the Omnibus Agreement. Since 2012, Defendants have not provided **any** closing statements, pro formas, or contracts on projects they have bought or sold—documents or information that typically would be provided to a significant partner, member, or shareholder in a commercial real estate venture. Since December 2017, Defendants have refused to provide Lowe with even a simple valuation of his ownership stake in the company. Lowe cannot discern the value of Plaintiffs’ interest in the RED entities without this information. Nor can he supply his lenders and other partners with the financial information they need to do business with him. Further, Defendants have not made a single distribution to Lowe or the Venture West Entities since 2013. This is unusual given that the RED Development owners regularly received distributions prior to the execution of the Omnibus Agreement. But because Defendants will not share financials demonstrating what distributions have been made and to whom, Plaintiffs have no way to know if they are being cut out of distributions made to the other owners.

5. Defendants’ stonewalling is particularly concerning because the value of Plaintiffs’ ownership interests has plummeted over the last seven years. Based on the last personal financial statement that Defendants provided, which was for year-end 2017, Lowe’s interest in the RED entities is now worth approximately 23% of what it was in 2012. This cannot be attributed to market forces given the rise and strength of the real estate market during this period. Yet despite

Lowe's repeated requests for documents and information that might explain this precipitous drop in value, Defendants continue to shirk their contractual and fiduciary obligations to treat Lowe and the Venture West Entities in the same manner as other owners in the company.

6. Meanwhile, Lowe's former partners—Ebert and Rehorn—have neglected the existing RED Development portfolio and engaged in self-dealing to enrich themselves. To do so, they have employed two schemes. In the first scheme, Ebert and Rehorn take out debt to buy or develop properties in order to pay themselves handsome salaries and development fees and then leave the debt for equity holders. What is worse, they then neglect the properties and do not maximize leasing, making it difficult to pay back the debt. And when the properties become “at risk” due to low occupancy, they either return the property to the lender, wiping out equity, or sell in a fire sale, also harming equity. Ebert and Rehorn appear to be perpetrating this scheme again with The Promenade at Chenal in Little Rock, Arkansas. Indeed, Plaintiffs learned on November 4, 2019, that RED Development has stopped paying interest on the property's debt and that foreclosure is imminent.

7. The second scheme involves self-dealing through side agreements. Ebert and Rehorn pursue trophy mixed-use projects in urban centers, and to get the resources they lack to move the projects forward, they cut side deals with project equity investors and RED Development staff. In the case of one project, Block 23 at CityScape in downtown Phoenix, Arizona, Ebert and Rehorn are developing the property under the RED Development name using RED Development resources, but without reimbursing the company for services at market rates and without giving a piece of the equity to RED Development's equity holders. They effectively are subsidizing their own private investments on Lowe and the other RED Development owners'

dime. Upon information and belief, similar arrangements have been made here in Dallas with the intended sale of The Union Dallas, which reportedly has found a buyer and entered due diligence.

8. Lowe and the Venture West Entities are contractually entitled to information about their substantial investment and to retain their proportionate share of any revenues from any sales. They also are owed duties of care and loyalty by the individuals managing that investment. This action, and the relief sought herein, seeks to vindicate those rights.

II. DISCOVERY CONTROL PLAN

9. Plaintiffs intend to conduct discovery under a Level 3 discovery control plan as provided by Rule 190 of the Texas Rules of Civil Procedure. This suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek monetary relief over \$100,000.00.

III. CLAIMS FOR RELIEF

10. Plaintiffs seek monetary relief over \$1,000,000, excluding court costs, pre- and post-judgment interest, and attorney fees. The damages sought are within the jurisdictional limits of this Court.

IV. PARTIES

11. Lowe. Plaintiff Dan Lowe is an individual residing in Leawood, Kansas. Lowe is an owner in various entities bearing the “RED” name, as described further below. Lowe is a party to the Omnibus Agreement and is the sole manager of the Venture West Entities and RED Legacy, LLC. The Venture West Entities and RED Legacy, LLC are also parties to the Omnibus Agreement. The Venture West Entities own a 25% interest in Defendant RED Principals, which, in turn, owns Defendant RCH. Lowe in his individual capacity is a shareholder with a 14% effective ownership interest in Defendant RDCH.

12. Venture West. Plaintiff Venture West Development, LLC is a limited liability company organized and existing under the laws of Kansas with its principal place of business in Kansas City, Missouri. Venture West is a party to the Omnibus Agreement. Venture West also is a member of Defendant RED Principals with a 11.4% effective ownership interest in that entity. Venture West's sole manager is Plaintiff Lowe.

13. Venture II. Plaintiff Venture West II, LC is a limited liability company organized and existing under the laws of Missouri with its principal place of business in Kansas City, Missouri. Venture II is a party to the Omnibus Agreement. Venture II also is a member of Defendant RED Principals with a 12.6% effective ownership interest in that entity. Venture II's sole manager is Plaintiff Lowe.

14. Ebert. Defendant Michael Ebert is a resident of Paradise Valley, Arizona, a partial owner of various RED entities, a managing partner of Defendant RED Development, and a manager of Defendant RED Principals. Ebert is sued in his individual capacity and as agent of some¹ or all of the RED Affiliated Entities,² which conduct business in Texas. Ebert is a nonresident who engages in business in Texas but does not maintain a regular place of business in Texas and has not designated or maintained a resident agent for service of process. Ebert travels to Dallas, Texas, approximately once a month to oversee the imminent disposition of The Union Dallas, which is one of the subjects of this lawsuit. Since 2002, Ebert has traveled to Dallas

¹ Sections 6.1.2 and 6.2 of the Restated and Amended Limited Liability Company Agreement of RED Principals, LLC ("RED Principals Agreement") provide that Ebert is an agent of Defendant RED Principals, which is a party to the Omnibus Agreement that is at issue in this case.

² As defined in the Omnibus Agreement, the "RED Affiliated Entities" include "RCH, RDCH, RDH, CA, RED Development and all legal entities (i) in which RCH, RDCH, RDH, CA or RED Development have directly or indirectly at least a five percent (5%) ownership interest, (ii) all legal entities controlled by, controlling or under common control with RCH or RED Development, and (iii) all legal entities which are managed or operated, directly or indirectly, by contract or similar arrangement by RCH, RDCH, RDH, CA or RED Development, whether in existence now or in the future." Omnibus Agreement § 1.2(a).

annually to meet with RED Development investor DPF to discuss RED Development's business, including business conducted in Texas. Ebert has personally benefited from these meetings and transactions as a partial owner of various RED entities. This lawsuit thus arises from Ebert's business transacted in Texas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for serving Ebert. The Secretary of State may serve Ebert at his home office located at 1 East Washington Street #300, Phoenix, AZ 85004.

15. Rehorn. Defendant Scott Rehorn is a resident of Paradise Valley, Arizona, a partial owner of various RED entities, a managing partner of Defendant RED Development, and a manager of Defendant RED Principals. Rehorn is sued in his individual capacity and as agent of some or all of the RED Affiliated Entities,³ which conduct business in Texas. Rehorn is a nonresident who engages in business in Texas but does not maintain a regular place of business in Texas and has not designated or maintained a resident agent for service of process. As a partial owner of various RED entities, Rehorn has personally benefited or stands to personally benefit from business transacted in Texas, including the development and imminent disposition of The Union Dallas, which is one of the subjects of this lawsuit. This lawsuit thus arises from Rehorn's business transacted in Texas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for serving Rehorn. The Secretary of State may serve Rehorn at his home office located at 1 East Washington Street #300, Phoenix, AZ 85004.

16. RED Development. Defendant RED Development, LLC is a foreign limited liability company organized and existing under the laws of Missouri with its principal place of

³ Sections 6.1.2 and 6.2 of the RED Principals Agreement provide that Rehorn is an agent of Defendant RED Principals, which is a party to the Omnibus Agreement.

business located in Phoenix, Arizona. RED Development maintains minimum contacts with Texas by consummating transactions in Texas and by purposefully availing itself of the benefits and protections of the laws of Texas. One of RED Development's properties—The Union Dallas—is located at 2300 North Field Street, Dallas, Texas 75201. As a party to the Omnibus Agreement that governs this dispute, RED Development has agreed and consented to exclusive jurisdiction and venue in this Court. *See* Omnibus Agreement § 13.12. This lawsuit arises from RED Development's business transacted in Texas, including its failure to provide Plaintiffs with any information about the intended sale of The Union Dallas. RED Development may be served by and through its registered agent: Corporation Service Company, 211 East 7th St., Suite 620, Austin, TX 78701.

17. RCH. Defendant RED Consolidated Holdings, LLC is a foreign limited liability company organized and existing under the laws of Delaware with its principal place of business located in Phoenix, Arizona. RCH maintains minimum contacts with Texas by consummating transactions in Texas and by purposefully availing itself of the benefits and protections of the laws of Texas. One of RCH's properties—The Union Dallas—is located at 2300 North Field Street, Dallas, Texas 75201. As a party to the Omnibus Agreement that governs this dispute, RCH has agreed and consented to exclusive jurisdiction and venue in this Court. *See* Omnibus Agreement § 13.12. RCH is a nonresident who engages in business in Texas but has not designated or maintained a resident agent for service of process. This lawsuit arises from RCH's business transacted in Texas, including its failure to provide Plaintiffs with any information about the intended sale of The Union Dallas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for serving RCH. The Secretary of State

may serve RCH by and through its registered agent: Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

18. RED Principals. Defendant RED Principals, LLC is a foreign limited liability company organized and existing under the laws of Delaware with its principal place of business located in Phoenix, Arizona. RED Principals maintains minimum contacts with Texas by consummating transactions in Texas and by purposefully availing itself of the benefits and protections of the laws of Texas. One of RED Principals' properties—The Union Dallas—is located at 2300 North Field Street, Dallas, Texas 75201. As a party to the Omnibus Agreement that governs this dispute, RED Principals has agreed and consented to exclusive jurisdiction and venue in this Court. See Omnibus Agreement § 13.12. RED Principals is a nonresident who engages in business in Texas but has not designated or maintained a resident agent for service of process. This lawsuit arises from RED Principals' business transacted in Texas, including its failure to provide Plaintiffs with any information about the intended sale of The Union Dallas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for serving RED Principals. The Secretary of State may serve RED Principals by and through its registered agent: Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808.

