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 RECEIVED NYSCEF: 01/08/2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

---X
CALVERTON AVIATION & TECHNOLOGY LLC,

Plaintiff,

- against –

THE TOWN OF RIVERHEAD, THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, AND THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY,

Defendants.
---X

Index No.

SUMMONS

Plaintiff designated Suffolk County as the place of trial pursuant to CPLR §§ 501 & 504

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear, judgment will be taken against you by default for the relief demanded in the notice set forth below.

Dated: New York, New York
January 8, 2024

KASOWITZ BENSON TORRES LLP

By:

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COMPLAINT

Plaintiff Calverton Aviation & Technology LLC ("CAT"), by its undersigned counsel for its complaint against defendants the Town of Riverhead ("Town" or "Riverhead"), the Town of Riverhead Community Development Agency ("CDA"), and the Town of Riverhead Industrial Development Agency ("RIDA", and collectively with the Town and the CDA, "Defendants"), alleges:

INTRODUCTION

1. This action arises out of the contractual breaches, fraud, and bad faith conduct of the Town, the CDA, and RIDA in terminating the Agreement of Sale, dated November 19, 2018 ("Purchase Agreement"), between the Town, the CDA and CAT to purchase and develop the Enterprise Park at Calverton ("EPCAL" or "the Property"). As set forth herein, the Town's actions – including its lies to CAT regarding its intention to perform its obligations, its improper interference with RIDA, and its pretextual basis for declaring the Purchase Agreement null and void – negate its purported termination. Instead, it must proceed to closing with CAT on its promised sale of EPCAL and pay damages to CAT for the harm it has caused.

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2. CAT is a special purpose entity under the umbrella of and financially backed by the Ghermezian family's conglomerate, Triple Five Worldwide ("Triple Five"). For more than five years, CAT has devoted significant resources, committed thousands of hours, and spent over five million dollars working diligently, transparently, and in good faith with the CDA, the Town, and RIDA to close the sale and develop EPCAL (the "Project") for the people of Riverhead. CAT's plan contemplates development of the site for up to 10,000,000 square feet of space, including for environmental, energy, and academic tenants, which would vastly improve the economy of the whole region. Phase 1 of the Project anticipates CAT investing approximately $250 million into the Project, and, as stipulated in the Purchase Agreement, building the first million square feet. Throughout this time, CAT has met every single one of its contractual obligations.

3. Prior to entering into the Purchase Agreement, the Town subjected CAT to extensive due diligence and scrutiny. This included, among other things, conducting public hearings on CAT's qualification to purchase and develop the Property.

4. At the conclusion of its due diligence, the Town declared that CAT was financially "qualified and eligible" to develop EPCAL and voted to approve the sale of EPCAL to CAT for $40,000,000.00 and to enter the Purchase Agreement.

5. Promptly upon executing the Purchase Agreement and pursuant to its terms, CAT deposited $500,000.00 into an escrow account, to be credited to CAT against the purchase price upon closing.

6. Thereafter, CAT undertook to perform environmental, zoning, and other assessments of the Property, and, upon its completion of these assessments, CAT made a second deposit of $500,000.00 into escrow, also to be credited to CAT upon closing.

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7. With the second deposit, CAT notified the Town and the CDA that it intended to proceed to closing.

8. Upon receiving that notice from CAT, the Town and the CDA became obligated to perform certain acts prior to closing, including seeking and obtaining approval of a subdivision of the Property. Specifically, the Purchase Agreement required the Town to obtain approval from the New York State Department of Environmental Conservation ("DEC") to subdivide the Property in order to carve out a portion of EPCAL that would remain in the Town's possession. To obtain the approval, the DEC asked the Town to acknowledge that the Riverhead Water Department ("RWD") was not the legal water provider to EPCAL, which falls within the Suffolk County Water Authority's ("SCWA") jurisdiction. The Town refused to accept and acknowledge this reality, and, accordingly, failed to obtain the subdivision as required by the Purchase Agreement.

9. The Town's breach of its obligation to obtain subdivision approval left the Project at a standstill, as the transaction could not legally close until the subdivision was granted. After affording the Town and the CDA extensions of time to perform their obligations under the Purchase Agreement, and in an effort to move the Project forward, CAT notified the Town and the CDA of its willingness to close despite the Town and the CDA's failure to satisfy their obligations, and negotiated with the Town and the CDA to take on certain of these obligations, including obtaining subdivision approval, from the Town and the CDA.

