

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 14-27648CA(42)

MILAN INVESTMENT GROUP,  
INC., a Florida corporation,  
individually, and on behalf of  
all others similarly situated,

Plaintiff,

vs.

CITY OF MIAMI, a Florida  
municipality, the MIAMI  
DOWNTOWN DEVELOPMENT  
AUTHORITY, a municipal board  
of the City of Miami, the MIAMI-DADE  
COUNTY PROPERTY APPRAISER,  
the MIAMI-DADE COUNTY TAX  
COLLECTOR and the FLORIDA  
DEPARTMENT OF REVENUE

Defendants.

COMPLAINT FOR DECLARATORY,  
EQUITABLE AND ANCILLARY RELIEF

CLASS REPRESENTATION  
REQUESTED

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Plaintiff, Milan Investment Group, Inc. ("Milan"), a Florida corporation,  
individually and as a Class Action Plaintiff, for and on its own behalf and on a Class  
Representation basis on behalf of all others similarly situated pursuant to Rule  
1.220, Fla. R. Civ. P., sues Defendants, the City of Miami ("City"), a Florida  
municipality, the Miami Downtown Development Authority (the "Miami DDA"),

a municipal board of the City, the Miami-Dade County Property Appraiser ("Property Appraiser"), the Miami-Dade County Tax Collector ("Tax Collector") and the Florida Department of Revenue ("Dept. of Revenue").

### INTRODUCTION

1. This is an action for declaratory, equitable and monetary relief with respect to an unconstitutional second ad valorem taxing ordinance enacted by the City on September 23, 2014, to-wit: Ordinance No. 13477, which levies additional ad valorem taxes on non-exempt property only within the limited geographical area of the City that is defined in Section 14-27 of the City's Code of Ordinances (the "DDA area") which is smaller than the geographical boundaries of the City as a whole, solely to fund the Miami DDA.

2. Plaintiff contends there is no existing general law that expressly authorizes the City to levy additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA, and therefore, Ordinance No. 13477 and the taxes to be levied pursuant to it violates multiple provisions of the Florida Constitution of 1968.

3. Plaintiff further contends Ordinance No. 13477 requires Plaintiff and all other DDA area property owners to pay unauthorized and unconstitutional additional ad valorem taxes under color of law or risk the loss of their property if those taxes are not paid in violation of the due process and equal protection clauses of both the Florida and Federal Constitutions.

4. Plaintiff and all other DDA area property owners lack an adequate remedy at law with respect to the unauthorized, unconstitutional and void additional ad valorem taxes being levied by Ordinance No. 13477.

5. There are no conditions precedent to filing this action, alternatively, all conditions precedent to this action have occurred or have been waived.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to grant the relief requested pursuant to Art. I, § 9 and 21, Art. V, § 5, and Art. VII, § 13, Fla. Const., 1968, Sections 26.012, 86.011 *et seq.* and 194.171(1), Fla. Stat., and 42 U.S.C. § 1983.

7. Venue is properly in this Court because the properties that are subject to Ordinance 13477 and the additional ad valorem taxes pursuant to it are all within the City's DDA area and within Miami-Dade County.

### **PARTIES**

8. Plaintiff, Milan Investment Group, Inc. ("Milan") is a Florida corporation, organized and doing business under the laws of the State of Florida and has its principal place of business in Miami, Florida.

9. Milan has owned property in the DDA area since 2007 and has paid *all* ad valorem taxes that have been levied against its DDA area property from up through and including the date of filing this lawsuit.

10. Defendant, the City of Miami ("City") is a municipality of the State of Florida.

11. Defendant, the Miami Downtown Development Authority (the "Miami DDA")

is a municipal board of the City that was created by the Miami City Commission by the enactment of Ordinance 7370 in 1965.

12. Defendant, the Miami-Dade County Property Appraiser ("Property Appraiser") is the independently elected official responsible for establishing the value of all property within Miami-Dade County.

13. Defendant, the Miami-Dade County Tax Collector ("Tax Collector") is the Miami-Dade County official responsible for sending the annual Notice of Ad Valorem Taxes and Non-Ad Valorem Assessments to all property owners in Miami-Dade County, and for collecting and distributing all ad valorem taxes to each "taxing unit" within Miami-Dade County.

14. Defendant, the Florida Department of Revenue ("Dept. of Revenue") is charged by statute with, among other matters, overseeing, enforcing and insuring compliance with all tax laws of the State of Florida.