19. RDCH. Defendant RED DPF Corporate Holdings, Inc. is a corporation organized and existing under the laws of Delaware. RDCH maintains minimum contacts with Texas by consummating transactions in Texas and by purposefully availing itself of the benefits and protections of the laws of Texas. One of RDCH's properties—The Union Dallas—is located at 2300 North Field Street, Dallas, Texas 75201. As a party to the Omnibus Agreement that governs this dispute, RDCH has agreed and consented to exclusive jurisdiction and venue in this Court.

See Omnibus Agreement § 13.12. RDCH is a nonresident who engages in business in Texas but has not designated or maintained a resident agent for service of process. This lawsuit arises from RDCH's business transacted in Texas, including its failure to provide Plaintiffs with any information about the intended sale of The Union Dallas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for serving RDCH. The Secretary of State may serve RDCH by and through its registered agent: Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808.

20. RDH. Defendant RED DPF Holdings, LLC is a limited liability company organized and existing under the laws of the Delaware. RDH maintains minimum contacts with Texas by consummating transactions in Texas and by purposefully availing itself of the benefits and protections of the laws of Texas. One of RDH's properties—The Union Dallas—is located at 2300 North Field Street, Dallas, Texas 75201. As a party to the Omnibus Agreement that governs this dispute, RDH has agreed and consented to exclusive jurisdiction and venue in this Court. See Omnibus Agreement § 13.12. RDH is a nonresident who engages in business in Texas but has not designated or maintained a resident agent for service of process. This lawsuit arises from RDH's business transacted in Texas, including its failure to provide Plaintiffs with any information about the intended sale of The Union Dallas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for service on RDH. The Secretary of State may serve RDH by and through its registered agent: Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808.

21. E&R. Defendant E&R Holdings, LLC is a foreign limited liability company organized and existing under the laws of Arizona, with its principal place of business in Phoenix, Arizona. E&R maintains minimum contacts with Texas by consummating transactions in Texas

and by purposefully availing itself of the benefits and protections of the laws of Texas. As a party to the Omnibus Agreement that governs this dispute, E&R has agreed and consented to exclusive jurisdiction and venue in this Court. *See* Omnibus Agreement § 13.12. E&R is a nonresident who engages in business in Texas but has not designated or maintained a resident agent for service of process. As a member of RED Principals, E&R has benefited or stands to benefit from RED Development's business in Texas, including its development and imminent disposition of The Union Dallas, which is one of the subjects of this lawsuit. This lawsuit thus arises from E&R's business transacted in Texas. Accordingly, under Texas Civil Practice & Remedies Code § 17.044, the Texas Secretary of State is the proper agent for service on E&R. The Secretary of State may serve E&R by and through its registered agent: Michael Ebert, 1 East Washington Street #300, Phoenix, AZ 85004.

22. DOES. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 25 are presently unknown to Plaintiffs who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and on that basis allege, that DOES 1 through 25 are in some manner responsible for the damages suffered by Plaintiffs as alleged herein. Plaintiffs will amend this Petition to identify the true names and capacities of the fictitiously named Defendants when the same have been ascertained.

V. JURISDICTION AND VENUE

23. Subject Matter Jurisdiction. This Court has subject matter jurisdiction over this lawsuit because the amount in controversy is within the jurisdictional limits of this Court. Plaintiffs presently seek monetary relief over \$1,000,000.⁴ *See* Tex. R. Civ. P. 47(c)(5). This

⁴ Notably, federal diversity jurisdiction is not present because Plaintiff Lowe and certain members of Defendant RED Principals—namely, Kramerica, LLC and Kramerica II LLC, and at least one of their members, Jeff McMahon—are not diverse.

Court also has jurisdiction over this action pursuant to Section 65.021 of the Texas Civil Practice and Remedies Code, as Plaintiffs seek injunctive relief.

24. In Personam Jurisdiction. This Court has personal jurisdiction over each of the nonresident Defendants under the Texas long-arm statute, Texas Civil Practice & Remedies Code § 17.042, because they have voluntarily availed themselves of the jurisdiction of this State by engaging in business in Texas and through their specific involvement with the acts that give rise to the claims asserted in the Petition. As set forth in this Petition, Defendants entered into Texas seeking business, entered into contracts in Texas for and relating to the sale and leasing of commercial real estate, and availed themselves of the benefit of Texas' laws and regulations. Subsequently, Defendants have breached those contracts, committed the torts described in this Petition in whole or in part in Texas, and recruited Texas residents for employment. In addition, Defendants RCH, RDCH, RDH, RED Principals, RED Development, and E&R ("Agreement Defendants") have agreed and consented to jurisdiction in this Court pursuant to the terms of the Omnibus Agreement that governs this dispute. Specifically, Section 13.12 of the Omnibus Agreement provides that

the parties agree any enforcement or legal action brought on account of or in connection with this Agreement, or the relationship between the parties, shall be commenced in, and each party hereby consents to exclusive jurisdiction in and the venue of, the appropriate state or federal court in Dallas County, Texas.

25. Venue. Because Plaintiffs and Agreement Defendants agreed that all suits arising from the Omnibus Agreement will be heard in the courts of Dallas County and the Omnibus Agreement constitutes a major transaction as it has an aggregate value at least \$1 million, venue is mandatory in this Court under Section 15.020 of the Texas Civil Practices and Remedies Code. Venue also is proper in Dallas County, Texas, under Section 15.005 of the Texas Civil Practices and Remedies Code, as all of Plaintiffs' claims arise out of the same transaction, occurrence, or

series of transactions or occurrences in the state. In addition, Agreement Defendants have agreed and consented to venue in this Court pursuant to the terms of the Omnibus Agreement that governs this dispute.⁵

VI. FACTUAL BACKGROUND⁶

A. Creation of the RED Affiliated Entities

26. Lowe has been a successful developer of real estate throughout the United States since 1990. In or about 1992, Lowe began to partner with Defendants Rehorn and Ebert on individual projects. Lowe first brought Rehorn in for a 15% interest in a shopping center project, and Rehorn later gave Ebert part of his interest. Lowe, Rehorn, and Ebert started Defendant RED Development shortly thereafter.⁷ Lowe originally owned approximately 75-80% of the assets developed by RED Development. Rehorn and Ebert collectively owned the remaining 20-25%. Lowe divided the shares in or around 2001 so that he, Rehorn, and Ebert would each have an equal one-third share in RED Development. The trio brought in other partners over the years, but Lowe, Ebert, and Rehorn remained the principals with the largest share of the company.

27. In December 2010, Lowe's Venture West Entities, Defendant E&R,⁸ and several other entities formed Defendant RED Principals, a Delaware limited liability company, under the RED Principals Agreement as a holding company for their respective ownership interests in the RED real estate portfolio.⁹ Lowe, Rehorn, Ebert, and two other partners served as RED Principals'

⁵ Omnibus Agreement § 13.12.

⁶ Whenever this Petition alleges that an entity committed any act or omission, it is meant that one or more of the entity's officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that he or she did so with the full authorization, ratification, and/or approval of the entity.

⁷ The RED name is derived from the "R" for Rehorn, "E" for Ebert, and "D" for Dan Lowe.

⁸ Like Lowe's Venture West Entities, E&R is an ownership vehicle for Defendants Ebert and Rehorn's interests in the RED Development real estate portfolio.

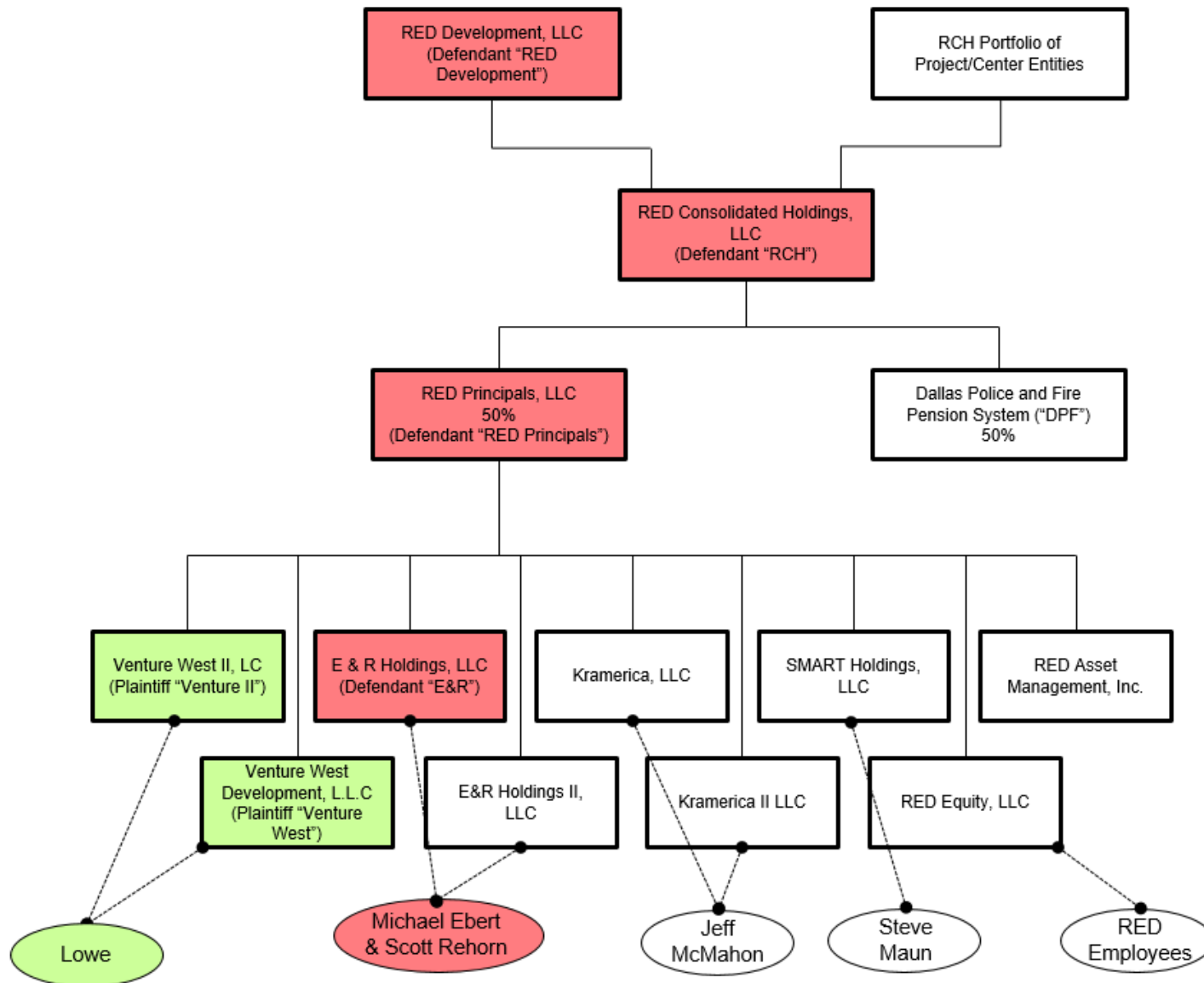
⁹ The RED Principals Agreement is governed by Delaware law.

managers at the time.¹⁰ Though Lowe ceded his manager position when he left his active management role at RED Development in 2012, Lowe remains an owner with a 25% interest in RED Principals.

