

MEMORANDUM

Agenda Item No. 14(A)(6)

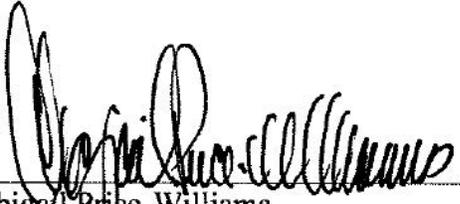
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving terms of
and authorizing execution by the
County Mayor of a second
amendment to the amended and
restated exchange Agreement
between Miami-Dade County
and Mapton Holdings, LLC and
Mana Fashion Realty, LLC for
Property located at 2900 NW 5th
Avenue, Miami, Florida to
extend design and construction
deadlines and allow reduction of
security under certain prescribed
circumstances; authorizing
County Mayor to execute the
second amendment to the
amended and restated exchange
Agreement and to exercise all
provisions contained therein

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor
Chairwoman Audrey M. Edmonson.


Abigail Price-Williams
County Attorney

APW/lmp



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(6)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(6)
8-31-20

RESOLUTION NO. _____

RESOLUTION APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE OF A SECOND AMENDMENT TO THE AMENDED AND RESTATED EXCHANGE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAPTON HOLDINGS, LLC AND MANA FASHION REALTY, LLC FOR PROPERTY LOCATED AT 2900 NW 5TH AVENUE, MIAMI, FLORIDA TO EXTEND DESIGN AND CONSTRUCTION DEADLINES AND ALLOW REDUCTION OF SECURITY UNDER CERTAIN PRESCRIBED CIRCUMSTANCES; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE THE SECOND AMENDMENT TO THE AMENDED AND RESTATED EXCHANGE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, pursuant to Resolution No. R-525-15, the County and Mapton Holdings, LLC (“Mapton”) entered into an agreement to exchange certain County-owned property for certain property owned by Mapton (“Mapton property”), pursuant to section 125.37, Florida Statutes; and

WHEREAS, pursuant to Resolution No. R-801-18, and as result of the extensive contamination on the Mapton property, the County, Mapton and Mapton’s affiliate, Mana Fashion Realty, LLC (“Mana”), entered into an amended and restated agreement (the “Agreement”) to identify another parcel of land owned by Mana located at 2900 NW 5th Avenue, Miami, FL, (“Property”) and to require Mana to construct a new four-story building consisting of approximately 43,646 gross square feet and associated parking with a cost to construct of \$8,357,633.00 on the Property (the “project”); and

WHEREAS, the Agreement sets forth numerous deadlines for the design and construction of the project and in order to secure Mana’s obligations to complete the development of the project,

the Agreement requires Mana to provide the County with security in the form of an irrevocable letter of credit (“ILOC”) in the amount of \$6,000,000.00; and

WHEREAS, following Mana’s and the County’s determination that the cost of the project, as evidenced by the 75% completed design plans, would greatly exceed Mana’s approved budget for the project, this Board approved Resolution No. R-1360-19 on December 17, 2019 in order to approve the first amendment to the Agreement; and

WHEREAS, the first amendment to the Agreement approved a modification to the scope of the project to reduce the square footage to approximately 35,410, inclusive of a parking garage, and to extend the project’s deadlines to account for the additional time needed to redesign and re-scope the project; and

WHEREAS, after Mana’s timely submissions of the new 75% and 100% plans to the County, Mana advised the County on July 20, 2020 that the progress of the development of the project had been adversely impacted by the Novel Coronavirus Disease 2019 (“COVID 19”) and requested additional time to milestones for the project, including its completion, and the ability to reduce the existing ILOC to obtain construction financing more efficiently; and

WHEREAS, this Board desires to approve a second amendment to the Agreement, in substantially the form attached as exhibit “A” and made a part hereof, to provide for an extension of the project milestone deadlines by maximum time periods of less than two months and Mana the ability to incrementally reduce the amount of the ILOC commensurate with the percentage completion of the project; and

WHEREAS, approval of the second amendment to the Agreement will allow for the project to continue as planned; and

WHEREAS, further, the Board desires to accomplish the purposes outlined in the memorandum, which is attached hereto as exhibit “B”,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated herein and are approved.