### **GENERAL ALLEGATIONS**

#### **A. The City: Ad Valorem Taxation**

15. The City has no inherent taxing authority.

16. All taxes levied by the City must be expressly authorized by an *existing* Law of Florida and all taxes are subject to the restrictions and limitations of the Florida Constitution of 1968.

17. Art. VII, § 1(a), Fla. Const., 1968, states "No tax shall be levied except in pursuance of law."

18. Art. VII, § 9(a), Fla. Const., 1968, states "municipalities shall . . . be

authorized *by law* to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes . . . .”

19. Art. VII, § 9(b), Fla. Const., 1968, restricts the purpose for which municipalities *shall* be authorized *by law* to levy ad valorem taxes and limits the ad valorem tax millage rate each municipality can levy.

20. Art. VII, § 2, Fla. Const., 1968, states “All ad valorem taxation shall be at a uniform rate within each *taxing unit*, . . . .”

21. Pursuant to Art. VII, § 9, Fla. Const., 1968, the Legislature enacted Section 1, Ch. 73-129, Laws of Florida, codified as Section 166.211, Fla. Stat., which expressly authorizes each municipality to levy ad valorem taxes on all non-exempt real and personal property *throughout* its boundaries for the purpose of funding its municipal purposes and in an amount not to exceed 10 mills.

22. Pursuant to Art. VII, §§ 2 and 9(a) & (b), Fla. Const., 1968, and Section 166.211, Fla. Stat., the City is only authorized to levy ad valorem taxes on all non-exempt property *throughout* its boundaries to fund its municipal purposes and at a uniform rate.

23. Section 166.211, Fla. Stat., is the only existing law that expressly authorizes the City to levy ad valorem taxes.

24. The City can not levy any tax that exceeds the scope of the expressed taxing authority granted to it by the Legislature and it can not impose a tax that violates the Florida Constitution of 1968.

25. No existing Law of Florida expressly authorizes the City to levy ad valorem taxes for a purpose other than to fund all of its municipal purposes.

26. No existing Law of Florida expressly authorizes the City to levy additional ad valorem taxes on property only within the DDA area.

27. No existing Law of Florida expressly authorizes the City to levy additional ad valorem taxes solely to fund the Miami DDA.

**B. Creation of the Miami DDA - A Municipal Board**

28. The Florida Legislature did not create and could not constitutionally create a Miami DDA in 1965.

29. The Florida Legislature did not create and could not constitutionally create a DDA area special taxing district in the City of Miami in 1965.

30. The Miami DDA was created as a municipal board by a City ordinance in 1965 and it has since been governed and regulated by the City's Code of Ordinances ("City Code"), presently codified in Chapter 14, Sections 14-26 through 14-29 and Sections 14-51 thru 14-62.

31. The Miami DDA has never been granted taxing authority by the Legislature.

32. The City Code cites only to Ch. 65-1090, Laws of Florida, a *pre-Municipal Home Rule* legislative act, as authority for the City to levy additional ad valorem taxes on property only in the DDA area and solely to fund the Miami DDA.

33. Ch. 65-1090, Laws of Florida, was introduced into the Legislature as a

"Population Act" and designated Senate Bill 951 during the regular 1965 Legislative Session.

34. Ch. 65-1090 purported to grant to the governing body of each Florida municipality having a population of in excess of 250,000, according to the last Official Census, permissive authority to create a downtown development authority, to define its boundaries and to levy additional ad valorem taxes not to exceed 0.5 mills to fund it.

35. Miami and Tampa were the only Florida municipalities in 1965 having a population of in excess of 250,000, according to the last Official Census, when Senate Bill 951 was introduced into the legislature.

36. Senate Bill 1368 was also introduced into the Legislature during the 1965 regular Legislative Session only for the expressed purpose of *excluding* from Senate Bill 951 any Florida municipality having a federally recognized urban renewal program which affected its central business district in progress or completed on the effective date of Senate Bill 951.

37. Senate Bill 951 and Senate Bill 1368 were enacted and each became effective on June 25, 1965 as Ch.65-1090 and Ch. 65-1160, respectively.

38. Tampa had an on-going urban renewal program affecting its central business district on the effective date of Senate Bill 951.

39. Tampa was excluded from the grant of permissive authority in Ch. 65-1090 because of the concurrent enactment of Ch. 65-1160.

40. Miami was the *only* municipality having a population of in excess of 250,000 and otherwise qualified to exercise the permissive authority conferred by Ch. 65-1090 in 1965.