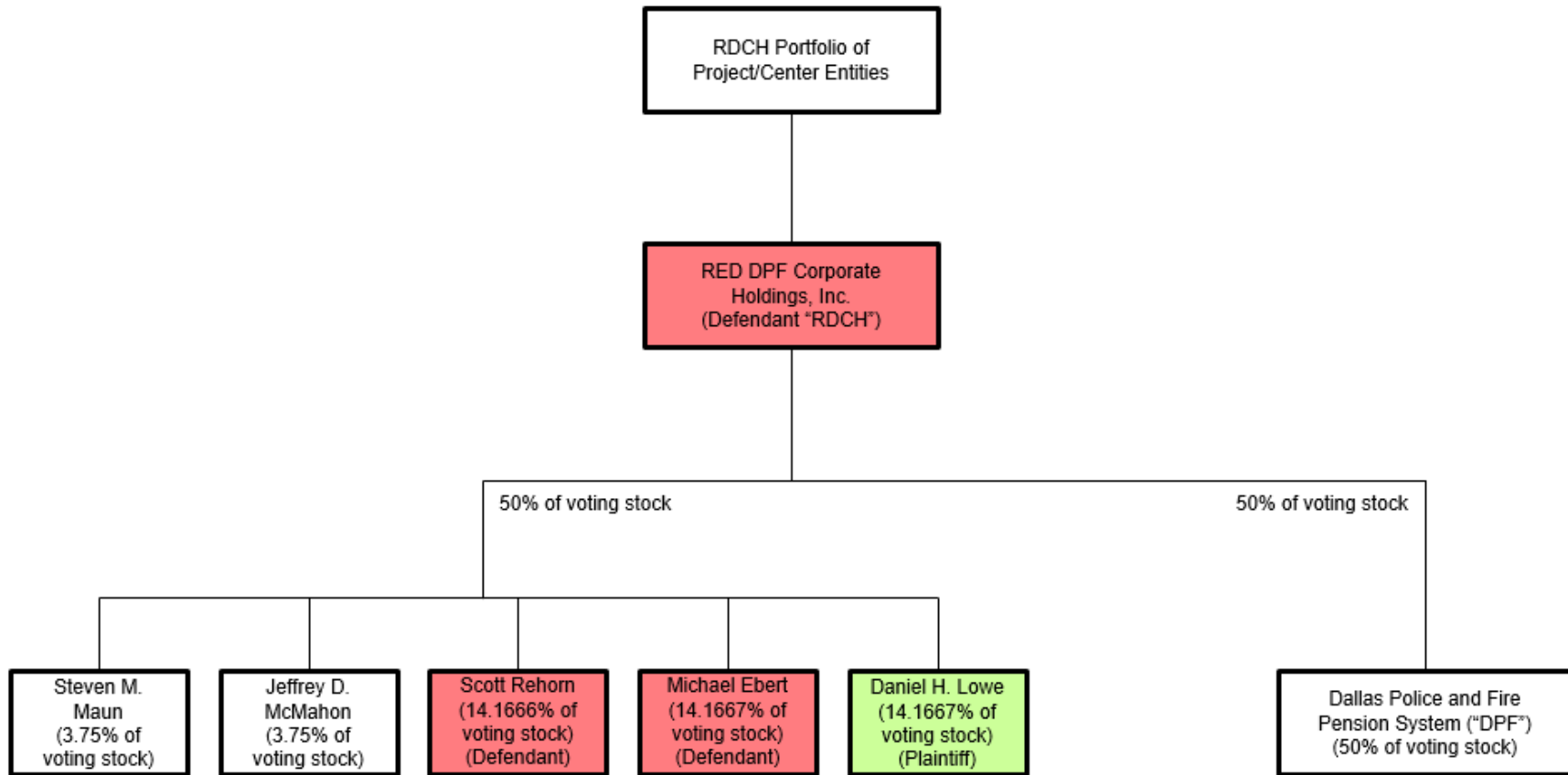
28. Also in 2010, DPF gained 50% ownership of the RED Affiliated Entities. Lowe, Rehorn, and Ebert shared the remaining 50% ownership equally through their interests in RED Principals. In connection with this joint venture, RED Principals and DPF formed Defendant RCH. RCH is a real estate operating company consolidating substantially all the real estate interests of RED Development, RED Principals, and their affiliates, with substantially all of the investments of DPF with RED Development. The organization charts on the following pages demonstrate the basic structure of the RED-DPF joint venture.

¹⁰ The two other partners were Steve Maun and Jeff McMahon. Maun has since left; McMahon remains a manager of RED Principals as of the date of this filing.

RCH Ownership Structure



RDCH Ownership Structure



B. Lowe Executes the Omnibus Agreement to Restructure His Relationship with the RED Affiliated Entities.

29. In 2012, Lowe decided to leave his active role as a Managing Partner at the RED Affiliated Entities. There was talk of taking RED Development public. Lowe preferred to stay private, so he decided to step down as Managing Partner. To govern the terms of the change in position as well as to protect his continued ownership interest, Defendants RCH, RDCH,¹¹ RDH, RED Principals, RED Development, and E&R, along with Lowe, his Venture West Entities, and non-parties CA and RED Legacy, LLC entered into the Omnibus Agreement on May 21, 2019. The Omnibus Agreement restructured Lowe's director role, day-to-day managerial activities with respect to RCH, and employment obligations concerning RED Development, among other things. The Omnibus Agreement is governed by Texas law.¹²

30. Under the Omnibus Agreement, Defendants agreed: (1) to provide Lowe with certain documents and information;¹³ (2) to make distributions to Lowe when other owners received distributions;¹⁴ and (3) to treat Lowe's ownership rights and obligations in the same manner as other owners of the various RED Development entities.¹⁵

31. Lowe in turn promised to: (1) execute the Omnibus Agreement; (2) modify his director role, day-to-day managerial activities with regard to RCH, and employment obligations concerning RED Development; (3) agree to permit \$8,000,000.00 in loans Lowe made to RED Development to remain as a continued capital infusion investment; and (4) agree to not seek

¹¹ RDCH is another holding company formed in 2010 to consolidate RED and DPF real estate interests in certain Missouri and Nevada projects. Plaintiff Lowe and Defendants Ebert, Rehorn, and Maun are shareholders of RDCH—as is DPF.

¹² Omnibus Agreement § 13.12.

¹³ *See id.* § 8.3; *see also* RED Principals Agreement § 8.3.

¹⁴ *See* Omnibus Agreement § 8.5; *see also* RED Principals Agreement art. IV.

¹⁵ *See* Omnibus Agreement §§ 8.2, 8.5.

reimbursement of other personal investments and funds that he had contributed to the business. They also agreed to jurisdiction and venue in Dallas, Texas, for disputes.¹⁶

32. Lowe and the Venture West Entities performed their obligations under the Omnibus Agreement. But Defendants have repeatedly failed to hold up their end of the bargain.

C. Defendants Breach the Omnibus Agreement and RED Principals Agreement.

1. Defendants Fail to Provide Lowe Documents and Information that He is Entitled to Receive Under the Omnibus Agreement and RED Principals Agreement.

33. Under the terms of the Omnibus Agreement, Lowe is entitled to receive certain documents and information as an owner. Section 8.3 of the Omnibus Agreement states:

Following Closing under this Agreement, Lowe shall concurrently receive the same information provided to the other owners of RCH and RED Affiliated Entities as owners, including but not limited to **all notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis**, distributed to owners, including Dallas Police and Fire Pension System, by RCH or RED Affiliated Entities for so long as Lowe remains an owner in the respective entity.

(Emphasis added). Similarly, the Venture West Entities are entitled to inspect RED Principals' books and records under Section 8.2 of the RED Principals Agreement:

The books and records of the Company shall be maintained at the principal office of the Company. Each Member (or such Member's designated agent or representative) shall have the right during ordinary business hours and upon reasonable notice to inspect and copy (at such Member's own expense) all books and records of the Company for any purpose reasonably related to the Member's Interest.

34. Although the Omnibus Agreement did not alter Lowe's ownership and membership interests and it entitles him to receive the referenced documents and information, Defendants have shut Lowe out of the business and refused to comply fully with their obligations under the Omnibus Agreement. And what documents they have provided is far short of what is required under the

¹⁶ See Omnibus Agreement § 13.12.

contract. Defendants upload monthly leasing summaries, sales reports, and business plans for a random assortment of properties to a website on a quarterly basis and have provided a hodgepodge of reports and financials over the years. They have not provided, however, the closing statements, notices, agendas, meeting minutes, pro formas, partnership or ownership correspondence, write-ups, and analysis that Lowe is entitled to and which any commercial real estate investor needs to evaluate the success or failure of their investments. Of the scarce information Defendants have provided, they have only provided them after the deadlines set forth in the Omnibus Agreement and after repeated requests by Lowe before and after said deadlines.