Section 2. This Board approves the second amendment to the Agreement in substantially the form attached hereto as exhibit “A” and made a part hereof, and authorizes the County Mayor or Mayor’s designee to execute same, for and on behalf of Miami-Dade County, and to exercise any and all other rights conferred therein and to perform all necessary acts to effectuate same.

The Prime Sponsor of the foregoing resolution is Chairwoman Audrey M. Edmonson. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose “Pepe” Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 31st day of August 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MRP

Monica Rizo Perez

SECOND AMENDMENT
TO AMENDED AND RESTATED EXCHANGE AGREEMENT

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED EXCHANGE AGREEMENT ("Second Amendment") is entered into and made effective on this 27th day of August, 2020 by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord" and/or "County"), and MAPTON HOLDINGS LLC, a Delaware limited liability company ("Mapton") and MANA FASHION REALTY, LLC a Delaware limited liability company, (hereinafter ("Developer") and/or ("MANA") and jointly with the County referred to herein as the "Parties").

WHEREAS, pursuant to Resolution No. R-525-15, the Parties entered into an Exchange Agreement to exchange certain County-owned property for certain property owned by Mapton ("Mapton Property"), pursuant to Section 125.37, Florida Statutes; and

WHEREAS, pursuant to Resolution No. R-801-18, and as result of the extensive contamination on the Mapton Property, the Parties entered into an Amended and Restated Exchange Agreement (the "Agreement") to identify another parcel of land owned by MANA ("Developer Property") which would require MANA to construct a new four-story building consisting of approximately 43,646 gross square feet including associated parking with a cost to construct of \$8,357,633.00 ("County Facilities") on the Developer Property; and

WHEREAS, pursuant to Resolution No. R-1360-19, the Parties amended the Agreement with the First Amendment to the Amended and Restated Exchange Agreement which adjusted the square footage of the County Facilities to be built to conform with the funding available, and extended the deadlines for design and construction of the County Facilities; and

WHEREAS, the Parties are desirous of amending the Agreement in order to extend certain deadlines and allow, under certain prescribed circumstances, for the periodic reduction of the secured Irrevocable Letter of Credit,

NOW, THEREFORE, in consideration for the mutual promises and covenants contained in this Second Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

WITNESSETH

1. Recitals. The County, Mapton and Developer agree that all of the foregoing recitals are true and correct, and incorporated by this reference in this Second Amendment.
2. Valid Amendment. The County, Mapton and Developer agree that this Second Amendment amends the Agreement in accordance with Section 34 thereof.
3. Effect of Amendment. Buyer and County agree that all of the terms and conditions in the Agreement and the First Amendment remain in full force and in effect, except for such terms and conditions that are expressly amended by this Second Amendment.
4. Defined Terms. Buyer and County agree that, unless specifically defined herein, all of the capitalized terms used but not defined in this Second Amendment shall have the respective meanings set forth in the Agreement.
5. The following paragraph shall be added to **Paragraph 11, Security for Developer's Obligations** as a new **Paragraph 11.3:**

11.3. Reduction of ILOC. The Developer may request from the Mayor or Mayor's designee, a reduction in the amount of the ILOC prior to Closing 2 of up to a total of seventy five percent (75%) of the total amount of the ILOC (equal to a total possible reduction not to exceed \$4,500,000.00), in twenty five percent (25%) increments (equal to \$1,500,000.00), based on the equivalent percentage of completion of the Improvements by the Developer, as reasonably determined by the County in consultation with the Developer and following a visual inspection of the Developer Property. The request for reduction shall include an original letter from the Developer specifying the percentage of reduction requested and an original American Institute of Architects (AIA) Form G702-1992: Application and Certificate for Payment, which shall be signed and certified by the Architect of Record for the Improvements. Upon receipt of each submittal, the County shall review same and shall, within thirty (30) days after receipt thereof, advise Developer in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Developer shall, within thirty (30) days after the date Developer receives such disapproval, make those changes necessary to meet the County's stated grounds for disapproval or request reconsideration of such comments. Any resubmission shall be subject to review and approval by the County, in accordance with the procedure hereinabove provided, until the same shall receive final approval or disapproval by the County. The County and Developer shall in good faith attempt to resolve any disputes concerning the plans in an expeditious manner, however, the County may disapprove the reduction of the ILOC in its sole and absolute discretion. If approved, the Developer may send a written request, executed by the Developer, to the Issuer (with a copy to the County), requesting a reduction in the ILOC in the amount approved by the County. The Issuer may then issue an amendment to the ILOC which will be effective only upon the execution of the County Mayor or Mayor's

designee. Any such amended ILOC shall otherwise remain in accordance with the definition of ILOC and Paragraph 11.1. No less than \$1,500,000.00 must remain on the ILOC until after Closing 2 has taken place and no outstanding amounts are due the County.