**C. The Florida Constitution of 1968 - Municipal Home Rule**

41. The Florida Constitution was revised and substantially amended in 1968 and the granting of "municipal home rule" to all Florida municipalities was one of the newly included constitutional provisions.

42. Pursuant to Art. VIII, § 2, Fla. Const., 1968, municipalities were granted "governmental, corporate and proprietary powers to perform municipal functions and render municipal services" but Municipal Home Rule *did not include* any taxing authority, any power preempted by other provisions of the Florida Constitutional or any power that was otherwise provided for by law.

43. Because of the power and authority conferred by constitutional Municipal Home Rule in 1968, the Legislature enacted Ch. 71-29, Laws of Florida, to expressly repeal thousands of pre-1968 "Population Acts" which the Legislature deemed to be unconstitutional.

44. Ch. 71-29 specifically identifies and expressly repealed Ch. 65-1090.

45. Ch. 71-29 repealed the only legislative act that expressly authorized the levying of additional ad valorem taxes pursuant to Ch. 65-1090.

**D. The Florida Constitution of 1968 - Ad Valorem Taxation**

46. The Florida Constitution of 1968 imposed limitations and restrictions on

ad valorem taxation not previously included in any of the State's prior Constitutions.

47. Art. VII, § 9, Fla. Const., 1968 identifies and restricts the "taxing units" that the Legislature shall/may authorize to levy ad valorem taxes and restricts the purpose for which each taxing unit shall/may levy ad valorem taxes.

48. Pursuant to Art. VII, § 9(a) & (b), Fla. Const., 1968: i) *counties* "shall be authorized to levy ad valorem taxes" to fund "*all county purposes*;" ii) *school districts* "shall be authorized to levy ad valorem taxes" to fund "*all school purposes*;" iii) *municipalities* "shall be authorized to levy ad valorem taxes" to fund "all municipal purposes;" iv) a *special district* "may be authorized to levy ad valorem taxes" either for "water management purposes" or as "authorized by law approved by vote of the electors . . . not wholly exempt from taxation" to fund the "*special district purposes*;" and v) a *county* "furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes" as a municipal services tax unit ("*MSTU*").

#### **E. Special Taxing Districts**

49. Dade County Home Rule and the Dade County Charter conferred exclusive authority in the Board of County Commissioners of Dade County (hereinafter all references will be to "Miami-Dade County") to create all special taxing districts within Miami-Dade County beginning in 1957.

50. The Miami-Dade County Board of Commissioners did not create the DDA area as a special taxing district.

51. The Miami-Dade County Board of Commissioners did not create the Miami DDA and it is not the governing body of the Miami DDA as required by the Miami-Dade County Code of Ordinances for all Miami-Dade County special taxing districts, with the exception of the Children's Trust.

52. The DDA area *is not* a special taxing district for purposes of ad valorem taxation as required by Art. VII, § 9, Fla. Const., 1968.

53. The DDA area *is not* a separate "taxing unit" for purposes of ad valorem taxation as required by Art. VII, § 9, Fla. Const., 1968.

54. The Miami DDA *is not* a special taxing district for purposes of ad valorem taxation as required by Art. VII, § 9, Fla. Const., 1968.

55. The Miami DDA *is not* a separate "taxing unit" for purposes of ad valorem taxation as required by Art. VII, § 9, Fla. Const., 1968.

#### **SPECIFIC ALLEGATIONS**

56. On or about July 24, 2014, the Miami City Commission ("City Commission") adopted a Resolution that tentatively approved a proposed ad valorem tax on all non-exempt property throughout the boundaries of the City at a 7.6465 millage rate to fund the City's operating budget for Fiscal Year 2014-2015 that would begin on October 1, 2014.

57. On or about July 24, 2014, the City Commission adopted Resolution R-14-0304 that tentatively approved a proposed additional ad valorem tax on all non-exempted property *only* within the DDA area at a 0.478 millage rate and solely to

fund the Miami DDA for Fiscal Year 2014-2015.

58. On or about September 12, 2014, the City Commission tentatively approved a City-wide budget for the ensuing fiscal year and approved a proposed taxing ordinance, on first reading, to levy ad valorem taxes at a 7.6465 millage rate on all non-exempt property throughout the City's boundaries to fund the City's operating budget for Fiscal Year 2014-2015.

59. On or about September 12, 2014, the City Commission tentatively approved a Miami DDA budget for the ensuing fiscal year and approved a proposed second ad valorem taxing ordinance, on first reading, to levy additional ad valorem taxes at a 0.478 millage rate on all non-exempt property *only* within the DDA area and solely to fund the Miami DDA budget for Fiscal Year 2014-2015.