35. In a letter dated December 22, 2017, Lowe asked Defendants for the documents and information that he has not received but is entitled to under the Omnibus Agreement. Although the requested documents and information are kept in the ordinary course of business and are easily accessible to Defendants, counsel for RED Development and the RED Affiliated Entities confirmed in a January 16, 2018 letter that they would not honor the Omnibus Agreement or Lowe's request. The parties since have exchanged numerous letters and emails regarding Lowe's requests for the information he is owed but to no avail.¹⁷

36. Lowe also requested in his December 22, 2017 letter to inspect RED Principals' books and records pursuant to the RED Principals Agreement. Lowe's request to inspect the books and records of RED Principals also was rejected.

37. Defendants have provided so little information that Lowe has not been able to provide banks with updated financials, resulting in Lowe being unable to obtain financing for his business. Defendants' failure to provide Lowe required documents and information resulted in a bank terminating a line of credit previously available to Lowe, causing him to lose a construction

¹⁷ See, e.g., Exhibits 1-5.

loan for the development of a lucrative new project. Since May 2019, Lowe has been unable to secure at least three commercial loans because he was unable to demonstrate the value of his RED Development investments sufficiently for the lenders to be comfortable with the required personal guaranty. This had a direct impact on Lowe's ability to operate his business. The harm from Defendants' stonewalling also has invaded Lowe's personal life: because he could not obtain the necessary documentation to value his substantial interest in the RED Affiliated Entities, Lowe was forced to purchase his new home with nonconventional loans from a fund lender at interest rates higher than a conventional mortgage.

38. Based on the piecemeal information that has been provided to Lowe, one alarming fact has emerged. There has been an inexplicable drop in the value of Lowe's investment. Based on the last personal financial statement that Defendants provided, which was for year-end 2017, **Lowe's interest has decreased by approximately \$48,440,883, or 77%.** This should be virtually impossible given the rise and strength of the real estate market during this period. But even after repeated requests for documents and information to explain this precipitous and implausible drop in value, Defendants have refused to provide Lowe the documents and information he is entitled to under the Omnibus Agreement relating to the value of his ownership.

2. Defendants Fail to Make Distributions to Plaintiffs as Required Under the Omnibus Agreement and RED Principals Agreement.

39. The Omnibus Agreement and RED Principals Agreement entitle Plaintiffs to distributions based on their ownership and membership interests.¹⁸ Section 8.5 of the Omnibus Agreement provides (1) that distributable cash flow from RED Affiliated Entities "shall be distributed solely pursuant to each owner's equity ownership in the respective entity," (2) that

¹⁸ See Omnibus Agreement § 8.5; RED Principals Agreement art. 4.1

Lowe is “to be treated no less favorably than Ebert and Rehorn,” and (3) that Defendants may take no action to dilute Lowe’s aggregate equity ownership below that of either Ebert or Rehorn. Section 4.1.3 of the RED Principals Agreement further provides that distributions are to be disbursed “to the primary members in accordance with their relative percentage interests.” Although Plaintiffs are entitled to receive such distributions, Defendants have not provided Plaintiffs with **any** distribution since 2013. It cannot be the case that no distributions have been made in the intervening six years—the RED Affiliated Entities regularly made distributions before Lowe’s step-down from Managing Partner in 2012.

40. Plaintiffs thus believe they are owed distributions totaling millions of dollars. But because Defendants continue to fail to provide Lowe the documents and information that he is entitled to under the Omnibus Agreement, Plaintiffs cannot determine the total of amount of distributions currently owed to them—and, based on indicators of insolvency, Plaintiffs believe they will be left with nothing to collect.

3. Defendants Improperly Use Lowe’s Power of Attorney.

41. The Omnibus Agreement sets forth the procedures and prerequisites for RED Development to use Lowe’s power of attorney if a guaranty, pledge, or reaffirmation of a guaranty is requested of Lowe or the Venture West Entities. Specifically, Section 9.1 provides that RED Development must provide at least five business days’ written notice to Lowe prior to utilizing his power of attorney. Such notice must advise Lowe of whether a guaranty, pledge, or reaffirmation is required of Lowe and provide “a reasonably detailed overview of the transaction together with all applicable information (if not previously delivered to Lowe) and copies of all pertinent documents.”¹⁹ Section 9.1 further requires that RED Development answer all questions Lowe may

¹⁹ Omnibus Agreement § 9.1.

have regarding the transaction and provide any further documents requested by Lowe. RED Development also must use commercially reasonable efforts to negotiate for any suggested revisions Lowe may have for the documents.²⁰

42. Defendants have not observed these provisions. In or about December 2017, RED Development demanded that Lowe sign a pre-negotiation letter relating to an \$83,800,000 loan involving a project in which Lowe still retains ownership and threatened to use his power of attorney if he refused to sign. In response to this unreasonable and improper demand, and in order to make an informed decision, Lowe requested documents and information that he was entitled to receive under the Omnibus Agreement. Defendants instead provided a short, vague email on that purported to explain what had recently happened to the property. Despite the lack of information and in the face of Defendants' threats, Lowe signed the pre-negotiation letter with his suggested revisions. Lowe later received a letter threatening that if he refused to sign the pre-negotiation letter as proposed, Defendants would improperly invoke Lowe's power of attorney to sign it on his behalf. Even after multiple follow-up demands from Lowe regarding this transaction, Defendants have not provided the requested documents and information related to this project that he requested, which Lowe is entitled to receive under the Omnibus Agreement.

D. Ebert and Rehorn Breach Their Fiduciary Duties to Plaintiffs, Unjustly Enrich Themselves, and Breach the Implied Covenant of Good Faith and Fair Dealing.

43. Upon information and belief, Defendants are stonewalling Plaintiffs to cover up their managers' self-dealing and mismanagement of the RED portfolio. As described above, the value of Plaintiffs' investment in RED has declined by over 75% in the years since he left his active role in the company. This cannot be explained by market forces given the rise and strength

²⁰ See *id.*

of the real estate market during those years. Instead, it appears to be the result of the RED Development managers (Ebert and Rehorn) neglecting the RED Development portfolio while misappropriating RED Development resources and cutting the other RED Development owners out of new projects.

44. First, Ebert and Rehorn have elected to neglect the existing RED property portfolio in favor of chasing new vanity projects, to the detriment of the other RED Development owners. Ebert and Rehorn rarely put cash into RED Development real estate projects—they instead arrange for debt to be secured by the property itself and use the debt to pay RED Development development fees, leasing fees, and construction management fees, among others. RED Development uses the funds received from the debt to pay overhead and salaries. Ebert and Rehorn in turn pay themselves exorbitant salaries and leverage RED Development overhead and resources to fund their private investments. RED Development equity owners are left holding the debt and are cut out of the private investments held by Ebert and Rehorn but funded by RED Development resources. Then Ebert and Rehorn allow the debt-laden property to languish instead of maintaining and leasing the property so that it makes money for RED Development's other owners.

45. As an example, The Promenade at Chenal that Ebert and Rehorn now intend to sell used to be 97 to 98 percent leased. The project has the only Apple store in the State of Arkansas, making it an important retail destination for an enormous area. The Promenade at Chenal accordingly has drawn a strong lineup of cotenants, and several of these tenants are currently reporting robust sales in excess of \$400 per square foot. Yet the project is now only 79% leased, diminishing its value significantly. Ebert and Rehorn reportedly are actively seeking to unload the property for its debt—or less—instead of focusing on leasing the property and maximizing its value for RED Development's owners. Indeed, upon information and belief, Ebert and Rehorn

have ceased paying interest on the property's loans, inviting the lender to foreclose. Ebert and Rehorn's neglect of The Promenade at Chenal is only one example of a pattern of mismanagement across the existing RED Development portfolio. Ebert reportedly has informed multiple individuals associated with RED Development that, if his projects have non-recourse debt, he will abandon the properties altogether, hand them back to lenders, and wipe out equity for RED Development's owners.

46. Meanwhile, while the existing RED Development portfolio languishes and RED Development's other owners pay the price, Ebert and Rehorn have been engaged in bald-faced self-dealing at the expense of RED Development equity owners. The two have been misappropriating the RED Development name and RED Development personnel and resources to develop their own private real estate investments. This arrangement might be permissible if they were fully reimbursing the company for its services. But at Block 23 in downtown Phoenix, Ebert and Rehorn have committed blatant acts of self-dealing to pay RED Development only a fraction of its fees. They thus have diverted funds from RED Development and its equity owners to their own pockets.²¹

47. Upon information and belief, other projects in Phoenix are the subjects of similar fraud. Ebert reportedly has been preoccupied with a \$300 million redevelopment of a mixed-use destination at the corner of 44th Street and Camelback in Phoenix, Arizona. Ebert apparently committed RED Development to another Phoenix-based project just recently: redevelopment of the Paradise Valley Mall, as a joint venture with The Macerich Company. But while these projects use the RED Development name and are being developed using RED Development overhead,

²¹ Upon information and belief, Ebert and Rehorn also are considering selling off pieces of the nearby RED Development CityScape project to one of their related entities on the cheap.

upon information and belief, Ebert has structured the deals so that Lowe and the other partners that own significant stakes in the company do not have an interest in these projects. Instead, Ebert has unjustly enriched himself, Rehorn, and a new cadre of partners, in violation of his fiduciary and contractual obligations to Plaintiffs and RED Principals.

E. Defendants Refuse to Provide Lowe Any Information Regarding the Sales of The Promenade at Chenal and The Union Dallas.

48. In late August 2019, Lowe learned from the market that Defendants intended to sell The Promenade at Chenal for the cost of the project's debt or less. As mentioned above, the offering documents obtained by Lowe indicated that the property is only 79% leased, which will not draw an offer that properly values the project. Lowe voiced his concern to Defendants' counsel in a letter dated September 20, 2019, noting that he had received no information from Defendants about this proposed transaction, much less the "notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis" that Defendants are obligated to provide to Lowe under Section 8.3 of the Omnibus Agreement. Lowe requested that Defendants cease and desist from selling The Promenade at Chenal until they provide him with the contractually promised information.