The remainder of Paragraph 11 of the Contract remains unchanged.

6. **Paragraph 14.3, Permits** is hereby amended to read as follows:

Developer shall obtain building permits for the Improvements by September 21, 2020. Developer acknowledges, understands and agrees that it is its responsibility to submit the final Construction Documents to the applicable and required governmental authority with sufficient time to enable review, comments and resubmittals by and to the governmental authorities, if necessary, so as to ensure that the permits are issued by the deadline contained herein.

7. **Paragraph 14.4, Commencement and Completion of Construction** is hereby amended to read as follows:

Developer shall have Commenced Construction by October 21, 2020 and shall thereafter diligently and continuously undertake the construction of the Improvements until Final Completion. Developer shall select the contractor for the Improvements in accordance with the requirements of Section 255.20, Florida Statutes. Developer shall obtain substantial completion of the Improvements, as evidenced by a Temporary Certificate of Occupancy, no later than October 21, 2021 and Final Completion on or before December 21, 2021 so as to allow Closing 2 to take place on or before January 21, 2022.

8. The effective date of this Second Amendment shall be the date set forth on the first page hereof.

9. This Second Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed for all purposes to be originals.

This Second Amendment shall constitute a part of the Agreement, as amended by the First Amendment, and references to the Agreement hereafter shall automatically include a reference to this Second Amendment. In all other respects, the Agreement, as amended by the First Amendment, remains in full force and effect in accordance with the terms and conditions specified therein. In the event of any conflict between this Second Amendment, the First Amendment and the Agreement, the First Amendment shall supersede the Agreement and the Second Amendment shall supersede both the First Amendment and the Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[ONLY THE SIGNATURE PAGES REMAIN]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

MIAMI-DADE COUNTY
a political subdivision of the State of Florida

By: _____

Name: _____

Title: _____

Date signed: _____

ATTEST:
Harvey Ruvin, Clerk

By: _____

Approved by the County Attorney as to
Form and legal sufficiency

Assistant County Attorney

MAPTON HOLDINGS, LLC

Delaware limited liability company

[Signature]
Witness/Attest:

By: [Signature]

[Signature]
Witness/Attest:

Name: MOISHE MANA

Title: MANAGING MEMBER

Date signed: 08/27/2020

STATE OF Florida

SS:

COUNTY OF MIAMI - DADE

I HEREBY CERTIFY, that on this 27th day of August, 2020 before me, an officer duly authorized to administer oaths and take acknowledgments, appeared MOISHE MANA, [] in person or [] via online notarization, who is personally known to me or proven, by producing the following identification: NOT APPLICABLE, to be the MANAGING MEMBER of MAPTON HOLDINGS, LLC, an existing Corporation under the laws of the State of Delaware, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

WITNESS my hand and official Seal at MIAMI, in the County and State aforesaid, on this, the 27th day of August, 2020

(SEAL)



MANA FASHION REALTY, LLC

Delaware limited liability company

[Signature]
Witness/Attest:

[Signature]
Witness/Attest:

By: [Signature]

Name: MOISHE MANA

Title: MANAGING MEMBER

Date signed: 08/27/2020

STATE OF Florida

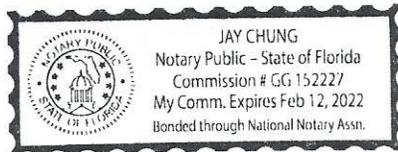
SS:

COUNTY OF MIAMI-DADE

I HEREBY CERTIFY, that on this 27th day of AUGUST, 2020 before me, an officer duly authorized to administer oaths and take acknowledgments, appeared MOISHE MANA, [] in person or [] via online notarization, who is personally known to me or proven, by producing the following identification: Not Applicable, to be the MANAGING MEMBER of MANA FASHION REALTY, LLC, an existing Corporation under the laws of the State of Delaware, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

WITNESS my hand and official Seal at MIAMI, in the County and State aforesaid, on this, the 27th day of AUGUST, 2020.