60. On or about September 23, 2014, the City Commission approved the City-wide budget for the ensuing fiscal year and enacted, on second reading, ad valorem taxing Ordinance No. 13478, a copy of which is attached as Exhibit "1," which levies ad valorem taxes at the 7.6465 millage rate on all non-exempt property throughout the City's boundaries to fund the City's operating budget for Fiscal Year 2014-2015.

61. On or about September 23, 2014, the City Commission approved the Miami DDA budget for the ensuing fiscal year and enacted, on second reading, a *second* ad valorem taxing ordinance, to-wit: Ordinance No. 13477, a copy of which is attached as Exhibit "2," which levies ad valorem taxes at the 0.478 millage rate on

all non-exempt property *only* in the DDA area and *solely* to fund the Miami DDA for Fiscal Year 2014-2015 and these ad valorem taxes are stated to be *in addition* to the City-wide ad valorem taxes that are to be levied at the 7.6465 millage rate.

62. The City cannot identify any existing Law of Florida that expressly and constitutionally authorizes it to levy the additional ad valorem taxes pursuant to City Ordinance No. 13477.

63. The Property Appraiser cannot identify any existing Law of Florida that expressly and constitutionally authorizes the City to levy the additional ad valorem taxes pursuant to City Ordinance No. 13477.

64. The Tax Collector cannot identify any existing Law of Florida that expressly and constitutionally authorizes the City to levy the additional ad valorem taxes pursuant to City Ordinance No.13477.

65. The Dept. of Revenue cannot identify any existing Law of Florida that expressly and constitutionally authorizes the City to levy the additional ad valorem taxes pursuant to City Ordinance No. 13477.

66. Plaintiff has retained counsel to bring this action and is obligated to pay the costs of this action and reasonable legal fees to its counsel for bringing and prosecuting this action.

#### **CLASS REPRESENTATION ALLEGATIONS**

67. The Class that the Plaintiff seeks to represent consists of all persons and entities owning real and personal property within the DDA area and that must pay the

additional ad valorem taxes levied by the City pursuant to Ordinance No. 13477 or risk the loss of their property for non-payment of those taxes in violation of the Florida Constitution of 1968.

68. This action is properly maintainable under Rule 1.220, Fla. R. Civ. Pro., as a class action:

A. The members of the Class are so numerous that separate joinder of each member is impracticable: there are thousands of members within the prospective class;

B. The claims of the representative Class Plaintiff raise issues of law and fact common to those of the Class which it seeks to represent. All issues of fact and law that are material with respect to this action apply equally to the Class Members and to the representative Class Plaintiff;

C. The claims of the representative Class Plaintiff are typical of the claims of the Class which it seeks to represent. The representative Class Plaintiff does not have issues relating to this litigation that are distinct from those of the Class, and the representative Plaintiff has no conflict of interest with the Class;

D. The representative Class Plaintiff can fairly and adequately protect and represent the interests of each member of the Class. It is committed to the vigorous prosecution of this matter and has retained undersigned counsel who is an experienced litigator in both state and federal courts;

E. The prosecution of separate claims by individual Members of the Class would create a risk of inconsistent or varying adjudications concerning individual members of the Class that would establish incompatible standards for the Defendants;

F. The City of Miami has acted and refused to act on grounds generally applicable to the entire class, thereby making it appropriate to seek and secure final declaratory and injunctive relief and damages or a refund concerning the Class as a whole;

G. The claims of the representative Class Plaintiff and the claims of each Member of the Class predominate over any question of law or fact affecting only individual Members of the Class, and class representation is superior to other available methods for the fair and efficient resolution of the controversy.

69. The issues common to the claims of the representative Plaintiff and to the Class members include but are not limited to:

A. Whether the City is expressly and constitutionally authorized by an existing Law of Florida to levy additional ad valorem taxes on property solely within the DDA area;

B. Whether the City's levying of additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA pursuant to Ordinance No. 13447 violates Art. VII, §1(a), Fla. Const., 1968;

C. Whether the City's levying of additional ad valorem taxes on

property only within the DDA area and solely to fund the Miami DDA pursuant to Ordinance No. 13447 violates Art. VII, § 2, Fla. Const., 1968;

D. Whether the City's levying of additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA pursuant to Ordinance No. 13447 violates Art. VII, § 9, Fla. Const., 1968;

E. Whether the DDA area is a special taxing district pursuant to the Florida Constitution of 1968;

F. Whether the DDA area is a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

G. Whether the Miami DDA is a special taxing district pursuant to the Florida Constitution of 1968;

H. Whether the Miami DDA is a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

I. Whether the City can constitutionally levy additional ad valorem taxes only on property within the DDA area when the electors within the DDA area have never voted and approved the creation of a DDA area special taxing district;

J. Whether the City can constitutionally levy additional ad valorem taxes only on property within the DDA area when the electors within the DDA area have never voted and approved the levying of additional ad valorem taxes of up to 0.5 mills.