49. In a letter dated September 20, 2019, counsel for Defendants ignored Lowe's request and instead made a specious accusation that Lowe had somehow defaulted as a member of RED Principals by executing a limited power of attorney.²²

²² The Limited Power of Attorney effective as of August 19, 2019, between Lowe and Matterhorn, LLC (the "LPOA") is expressly limited so as not to infringe on the RED Principals Agreement. Section 3.2 of the LPOA provides that "Lowe hereby acknowledges and agrees that the powers granted to Matterhorn herein are only for the purpose of enabling Matterhorn to determine the value [of] Lowe's interest in RED and potentially liquidate the interests in order to satisfy the obligations owed by Lowe to Matterhorn." And the "the powers granted [by the LPOA] may only be exercised so long as such acts are consistent with the limitations imposed on said Agent." LPOA § 3.4. Thus, the LPOA merely "appoints [Matterhorn] as designated agent and representative of Lowe as provided in the membership agreements of [RED Consolidated] Holdings and [RED] Principals," and Lowe is not in default. *Id.*

50. Lowe renewed his requests on October 1, 2019, and October 18, 2019, after it came to his attention that Defendants also were in the process of offering The Union Dallas for sale. Lowe again learned of this proposed transaction from the market, instead of from the company in which he owns a significant stake. And Lowe again raised his concerns that he had received no information related to the potential sale, including any appraisal or valuation of the property. Indeed, Lowe has no insight into the financial circumstances of The Union Dallas, the structure of the proposed transaction, or how the proceeds realized from the sale might be distributed to RED's owners. Lowe can only assume that, based on Defendants' actions, the sale of The Union Dallas will result in no benefit to him, while Ebert and Rehorn reap the benefits of Lowe's investment in the company he entrusted them to manage after he stepped down from an active management role in 2012.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION – BREACH OF CONTRACT (AGAINST AGREEMENT DEFENDANTS)

51. Plaintiffs incorporate by reference paragraphs 1 through 50 of this Petition as if set forth fully herein.

52. Plaintiffs and Agreement Defendants are parties to the Omnibus Agreement, which is a valid and enforceable contract supported by consideration.

53. Plaintiffs have performed all conditions, covenants, and promises required of them under the Omnibus Agreement, except to the extent that such performance has been prevented, excused, or waived.

54. Agreement Defendants have committed material breaches of the Omnibus Agreement that excused Plaintiffs from any further performance under the Omnibus Agreement.

55. Agreement Defendants breached the Omnibus Agreement by, among other things, (1) not providing Lowe with information and documents he is entitled to under the agreement; (2) not making distributions to Plaintiffs as required by the contract; (3) improperly using Lowe's power of attorney in violation of the terms of the contract; and (4) failing to treat Plaintiffs' ownership rights and obligations in accordance with the requirements of the contract by using the RED Development name and RED Development resources on Ebert and Rehorn's private investments without reimbursing Plaintiffs or granting them equity in the projects.

56. Agreement Defendants' breaches of the Omnibus Agreement caused Plaintiffs' injury, including, without limitation, special damages of lost profits in the past and future, loss of credit reputation, loss of business goodwill in the past and future, loss of credit, loss of financing, and costs they incurred attempting to mitigate their damages.

57. Plaintiffs accordingly sue Agreement Defendants for breach of contract as more particularly set forth herein and seek a judgment for specific performance and/or unliquidated damages in excess of the minimum jurisdictional limits of the Court.

SECOND CAUSE OF ACTION – PROMISSORY ESTOPPEL
(AGAINST AGREEMENT DEFENDANTS)

58. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Petition as if set forth fully herein.

59. Plaintiffs assert this cause of action in the alternative to the First Cause of Action.

60. Agreement Defendants represented and made promises to Plaintiffs that, after they executed the Omnibus Agreement: (1) Lowe would receive certain documents and information; (2) Plaintiffs would receive distributions when other owners received distributions; (3) Plaintiffs' ownership and membership interests would not change and they would be treated in the same manner as compared to other owners of the various RED entities; (4) Agreement Defendants would

run the performance of projects and developments by Lowe, get his input, and keep him apprised of the business; and(5) Agreement Defendants would only use Lowe's power of attorney in certain well-defined situations.

61. Plaintiffs reasonably and substantially relied on Agreement Defendants' promises to their detriment by (1) executing the Omnibus Agreement; (2) agreeing to modify Lowe's director role, day-to-day managerial activities with regard to RCH, and employment obligations concerning RED Development; (3) agreeing to permit \$8,000,000 in loans Lowe made to RED Development to remain as a continued capital infusion investment; and (4) agreeing to not seek reimbursement of other personal investments and funds that Lowe had contributed to the business.

62. Agreement Defendants knew, or reasonably should have known, that Plaintiffs would rely on their promises, and it was foreseeable that Plaintiffs would do so.

63. Agreement Defendants breached the representations and promises they made to Plaintiffs by (1) not providing Lowe with certain documents and information; (2) not making certain distributions to Plaintiffs when the other owners received distributions; (3) changing Plaintiffs' ownership and membership interests and not treating them in the same manner as compared to other owners of the various RED entities; (4) not running the performance of projects and developments by Lowe, not getting his input, and not keeping him apprised of the business; and (5) improperly using Lowe's power of attorney.

64. Injustice can be avoided only by enforcing Agreement Defendants' promises.

65. Agreement Defendants' breaches of their promises caused Plaintiffs' injury, including, without limitation, special damages of lost profits in the past and future, loss of credit reputation, loss of business goodwill in the past and future, loss of credit, loss of financing, and costs they incurred attempting to mitigate their damages.

66. Plaintiffs accordingly sue Agreement Defendants for promissory estoppel as more particularly set forth herein and seek damages in excess of the minimum jurisdictional limits of the Court.

THIRD CAUSE OF ACTION – QUANTUM MERUIT
(AGAINST AGREEMENT DEFENDANTS)

67. Plaintiffs incorporate by reference paragraphs 1 through 66 of this Petition as if set forth fully herein.

68. Plaintiffs assert this cause of action in the alternative to the First Cause of Action.

69. Plaintiffs provided the following valuable benefits to Agreement Defendants: (1) execution of the Omnibus Agreement; (2) agreement to modify Lowe's director role, day-to-day managerial activities with regard to RCH, and employment obligations concerning RED Development; (3) agreement to permit \$8,000,000 in loans Lowe made to RED Development to remain as a continued capital infusion investment; and (4) agreement to not seek reimbursement of other personal investments and funds that Lowe had contributed to the business.

70. Agreement Defendants accepted these benefits from Plaintiffs.

71. Agreement Defendants had reasonable notice that Plaintiffs expected, among other things, compensation in the form of distributions due to Plaintiffs as owners and members of the various RED entities.

72. Plaintiffs accordingly sue Agreement Defendants for quantum meruit as more particularly set forth herein and seek damages in excess of the minimum jurisdictional limits of the Court.

FOURTH CAUSE OF ACTION – MONEY HAD MONEY RECEIVED
(AGAINST AGREEMENT DEFENDANTS)

73. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Petition as if set forth fully herein.

74. Plaintiffs assert this cause of action in the alternative to the First Cause of Action.

75. Agreement Defendants have wrongfully failed to make required distributions to Plaintiffs as owners and members of the various RED entities.

76. As a result, Agreement Defendants hold money which, in equity and good conscience, belongs to Plaintiffs.

77. Plaintiffs accordingly sue Agreement Defendants for money had money received as more particularly set forth herein and seek damages in excess of the minimum jurisdictional limits of the Court.

FIFTH CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY
(DERIVATIVELY ON BEHALF OF RED PRINCIPALS
AGAINST EBERT AND REHORN AND DIRECTLY)

78. Plaintiffs incorporate by reference paragraphs 1 through 77 of this Petition as if set forth fully herein.

79. Defendants Ebert and Rehorn, as Managers of Defendant RED Principals, are fiduciaries to RED Principals. As fiduciaries, Ebert and Rehorn owe unremitting duties of due care and loyalty.

80. Through the conduct alleged herein, Ebert and Rehorn have breached their duties to RED Principals.

81. By prioritizing their own development fees and salaries, neglecting the existing RED Development portfolio, and leaving debt for equity holders; by cutting side-deals with project equity investors and RED Development staff that in turn cut into returns for members of RED Principals or cut those members out altogether; and by using RED Development resources to develop The Union Dallas, Block 23 at CityScape, 44th and Camelback, and Paradise Valley Mall, among others, without properly reimbursing the company or giving an equity stake to Plaintiffs or the members of RED Principals; Ebert and Rehorn have placed their interests as individuals over

their obligations as the Managers of RED Principals and the interests of the members of RED Principals.

82. As a direct and proximate result of Ebert and Rehorn's purposeful breaches of their duties of care and loyalty, RED Principals and its members have suffered and continue to suffer actual damages in an amount to be determined by the trier of fact, including, without limitation, special damages of lost profits in the past and future, loss of credit reputation, loss of business goodwill in the past and future, loss of credit, loss of financing, and costs they incurred attempting to mitigate their damages. All damages RED Principals and its members have and will suffer as the result of Ebert and Rehorn's wrongful conduct were and are foreseeable to Ebert and Rehorn.

83. The conduct of Ebert and Rehorn, and each of them, in breaching their fiduciary duties, was intentional, willful, malicious, and fraudulent and calculated to cause damage to Plaintiffs and their existing lawful business. The conduct of Ebert and Rehorn, and each of them, was perpetrated with actual fraud, malice, and ill will toward RED Principals and its members, and with the intentional and improper purpose of causing damage. There was no justifiable cause for Ebert and Rehorn's actions, and the Venture West Entities and RED Principals and its members are entitled to an award of exemplary damages.

84. The Venture West Entities bring this action directly against Ebert and Rehorn and derivatively in the right and for the benefit of RED Principals. Plaintiffs will adequately and fairly represent the interests of RED Principals and its members in enforcing and prosecuting RED Principals' rights.