(SEAL)



Date: August 20, 2020

To: Honorable Chairwoman Audrey M. Edmonson
Commissioner District 3

From: Leland S. Salomon 
Deputy Director for Economic Development
Department of Regulatory and Economic Resources

Subject: Approval of Second Amendment to the Amended and Restated Exchange Agreement between Miami-Dade County and Mapton Holdings, LLC and MANA Fashion Realty, LLC for the Property located at 2900 NW 5th Avenue to redefine the Improvements and provide for deadline extensions

Recommendation

Staff recommends that the Board of County Commissioners (Board) approve this Second Amendment to the Amended and Restated Exchange Agreement between Miami-Dade County and Mapton Holdings, LLC and MANA Fashion Realty, LLC (“Developer”) and/or (“MANA”) to extend all deadlines to undertake the work and allow for the reduction of the secured Irrevocable Letter of Credit under certain prescribed circumstances. Under the revised deadlines, Developer shall obtain substantial completion of the Improvements, as evidenced by a Temporary Certificate of Occupancy, no later than October 21, 2021, and Final Completion as evidenced by a Certificate of Occupancy on or before December 21, 2021.

Scope

The impact of this project is in District 3 represented by Chairwoman, Audrey M. Edmonson.

Fiscal Impact/Funding Source

This Amendment has no fiscal impact on the County.

Track Record/Monitor

Rosa Garcia of the Internal Services Department is the Lease monitor.

Background

Pursuant to Resolution No. R-917-04 (the “Outreach Facilities Resolution”) the voters approved issuance of general obligation bonds in a principal amount not to exceed \$255,070,000.00 to construct and improve outreach facilities to meet code and service requirements and to increase neighborhood and community access and services. Appendix A to the Outreach Facilities Resolution lists projects eligible for funding from the Building Better Communities General Obligation Bond Program (the “Bond Program”). One of the projects listed in Appendix A to the Outreach Facilities Resolution was Project No. 324 - “Puerto Rican Community Center” with an original allocation of \$2.5 million to “Construct a Community Center for the Puerto Rican Community.”

On December 2, 2008 by Resolution No. R-1368-08, the Board of County Commissioners designated the South Florida Puerto Rican Chamber of Commerce, Inc. (“PRCC”) as the grant recipient of the Bond Program proceeds for the development, design and construction of Project No. 324, which project was to be “a multi-purpose facility to include retail gallery space, conference rooms, classrooms for neighborhood residents and students of two neighborhood public schools, and office space to a community business enterprise program to assist with job creation within District 3.” The Board identified the County-owned property in the area of N.W. 23rd Street and N.W. 2nd Avenue (Folio Numbers 01-3125-034-0830; 01-3125-044-0020; 01-3125-044-0010; and 01-3125-034-0890); as a viable site upon which to construct the Puerto Rican Community Center. The PRCC has made several attempts to develop their project on the County Property, but have been unable to do so.

On June 30, 2015, the Board of County Commissioners approved Resolution No. R-525-15 authorizing an exchange agreement between Mapton Holdings, LLC for the conveyance to and purchase by the County of two parcels of land located at 2153 NW 2nd Avenue and 2145 NW 2nd Avenue along with improvements to be built for the County thereon at Mapton's cost, in exchange for the conveyance to Mapton Holdings, LLC of four parcels of vacant land located at 270 NW 23rd Street, 251 NW 22nd Lane, 205 NW 22nd Lane and 2268 NW 2nd Avenue. The County and Mapton were aware of some environmental contamination associated with the Mapton parcels. However, upon further examination during the pre-construction process, Mapton discovered that the contamination was far greater than originally thought and extended off the property onto adjoining properties not owned by Mapton. The County and Mapton both agreed that the cost in both time and money was too great to proceed and the County agreed to consider other property owned by Mapton.

On July 24, 2018, The Board of County Commissioners approved Resolution No. R-801-18 approving an Amended and Restated Exchange Agreement with Mapton Holdings, LLC and Mana Fashion Realty ("Agreement") which would require MANA to construct a new four-story building consisting of approximately 43,646 gross square feet including associated parking with a cost to construct of \$8,357,633.00 ("County Facilities") on the Developer Property. The \$2.5 million General Obligation Bond Grant would be paid by the County at the closing for the Developer Property. Conceptual plans for the building were included as Exhibit "G" to the Amended and Restated Exchange Agreement.