70. The facts and circumstances supporting the conclusion that this action is properly treated on a class action basis are that all actions taken by the City were done and taken on a uniform basis affecting all members of the Class equally.

71. Plaintiff is a proper representative Class Plaintiff under the provisions of Rule 1.220, Fla. R. Civ. Pro. because (i) it is a taxpayer owning property within the DDA area; (ii) it has heretofore paid all ad valorem taxes levied by the City on its property within the DDA area during each Fiscal Year since it began owing property in the DDA area and it continues to be obligated to pay all ad valorem taxes levied by the City on its DDA area property; and (iii) it has been annually challenging the authority and constitutionality of the City levying these additional ad valorem taxes since 2008.

## COUNT I

### DECLARATORY AND INJUNCTIVE RELIEF

72. Plaintiff re-adopts and re-alleges paragraphs 1 thru 71 as if fully restated.

73. Plaintiff is in doubt as to its rights and liabilities and seeks a declaratory, injunctive and such further and other relief as the Court deems appropriate.

74. Plaintiff **disputes** that:

A. Any existing Law of Florida expressly and constitutionally authorizes the City to enact a taxing ordinance, including Ordinance No 13477, that levies additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA;

B. The City can constitutionally enact a taxing ordinance, including Ordinance No. 13477, that levies additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA without the approval of the electors within the DDA area;

C. The DDA area is a special taxing district pursuant to the Florida Constitution of 1968;

D. The DDA area is a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

E. The Miami DDA is a special taxing district pursuant to the Florida Constitution of 1968;

F. The Miami DDA is a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968.

75. Plaintiff **contends**:

A. There is no existing Law of Florida that expressly and constitutionally authorizes the City to enact a taxing ordinance, including Ordinance No. 13477, that levies additional ad valorem taxes on property only in the DDA area and solely to fund the Miami DDA ;

B. The City is violating Art. VII, §§ 1(a), 2, and/or 9(a) & (b), Fla. Const., 1968, by enacting a second ad valorem taxing ordinance, including Ordinance 13477, that levies additional ad valorem taxes on property only in the DDA area and solely to fund the Miami DDA ;

C. The DDA area is not a special taxing district pursuant to the Florida Constitution of 1968;

D. The DDA area is not a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

E. The Miami DDA is not a special taxing district pursuant to the Florida Constitution of 1968;

F. The Miami DDA is not a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

G. By levying additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA in violation of Art. §§ 1(a), 2, and/or 9(a) & (b), Fla. Const., 1968, the City is denying the Plaintiff and Members of the Class due process;

H. By levying additional ad valorem taxes on property only within the DDA area and solely to fund the Miami DDA in violation of Art. §§ 1(a), 2 and/or 9(a) & (b), Fla. Const., 1968, the City is denying the Plaintiff and Members of the Class equal protection of the law.

76. The considerations of the public interest in the enforcement of the Florida Constitution and in the elimination of illegal and unconstitutional taxes are all on the side of the Plaintiff and the Class Members.

77. Plaintiff has a substantial likelihood of success on the merits.

78. Plaintiff seeks a declaration by the Court that:

A. The City is not authorized by any existing and constitutional law to levy additional ad valorem taxes on property only in the DDA area and solely to fund the Miami DDA;

B. The DDA area is not a special taxing district pursuant to the Florida Constitution of 1968;

C. The DDA area is not a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

D. The Miami DDA is not a special taxing district pursuant to the Florida Constitution of 1968;

E. The Miami DDA is not a separate "taxing unit" for purposes of ad valorem taxation pursuant to the Florida Constitution of 1968;

F. Ordinance No. 13447 and the additional ad valorem taxes levied by this Ordinance violate Art. §§ 1(a), 2 and 9(a) & (b), Fla. Const., 1968;

79. Plaintiff and all similarly situated owners of property in the DDA area have no adequate remedy at law against the levying of unauthorized, illegal, unconstitutional and void ad valorem taxes levied by the City.