85. Pre-filing demand upon RED Principals' managers—Ebert, Rehorn, and non-party Jeff McMahon—to institute this action against Ebert and Rehorn is excused as futile.²³ Ebert and Rehorn are not disinterested and independent. Ebert is an interested party and stands to benefit from the alleged misconduct: prioritizing his own development fees, neglecting the existing RED Development portfolio, and leaving debt for equity holders; cutting side-deals with project equity investors and RED Development staff that, in turn, cut into returns for members of RED Principals or cut those members out altogether; and misappropriating RED Development company resources to develop properties for his own gain and without giving RED Principals a stake in the project. Rehorn also is an interested party and stands to benefit from the same alleged misconduct. Both Ebert and Rehorn face a substantial likelihood of liability given the allegations set forth throughout this Petition. Moreover, Ebert and Rehorn's misconduct was not the product of a valid exercise of business judgment because they did not act in good faith, as evidenced by the allegations set forth throughout this Petition.

86. The Venture West Entities accordingly sue Defendants Ebert and Rehorn directly and derivatively for breach of fiduciary duty as more particularly set forth herein and seek damages in excess of the minimum jurisdictional limits of the Court.

SIXTH CAUSE OF ACTION – UNJUST ENRICHMENT
(AGAINST EBERT AND REHORN)

87. Plaintiffs incorporate by reference paragraphs 1 through 86 of this Petition as if set forth fully herein.

88. As a result of Ebert and Rehorn's intentional acts, Ebert and Rehorn have wrongfully obtained a benefit from Plaintiffs by the taking of undue advantage. Specifically, Ebert

²³ Lowe requested in a December 22, 2017 letter to inspect RED Principals' books and records pursuant to the RED Principals Agreement. The request to inspect the books and records of RED Principals was rejected. Demand in these circumstances would be unlikely to produce a different result.

and Rehorn have retained a benefit from breaching their fiduciary duties of care and loyalty and unlawfully misappropriating RED Development resources, presumably realizing monetary or other gains from such unlawful acts.

89. Plaintiffs accordingly sue Defendants Ebert and Rehorn for unjust enrichment and seek a judgment in excess of the minimum jurisdictional limits of the Court.

**SEVENTH CAUSE OF ACTION – BREACH OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING (RED PRINCIPALS AGREEMENT)
(AGAINST EBERT AND REHORN)**

90. Plaintiffs incorporate by reference paragraphs 1 through 89 of this Petition as if set forth fully herein.

91. The covenant of good faith and fair dealing is implied in every Delaware contract, and the covenant requires that Ebert and Rehorn act with fairness and in good faith toward the Venture West Entities and not take any actions that would prevent the Venture West Entities from receiving the benefits of their contractual relationship under the RED Principals Agreement. The covenant also obligates Ebert and Rehorn to refrain from causing harm to the Venture West Entities or damaging the financial stability of RED Principals.

92. Ebert and Rehorn entered into the Amended and Restated Limited Liability Company Agreement of RED Principals, LLC dated May 24, 2012.

93. Pursuant to the RED Principals Agreement, RED Principals was to “acquire and own real property, improve and mortgage such real property, and lease, sell and otherwise deal in and with such real property.” RED Principals Agreement § 1.1. Such purpose was to “be accomplished through [RED Principals] and its direct and indirect, wholly-owned and partially-owned subsidiaries.” *Id.* Moreover, RED Principals was to from time to time determine the amount of available cash and distribute such available cash to the members in accordance with their relative percentage interests. *Id.* § 4.1.

94. Ebert and Rehorn, as managers of RED Principals, have breached the covenant of good faith and fair dealing by either breaching, or causing to be breached, the obligations under the RED Principals Agreement, by *inter alia*:

- a. Failing to deal fairly, honestly, and reasonably so as to effectuate the purpose of the RED Principals Agreement;
- b. Failing to make distributions to the Venture West Entities; and
- c. Intentionally excluding the Venture West Entities from real estate ventures being accomplished through RED Principals' direct and indirect, wholly-owned and partially-owned subsidiaries, including without limitation RED Development and its ongoing projects The Union Dallas, 44th and Camelback, Block 23 at CityScape, and Paradise Valley Mall.

95. Ebert and Rehorn have acted and continue to act, as alleged herein, in bad faith, to deprive the Venture West Entities of the benefits of the RED Principals Agreement, and in contravention of the purpose and intent of the RED Principals Agreement.

96. The Venture West Entities have at all times performed all obligations required by the RED Principals Agreement and have at all times acted in good faith toward Ebert and Rehorn.

97. As a direct and proximate result of Ebert's and Rehorn's breach of their duty of good faith and fair dealing, Ebert's and Rehorn's actions are causing substantial harm and damage to the Venture West Entities and to RED Principals, which has served to diminish the value of the company.

98. The Venture West Entities accordingly sue Defendants Ebert and Rehorn for breach of the duty of good faith and fair dealing as more particularly set forth herein and seek damages in excess of the minimum jurisdictional limits of the Court.

EIGHTH CAUSE OF ACTION – DECLARATORY JUDGMENT
(AGAINST AGREEMENT DEFENDANTS)

99. Plaintiffs incorporate by reference paragraphs 1 through 98 of this Petition as if set forth fully herein.

100. This Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, under Section 37.003 of the Texas Civil Practice & Remedies Code.

101. Pursuant to Section 8.3 of the Omnibus Agreement, Lowe was to “concurrently receive the same information provided to the other owners of RCH and RED Affiliated Entities as owners, including but not limited to all notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis, distributed to owners, including Dallas Police and Fire Pension System, by RCH or RED Affiliated Entities for so long as Lowe remains an owner in the respective entity.”

102. Agreement Defendants have refused to fully comply with their obligations to provide such documents and information.

103. An actual controversy exists as to whether Lowe is entitled to the documents and information provided for in the Omnibus Agreement. The issue of whether Agreement Defendants are obligated to provide such documents and information is ripe for judicial determination.

104. All persons who have or claim an interest in the construction of the Omnibus Agreement’s provision for Lowe’s entitlement to certain documents and information have been made parties to this lawsuit.

105. Lowe is entitled to a determination of his rights with regard to the Omnibus Agreement, including a declaratory judgment that, under the Omnibus Agreement, Lowe is entitled to the documents and information provided for in Section 8.3.

106. Plaintiffs are entitled to recover reasonable and necessary attorneys' fees that are equitable and just under Section 37.009 of the Texas Civil Practice & Remedies Code because this is a suit for declaratory relief.

107. Plaintiffs accordingly sue Agreement Defendants for declaratory relief.

NINTH CAUSE OF ACTION – INJUNCTIVE RELIEF
(AGAINST ALL DEFENDANTS)

108. Plaintiffs incorporate by reference paragraphs 1 through 107 of this Petition as if set forth fully herein.

109. Defendants have engaged in wrongful conduct that has caused, and will continue to cause, harm to Plaintiffs. Such conduct has caused, and will continue to cause, irreparable injury to Plaintiffs for which there will be no adequate remedy at law.

110. Accordingly, Plaintiffs respectfully request that the Court temporarily restrain Defendants from taking any action that might dilute or otherwise harm Plaintiffs' ownership interests in the RED Affiliated Entities—including, but not limited to, selling or otherwise disposing of The Promenade at Chenal in Little Rock, Arkansas; The Union Dallas in Dallas, Texas, or CityScape in Phoenix, Arizona; or misappropriating further RED Development resources at Block 23 at CityScape, 44th and Camelback, or Paradise Valley Mall in or around Phoenix, Arizona.

TENTH CAUSE OF ACTION – EXEMPLARY DAMAGES
(AGAINST ALL DEFENDANTS)

111. Plaintiffs incorporate by reference paragraphs 1 through 110 of this Petition as if set forth fully herein.

112. Defendants committed their conduct described herein with fraud, malice, and/or gross negligence, as the terms are defined by Chapter 41 of the Texas Civil Practices and Remedies

Code and/or other applicable law. As such, Plaintiffs are entitled to and request an award of exemplary damages in an amount to be decided by the trier of fact.

ELEVENTH CAUSE OF ACTION – ATTORNEYS’ FEES AND EXPENSES
(AGAINST ALL DEFENDANTS)

113. Plaintiffs incorporate by reference paragraphs 1 through 112 of this Petition as if set forth fully herein.

114. Plaintiffs have retained the services of the undersigned law firm to protect their rights and prosecute their causes of action and request that they be awarded their reasonable attorneys’ fees and costs on all causes of action for which an award of attorneys’ fees and costs is appropriate, including under Chapter 38 of the Texas Civil Practices and Remedies Code, Section 37.009 of the Texas Civil Practice & Remedies Code, and Section 12.1 of the Omnibus Agreement. Presentment will be made in accordance with Section 38.001.

VIII. CONDITIONS PRECEDENT

115. Under Texas Rule of Civil Procedure 54, Plaintiffs state that all conditions precedent to each of Plaintiffs’ claims have been performed, have occurred, and/or have been waived.

IX. REQUEST FOR DISCLOSURES

Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose the information and material described in Texas Rule of Civil Procedure 194.2 within 50 days of service of this request.

X. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that upon the trial of this cause, they have and recover all relief requested in this Petition, including:

- A. Actual damages, including, without limitation, general damages, special damages, direct damages, and consequential damages;
- B. Exemplary damages;
- C. Specific performance under the Omnibus Agreement, including (1) providing Lowe with information and documents he is entitled to under the agreement, and (2) making distributions to Plaintiffs as required by the contract;
- D. Declaratory judgment declaring that Lowe is entitled to receive the documents and information listed in Section 8.3 of the Omnibus Agreement;
- E. Injunctive relief;
- F. Reasonable and necessary attorneys' fees and court costs;
- G. Pre- and post-judgment interest at the maximum rate permitted by applicable law; and
- H. Any and all other relief under law or equity, general or specific, to which Plaintiffs are justly entitled.

Dated: November 7, 2019

Respectfully submitted,

/s/ Yvette Ostolaza

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EXHIBIT 1

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December 22, 2017

VIA E-MAIL AND OVERNIGHT

Michael L. Ebert
Scott Rehorn
One East Washington, Suite 300
Phoenix, AZ 85004

Steve Maun
6467 East Maverick Rd.
Paradise Valley, AZ 85253

Re: **Request for Information pursuant to the May 21, 2012 Agreement**

Dear Messrs. Ebert, Rehorn, Maun and McMahon:

We represent Dan Lowe, and on his behalf and pursuant to Section 8.2 of the May 21, 2012 Agreement (the "May 2012 Agreement") by and between RED Consolidated Holdings, LLC, RED DPF Corporate Holdings, Inc., RED DPF Holdings, LLC, Creative Attractions, LLC, RED Principals, LLC, RED Development, LLC, E&R Holdings, LLC, Dan Lowe, Venture West Development, LLC, Venture West II, LLC, and RED Legacy, LLC, we hereby request copies of all documents and information including, but not limited, to the following:

1. Any and all notices provided and distributed to all owners of RED Consolidated Holdings and RED Affiliated Entities¹, as well as any and all notices provided and distributed to the Dallas Police and Fire Pension System.