In order to secure MANA's obligations to the County to construct the new building, MANA agreed to provide the County with an Irrevocable Letter of Credit ("ILOC") in the amount of \$6 million which can be drawn down by the County if MANA defaults in any of their obligations in their performance of the Agreement to build. Additionally, MANA issued a separate environmental ILOC in the amount of \$574,000.00 to cover the remediation required for any environmental issues regarding MANA's property.

Finally, the Agreement allowed for the conceptual plans to be altered if at any time during the development of the Improvements the Developer reasonably anticipated that the Project Costs would exceed \$8,357,633.00. The Developer was required to immediately notify the County of same and suggest revisions to the design, square footage, layout, finishes, fixtures, and/or equipment of the Improvements that would result in an adjustment of Project Costs to \$8,357,633.00. The Developer and the County would then meet and confer in order to agree on the necessary revisions, which revisions would be subject to approval of the County, not to be unreasonably withheld, conditioned or delayed.

On May 8, 2019, MANA advised the County that after submitting 75% design plans, MANA parties determined that Improvements for the property would cost \$10,873,522.00 and exceed the budget by \$2,515,889.00. Staff immediately began having meetings with MANA in order to adjust the Project Costs in accordance with Section 14.2(F) of the Amended Exchange Agreement.

On December 17, 2019, The Board of County Commissioners approved Resolution No. R-1360-19 approving Amendment No. 1 which redefined "Improvements" as "a three-story building consisting of approximately 35,410 Gross square feet, which includes, at a minimum: (a) 24,851 square feet of interior, fully finished and built-out space; (b) 2,060 square feet of terrace space; and (c) 6,832 square feet of parking garage. The facility shall also house the Puerto Rican Community Center and shall be developed in accordance with the terms and conditions of this Agreement. The total cost to construct the facility is \$8,357,633.00." Additionally, the Developer's project deadlines were extended as follows:

- A. Submission of 75% plans and specifications by December 13, 2019
- B. Submission of 100% plans and specifications by January 31, 2020
- C. Obtain permits for the Improvements by August 1, 2020

- D. Commencement of Construction by September 1, 2020
- E. Obtain substantial completion of the Improvements, as evidenced by a Temporary Certificate of Occupancy, no later than September 1, 2021, and
- F. Obtain Certificate of Occupancy by November 1, 2021 to allow Closing 2 to take place on or before November 30, 2021.

While timely Submissions of the 75% and 100% plans occurred, a declared state of emergency due to Novel Coronavirus Disease 2019 (“COVID-19”), a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza, caused MANA to have to “deal with layoffs amongst our design team and city staff as well as delays in reviewing submittals and responding to comments, etc.” Subsequently, MANA has requested additional time to complete the project and the ability to reduce the existing ILOC to obtain construction financing more efficiently.

This Proposed Amendment No. 2 will:

- 1) Extend the Developer’s project deadlines as follows:
 - i. Obtain permits for the Improvements by September 21, 2020
 - ii. Commencement of Construction by October 21, 2020
 - iii. Obtain substantial completion of the Improvements, as evidenced by a Temporary Certificate of Occupancy, no later than October 21, 2021, and
 - iv. Obtain Certificate of Occupancy by December 21, 2021 to allow Closing 2 to take place on or before January 21, 2022, and
- 2) Allow for the secured Irrevocable Letter of Credit to be reduced up to a total of seventy five (75) percent, in twenty five (25) percent increments, based on the equivalent percentage of the total monies required to be expended by the Developer on the Improvements (\$8,357,633.00). The Architect must certify the amount expended on American Institute of Architects (AIA) Form G702-1992 and the form must be accompanied by the Developer’s request for each reduction of the ILOC, for the County’s approval or disapproval in its sole discretion.

As required by Section 2-8.6.5 of the County Code, the following is the ownership structure of Mana Fashion Realty, LLC and Mapton Holdings, LLC:

- 1) Mapton Holdings LLC is owned 99% by Moishe Mana, Individually, and it is owned 1% by Mapton Realty Corp, its managing member.
- 2) MANA Fashion Realty, LLC is 100% owned by Moishe Mana.