80. Plaintiff further seeks injunctive relief that:

A. Prohibits all Defendants either levying, billing, enforcing collection and/or facilitating the taxes levied by Ordinance No. 13477;

B. Prohibits all Defendants from enacting an ordinance, levying, billing, enforcing, collecting and/or facilitating any other ordinance that levies addition ad

valorem taxes on property only in the DDA area and solely to fund the Miami DDA.

WHEREFORE, Plaintiff prays on its own behalf and on behalf of all other owners of property within the DDA area for entry of an order and final judgment for the above-stated declaratory and injunctive relief, plus the costs for bringing this action, and attorneys fees for Plaintiff's counsel for filing and prosecuting this action.

## COUNT II

### **Refund and Money Damages**

81. Plaintiff re-alleges paragraphs 1 thru 71 as if fully restated.

82. The value of the refunds claimed or the damages caused as a result of City's deliberate enactment of Ordinance No. 13447 and the levying of unauthorized, illegal, unconstitutional and void ad valorem taxes exceeds \$15,000.00, exclusive of interest, costs and attorneys' fees.

83. The City does not have expressed legislative authority to enact Ordinance No. 13447 or to levy additional ad valorem taxes only within the DDA area and solely to fund the Miami DDA.

84. The enactment of Ordinance No. 13447 and the levying of the taxes stated therein are unlawful, unauthorized, unconstitutional, illegal and void and violate multiple provisions of the Florida Constitution.

85. The enactment of Ordinance No. 13341 and the levying of the taxes stated therein are unauthorized and unconstitutional and Plaintiff and other owners of property within the DDA area who are paying the taxes pursuant to Ordinance No.

13447 are entitled to a refund or money damages.

WHEREFORE, Plaintiff prays for entry of an order and final judgment for a refund and/or damages of all sums unlawfully and unconstitutionally taken, collected or extracted pursuant to Ordinance No. 13447, plus interest thereon, costs, attorneys' fees and such other relief as the Court may deem appropriate.

### **COUNT III**

#### **Relief Under The Federal Civil Rights Act**

86. Plaintiff adopts and re-alleges Paragraphs 1 thru 71 as if fully restated.

87. This is an action for damages pursuant to 42 USC §1983.

88. The value of the controversy concerning the City's deliberate enactment of Ordinance No. 13477 and the levying of unauthorized, unconstitutional and illegal tax under color of law exceeds \$15,000.00, exclusive of interest, costs and attorneys' fees.

89. The City's enactment of Ordinance No. 13447 causes the taking of property of the Plaintiff and that of all other owners of property in the DDA area under color of law for unauthorized and unconstitutional additional ad valorem taxes.

90. Ordinance No. 13447 deprives and will continue to deprive Plaintiff and all other owners of property within the DDA area of their property and other rights protected by the Florida and Federal Constitution.

91. The action by the City as described herein was and is arbitrary and capricious, contrary to Florida's constitutional and general law, without any lawful or

constitutional basis and prohibited by the Florida Constitution.

92. The action by the City as described herein was taken under color of state law but in fact is without valid and existing legislative authority and is prohibited by the Florida Constitution.

93. The action by the City as described herein has caused and will continue to cause damage to the Plaintiff and to all other owners of property within the DDA area.

94. The action taken by the City violates the due process rights of the Plaintiff and all other owners of property within the DDA guaranteed by both the Florida and Federal Constitutions.

95. The action taken by the City violates the equal protection rights of the Plaintiff and all other owners of property within the DDA area guaranteed by both the Florida and Federal Constitutions.

96. Damages to the Plaintiff and to all other owners of property within the DDA area by the unauthorized and unconstitutional additional ad valorem taxes pursuant to Ordinance No. 13447 are expected to exceed \$5,000,000.00.

97. Plaintiff has retained counsel to represent it and all similarly situated persons/entities who own non-exempt real and personal property within the DDA area and it is obligated to pay the costs of this action and legal fees to its counsel.

98. Plaintiff and all other owners of property within the DDA area are entitled to recover attorneys' fees and costs for bringing this action pursuant to 42

USC §1988.

WHEREFORE, Plaintiff prays that this Court enter an order and final judgment and:

A. Award damages to the Plaintiff and all other owners of property within the DDA area by reason of having to pay unauthorized, unconstitutional, unlawful and void taxes under color of law;

B. Award costs and attorneys' fees;

C. Grant such other and further relief as may be just and proper.

Dated: October 28, 2014

Respectfully submitted,

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By: /s/ Linda L. Carroll

**LINDA L. CARROLL**

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