¹ RED Affiliated Entities shall mean and include RCH, RDCH, RDH, CA, RED Development and all legal entities (i) in which RCH, RDCH, RDH, CA or RED Development have directly or indirectly at least a five percent (5%) ownership interest, (ii) all legal entities controlled by, controlling or under common control with RCH or RED Development, and (iii) all legal entities which are managed or operated, directly or indirectly, by contract or similar arrangement by RCH, RDCH, RDH, CA or RED Development, whether in existence now or in the future.

2. Any and all agendas provided and distributed to all owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all agendas provided and distributed to the Dallas Police and Fire Pension System.
3. Any and all reports provided and distributed to all owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all reports provided and distributed to the Dallas Police and Fire Pension System.
4. Any and all minutes of meetings provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all minutes of meetings provided and distributed to the Dallas Police and Fire Pension System.
5. Any and all memorandums provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all memorandums provided and distributed to the Dallas Police and Fire Pension System.
6. Any and all financials and financial reports provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all financials and financial reports provided and distributed to the Dallas Police and Fire Pension System.
7. Any and all pro formas provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all pro formas provided and distributed to the Dallas Police and Fire Pension System.
8. Any and all partnership or ownership correspondence provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all partnership or ownership correspondence provided and distributed to the Dallas Police and Fire Pension System.
9. Any and all write-ups and analysis provided and distributed to the other owners of RED Consolidated Holdings and RED Affiliated Entities, as well as any and all write-ups and analysis provided and distributed to the Dallas Police and Fire Pension System.
10. Any and all information that Mr. Lowe is entitled to pursuant to the May 2012 Agreement related to any investment, project and business endeavor entered into by the RED Affiliated Entities and the Dallas Police and Fire Pension System.
11. Any and all information related to projects involving and/or utilizing the resources, employees and possessions of any RED Affiliated Entities.
12. Any and all information not specifically requested above but that Mr. Lowe is entitled to pursuant to the May 2012 Agreement.

There is no limitation as to time with regard to the above categories of documents.

December 22, 2017

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Mr. Lowe has been continuously seeking this information since the parties entered into the May 2012 Agreement, and yet you continue to refuse providing him with the information he is entitled to pursuant to the May 2012 Agreement. If you once again fail to provide Mr. Lowe with the information he is rightfully entitled to, Mr. Lowe will be forced to pursue all available legal remedies and actions against you and the relevant entities. To avoid any further dispute, please provide Mr. Lowe with all the requested documents **on or before January 5, 2018.**

In addition, pursuant to Article 8.2 of the Amended and Restated Limited liability Company Agreement of RED Principals, LLC dated May 24, 2012 by and among RED Principals, LLC, Venture West II, LLC, Venture West Development, LLC, E&R Holdings, LLC, E&R Holdings II, LLC, KramERICA, LLC, KramERICA II, LLC, SMART Holdings, LLC, RED Equity, LLC, and RED Asset Management, Inc., Mr. Lowe is entitled to inspect and copy all books and records of RED Principals, LLC for any purpose reasonably related to Mr. Lowe's interest. Please advise as to when these can be available for inspection or call me to discuss an appropriate schedule. Mr. Lowe is also entitled to quarterly financial reports pursuant to Article 8.3. Please provide those to us as well.

Finally, immediately cease and desist making any accusations and misrepresentations about Mr. Lowe, in his individual capacity and in his capacity as part owner of the RED Affiliated Entities to any individuals or entities including other parties of the May 2012 Agreement, the Dallas Police and Fire Pension Fund, and their financial advisors, AEW Capital Management.

Please call me if you have any questions at (213) 576-1084.

Sincerely,

ALSTON & BIRD LLP

A handwritten signature in blue ink, appearing to read "Debbie Jones", is written over the printed name.

Debbie Jones, Esq.

DYJ/ht

cc: Coral del Mar Lopez, Esq.

EXHIBIT 2



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September 20, 2019

By Email and Overnight Mail

Mr. Edward F. Novak
Polsinelli PC
One East Washington
Suite 1200
Phoenix, Arizona 85004
Email: enovak@polsinelli.com

Re: RED Development Offering of The Promenade at Chenal

Dear Mr. Novak:

Our law firm represents Dan Lowe. Mr. Lowe recently became aware that RED Development, LLC (“RED”) intends to sell The Promenade at Chenal in Little Rock, Arkansas (the “Little Rock Development”). This is concerning to Mr. Lowe for several reasons.

First, RED appears to be unloading the Little Rock Development for its debt instead of focusing on leasing the property and maximizing its value for RED’s investors. According to offering documents provided to Mr. Lowe, the Little Rock Development currently is only 78% leased. As such, it will not draw an offer that properly values the project. This is unacceptable to Mr. Lowe, who has seen his substantial investment in the company he founded dissipate over the past seven years.

Moreover, it is disappointing—as well as a violation of applicable law and contract—that Mr. Lowe must learn of RED sales through the market, instead of from his partners. Mr. Lowe has received no information from RED about this proposed transaction, much less the “notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis” that RED is obligated to provide to Mr. Lowe under Section 8.3 of the Omnibus Agreement.¹ RED’s continued unwillingness to provide such information and abide by its contractual promises has harmed, and continues to harm, Mr.

¹ The “Omnibus Agreement” refers to the contract entered into as of May 21, 2012, by and between Mr. Lowe; Venture West Development, LLC; Venture West II, LC; RED Legacy, LLC; RED Consolidated Holdings, LLC; RED DPF Corporate Holdings, Inc.; RED DPF Holdings, LLC; Creative Attractions, LLC; RED Principals, LLC; RED Development, LLC; and E&R Holdings, LLC.

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Page 2

Lowe, depriving him of even basic financial information to value and protect his multimillion-dollar investment in RED.

To avoid imminent, irreparable harm to his rights, Mr. Lowe requests that RED immediately provide written confirmation that it will temporarily cease and desist from entering into any sales agreement for the Little Rock Development until RED provides to Mr. Lowe copies of any Little Rock Development sale documentation or other documents related to the potential sale of the property, including any appraisals or land valuations, as is Mr. Lowe's right under the Omnibus Agreement. Mr. Lowe further requests that RED immediately agree in writing to provide such information.

Relatedly, to properly evaluate the impact of the potential sale of the Little Rock Development on Mr. Lowe's investment, he must receive the "notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis" that he is entitled to under the Omnibus Agreement. Mr. Lowe requests that RED immediately agree in writing to provide such information. Furthermore, Mr. Lowe requests all accounting and certain books/records. We would like to discuss this with you on Monday.

Mr. Lowe expressly reserves all rights.

Sincerely,

/s/ Tai-Heng Cheng

Tai-Heng Cheng

TC:

cc: Yvette Ostolaza

EXHIBIT 3



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October 1, 2019

By Email

Mr. Edward F. Novak
Polsinelli PC
One East Washington
Suite 1200
Phoenix, Arizona 85004
Email: enovak@polsinelli.com

Re: RED Development

Dear Mr. Novak:

This letter is in reference to my letter dated September 20, 2019, regarding RED Development, LLC's ("RED") intention to sell The Promenade at Chenal (the "Little Rock Development") for less than the property is worth and without providing RED investors with any information regarding the proposed transaction. We also write in response to your September 20, 2019 letter alleging that Mr. Lowe should be treated as a "Defaulting Member" under the Amended and Restated Limited Liability Company Agreement of RED Principals, LLC dated effective as of May 24, 2012 (the "LLC Agreement"), purportedly because Mr. Lowe's "execution and delivery of the LPOA, among other things," breached the terms of the LLC Agreement and Omnibus Agreement.

It is unfortunate that RED has resorted to manufacturing specious legal arguments to avoid its obligations to provide investors with basic information about the company and its intended transactions. As you know, RED is required to provide Mr. Lowe with "notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis" under Section 8.3 of the Omnibus Agreement. But to date, your client has refused to perform its contractual duties despite Mr. Lowe's repeated requests. Mr. Lowe's appointment of a designated agent and representative to get to the bottom of RED's obstruction of Mr. Lowe's ownership rights does not absolve RED of these duties, and it certainly does not place Mr. Lowe in default under the LLC Agreement.

Indeed, the Limited Power of Attorney effective as of August 19, 2019, between Mr. Lowe and Matterhorn, LLC (the "LPOA") is expressly limited so as not to infringe on the provisions you referenced in your September 20 letter. Section 3.2 of the LPOA provides that "Lowe hereby acknowledges and agrees that the powers granted to Matterhorn herein are only for the purpose of

enabling Matterhorn to determine the value [of] Lowe's interest in RED and potentially liquidate the interests in order to satisfy the obligations owed by Lowe to Matterhorn." And the "the powers granted [by the LPOA] may only be exercised so long as such acts are consistent with the limitations imposed on said Agent." LPOA § 3.4. Thus, the LPOA merely "appoints [Matterhorn] as designated agent and representative of Lowe as provided in the membership agreements of [RED Consolidated] Holdings and [RED] Principals." *Id.*

Given that powers of attorney—and particularly limited powers of attorney—are construed narrowly, and given that you have provided no evidence that Mr. Lowe actually transferred his ownership interest to Matterhorn, we encourage you to reevaluate your assertion that the LPOA excuses RED from providing Mr. Lowe the documents and information to which he is entitled. Even if, for the sake of argument, the LPOA violates the LLC Agreement, RED still has independent duties and obligations to Mr. Lowe under the separation agreements, including without limitation Section 8.3 of the Omnibus Agreement. RED cannot skirt all of its responsibilities to an investor simply because the investor signs a limited power of attorney, especially when RED's own breaches and tortious conduct precipitated the investor's need for such an instrument.

Meanwhile, Mr. Lowe continues to hear about RED's activities through the marketplace, instead of from the company in which he owns a substantial share. Since our prior letter to you, it has come to our attention that, in addition to offering the Little Rock Development at a fire-sale price, RED is now shopping The Union Dallas ("The Union"). This property was just completed last year. Mr. Lowe is concerned that RED's premature sale of The Union will irreparably harm RED's owners. These concerns cannot be assuaged unless RED provides the documents and information Mr. Lowe is entitled to under the Omnibus Agreement.

Thus, to avoid imminent, irreparable harm to his rights, Mr. Lowe reiterates his request that RED immediately provide written confirmation that it will temporarily cease and desist from entering into any sales agreement for the Little Rock Development or The Union until RED provides to Mr. Lowe copies of any Little Rock Development or The Union sale documentation or other documents related to the potential sale of the properties, including any appraisals or land valuations, as is Mr. Lowe's right under the Omnibus Agreement. Mr. Lowe further requests that RED immediately agree in writing to provide such information.

Moreover, to properly evaluate the impact of the potential sales of the Little Rock Development and The Union on Mr. Lowe's investment, he must receive the "notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis" that he is entitled to under the Omnibus Agreement. Mr. Lowe requests that RED immediately agree in writing to provide such information. Furthermore, Mr. Lowe requests all accounting and certain books/records. We would like to discuss this with you as soon as possible this week.

SIDLEY

Page 3

Mr. Lowe expressly reserves all rights.

Sincerely,

/s/ Tai-Heng Cheng
Tai-Heng Cheng

TC:

cc: Yvette Ostolaza

EXHIBIT 4



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October 18, 2019

By Email

Mr. Edward F. Novak
Polsinelli PC
One East Washington
Suite 1200
Phoenix, Arizona 85004
Email: enovak@polsinelli.com

Re: RED Development

Dear Mr. Novak:

This letter responds to your letter dated October 8, 2019, and serves as a follow up to our correspondence, beginning with my letter dated September 20, 2019, regarding RED's failure to provide investors with any information about its intentions to sell the Little Rock Development and The Union.¹

As you know, RED must provide Mr. Lowe with "the same information provided to the other owners of RCH and RED Affiliated Entities as owners, including but not limited to all notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis, distributed to owners, including Dallas Police and Fire Pension System, by RCH or RED Affiliated Entities." Omnibus Agreement § 8.3. RED has not provided any of this information with respect to the contemplated Little Rock Development and The Union transactions. RED's failure to do so suggests either these documents do not exist or they do exist and RED is trying to hide them from its investors. Both possibilities amount to breaches of RED's contractual and fiduciary duties and require immediate remedial measures to avoid imminent, irreparable harm to Mr. Lowe's and other investors' rights.

Instead of addressing these concerns, your October 8 letter repeats stale and meritless counterarguments from years past. I will briefly address each in turn.

- Insufficient Information Provided by RED. While RED uploads operating statements for a random assortment of properties to a website on a quarterly basis, it has **not** provided, among other things, the closing statements, pro formas, or meeting minutes that Mr. Lowe is entitled to under the Omnibus Agreement and which any commercial real estate investor

¹ Defined terms have the same meanings as my prior letters, unless otherwise defined herein.

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needs to evaluate the success or failure of their investment. RED's delivery of a fragment of what was promised under the Omnibus Agreement does not absolve RED of its obligations to provide the remaining information. And in any event, RED's haphazard provision of historical information regarding certain shopping centers is not responsive to Mr. Lowe's current request for any Little Rock Development or The Union sale documentation or other documents related to the potential sale of these properties, including any appraisals or land valuations.

- Mr. Lowe's Use of an Email Address Provided by RED. Without citation to any contract or other provision, you accuse Mr. Lowe of "improperly access[ing] information on RED's servers." The Omnibus Agreement provides that Mr. Lowe retains his ownership rights and such rights shall be the same afforded to Messrs. Ebert and Rehorn. Omnibus Agreement § 8.2. Even if, for the sake of argument, you are asserting that RED's owners do not have a right to their RED email aliases, RED's failure to terminate such access does not excuse RED from fulfilling its independent contractual and fiduciary duties to the owners.
- Mr. Lowe's Performance Under the Participation Agreement. Your assertion that "Mr. Lowe has provided nothing to RED pursuant to the Omnibus Agreement" is false. Mr. Lowe performed his obligations under the Omnibus Agreement and Participation Agreement² until he terminated the Participation Agreement effective June 1, 2015. After that date, RED no longer had a Participation Interest, as that term is defined in the Participation Agreement, and Mr. Lowe was no longer obligated to provide information or make distributions to RED. Omnibus Agreement Introductory Statement G & § 7.2; Participation Agreement §§ 1.2, 4.2, 4.3. RED's repeated assertions to the contrary are meritless, as Mr. Lowe's prior counsel have explained to you on multiple occasions.
- The LPOA Does Not Make Mr. Lowe a Defaulting Member. I will not repeat the reasons why the LPOA does not violate the LLC Agreement—my October 1 letter stands for itself. Though you characterize the LPOA as being "far more extensive than [I] describe," it remains limited by its own terms and subject to the limitations imposed by the LLC Agreement. The LPOA thus is consistent with the LLC Agreement, and RED cannot use it as a shield to duck its independent obligations to Mr. Lowe.
- Mr. Lowe Has Rights to Basic Information About His Investment. Despite red-herring assertions related to Mr. Lowe's management rights, it is indisputable that Mr. Lowe has rights to information regarding his substantial investment in RED. RED's repeated refusals

² The "Participation Agreement" is the Participation Agreement made and entered into effective as of May 24, 2012 by and between RED Legacy, LLC and RED Consolidated Holdings, LLC, attached as Exhibit D to the Omnibus Agreement.

Page 3

to provide even such basic documentation as a pro forma and RED's intention to sell properties for less than they are worth indicate that RED has abdicated its duties to Mr. Lowe and the other owners. To avoid imminent, irreparable harm to those owners' rights, RED must be transparent and allow the owners to evaluate the impact of the potential sales of the Little Rock Development and The Union on their investments.

Mr. Lowe thus reiterates his request that RED immediately provide written confirmation that it will temporarily cease and desist from entering into any sales agreement for the Little Rock Development or The Union until RED provides to Mr. Lowe copies of any Little Rock Development or The Union sale documentation or other documents related to the potential sale of the properties, including any appraisals or land valuations, as is Mr. Lowe's right under the Omnibus Agreement. Mr. Lowe further requests that RED immediately agree in writing to provide such information.

Moreover, to properly evaluate the impact of the potential sales of the Little Rock Development and The Union on Mr. Lowe's investment, he must receive the "notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis" that he is entitled to under the Omnibus Agreement. Mr. Lowe requests that RED immediately agree in writing to provide such information. Furthermore, Mr. Lowe requests all accounting and certain books/records.

We urge you to contact us as soon as possible to discuss.

Mr. Lowe expressly reserves all rights.

Sincerely,

/s/ Tai-Heng Cheng
Tai-Heng Cheng

TC:

cc: Yvette Ostolaza

EXHIBIT 5



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November 4, 2019

By Email

Mr. Edward F. Novak
Polsinelli PC
One East Washington
Suite 1200
Phoenix, Arizona 85004
Email: enovak@polsinelli.com

Re: RED Development

Dear Mr. Novak:

You have not responded to our October 18, 2019 letter regarding RED's failure to provide Mr. Lowe with any information about its intentions to dispose of the Little Rock Development and The Union.¹ For your convenience, enclosed is another copy of the letter. To avoid imminent, irreparable harm to Mr. Lowe's rights, we reiterate the requests set forth in our correspondence, beginning with my letter dated September 20, 2019, and merely ask that RED comply with its contractual and fiduciary obligations to Mr. Lowe.

We urge you to contact us as soon as possible to discuss.

Mr. Lowe expressly reserves all rights.

Sincerely,

/s/ Tai-Heng Cheng
Tai-Heng Cheng

TC:

cc: Yvette Ostolaza

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October 18, 2019

By Email

Mr. Edward F. Novak
Polsinelli PC
One East Washington
Suite 1200
Phoenix, Arizona 85004
Email: enovak@polsinelli.com

Re: RED Development

Dear Mr. Novak:

This letter responds to your letter dated October 8, 2019, and serves as a follow up to our correspondence, beginning with my letter dated September 20, 2019, regarding RED's failure to provide investors with any information about its intentions to sell the Little Rock Development and The Union.¹

As you know, RED must provide Mr. Lowe with "the same information provided to the other owners of RCH and RED Affiliated Entities as owners, including but not limited to all notices, agendas, reports, minutes of meetings, memorandums, financials, pro formas, partnership or ownership correspondence, write-ups and analysis, distributed to owners, including Dallas Police and Fire Pension System, by RCH or RED Affiliated Entities." Omnibus Agreement § 8.3. RED has not provided any of this information with respect to the contemplated Little Rock Development and The Union transactions. RED's failure to do so suggests either these documents do not exist or they do exist and RED is trying to hide them from its investors. Both possibilities amount to breaches of RED's contractual and fiduciary duties and require immediate remedial measures to avoid imminent, irreparable harm to Mr. Lowe's and other investors' rights.

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- Mr. Lowe Has Rights to Basic Information About His Investment. Despite red-herring assertions related to Mr. Lowe's management rights, it is indisputable that Mr. Lowe has rights to information regarding his substantial investment in RED. RED's repeated refusals

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Mr. Lowe thus reiterates his request that RED immediately provide written confirmation that it will temporarily cease and desist from entering into any sales agreement for the Little Rock Development or The Union until RED provides to Mr. Lowe copies of any Little Rock Development or The Union sale documentation or other documents related to the potential sale of the properties, including any appraisals or land valuations, as is Mr. Lowe's right under the Omnibus Agreement. Mr. Lowe further requests that RED immediately agree in writing to provide such information.

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We urge you to contact us as soon as possible to discuss.

Mr. Lowe expressly reserves all rights.

Sincerely,

/s/ Tai-Heng Cheng
Tai-Heng Cheng

TC:

cc: Yvette Ostolaza