10. During these negotiations, the Town and the CDA informed CAT that they could proceed more quickly to closing if the transaction was restructured. Under the Town and the CDA's proposed restructuring, the CDA would transfer title of the Property to RIDA and RIDA would, in turn, execute a ground lease with CAT. CAT would take on the obligation to obtain

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the subdivision, which was previously the Town's responsibility under the Purchase Agreement. After the subdivision was obtained, RIDA would be required to convey fee title to the Property to CAT. CAT's demonstrated good faith was showcased during this time. In the face of the Town's failure to get the subdivision approved, which had hopelessly stalled the Project, CAT remained flexible and agreed to step up to take on the responsibility and cost of doing so. CAT was even willing to close with an inferior structure (under a ground lease that would later become a fee simple rather than just a fee simple as previously agreed).

11. In addition, the Town and the CDA informed CAT that, as part of this process, RIDA would conduct a review of CAT to determine whether it remained financially capable of purchasing and developing the Property, and, if it found CAT was not qualified, the Town and the CDA would be allowed to terminate the Purchase Agreement. The seemingly spontaneous request for CAT to submit to review by RIDA was outside of any obligation in the Purchase Agreement and outside of any normal course activities of RIDA.

12. CAT initially refused to agree to the RIDA review, but the Town threatened CAT that, if it did not agree, CAT would have to sue in order to force the Town and the CDA to close on the Purchase Agreement.

13. During negotiations, to induce CAT to agree to RIDA review and assuage CAT's concerns, the Town and the CDA represented to CAT that the ability to terminate was solely for "optics", but that that the Town fully intended to close with CAT even if RIDA, ultimately, did not approve CAT.

14. In a March 2022 meeting, attended by Riverhead's then-Supervisor[1] and the CDA Chairperson Yvette Aguiar, former Town Attorney Dawn Thomas, and Deputy Town Attorney

[1] Supervisor Aguiar was replaced by former Town Councilman Tim Hubbard in January 2024.

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Marie Prudenti, Aguiar told Justin Ghermezian, Margaret Blakey,[2] and Alan Glazer of CAT that she wanted to be "crystal clear" that the Town fully supported closing the deal with CAT and that the RIDA process was solely intended to ensure a closing could take place quickly and development could commence. The Town officials further assured CAT that RIDA would find it financially capable and approve the revised structure, that the RIDA review process was, essentially, a pro forma exercise, and that the Town would close on the sale of the Property to CAT regardless of the outcome of the RIDA review process.

15. Based on these representations, CAT agreed to enter into the March 2022 letter agreement between the Town, the CDA and CAT ("Letter Agreement"); and the September 21, 2022 Preliminary Agreement between the CDA, CAT, and RIDA (the "Preliminary Agreement").

16. The Town and the CDA, however, never intended to honor the Purchase Agreement, Letter Agreement or Preliminary Agreement. The proposed RIDA process was a ruse, an escape hatch to enable the Town to manufacture a pretextual basis – *i.e.,* a RIDA finding that CAT was not financially qualified to develop the Project – for the Town to escape its contractual obligation. Based on the Town's representations, and CAT's belief that RIDA would discharge its contractual obligations in good faith as required, CAT, in reasonable reliance on these assurances, agreed to allow RIDA to conduct a second financial ability assessment. CAT made that decision reasonably believing that, so long as RIDA acted in good faith, it would readily conclude, as any reasonable actor would, that CAT continued to have the financial ability to perform its obligations under the Purchase Agreement. And, on the off chance that RIDA

[2] Margaret Blakely, Executive Vice President of Triple Five.

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somehow found otherwise, CAT had been assured by the Town and the CDA that they would still close on the sale of the Property.

17. The reasonableness of CAT's reliance is further underscored by the fact that Triple Five is the most financially capable sponsor entity the Town or RIDA has ever dealt with and has developed, financed, owns and manages North America's three largest shopping and entertainment centers with a collective valuation of over $10 billion, in addition to numerous other assets and investments.

18. After entering the Preliminary Agreement in September 2022, CAT continued to meet all of its contractual obligations, including by providing RIDA with extensive evidence of its continued financial capability to acquire and develop the Property.

19. After CAT agreed to involve RIDA, however, not only did the Town not engage in good faith and provide the assistance it was contractually obligated to provide CAT in dealing with RIDA, but members of the Town Board, including its then-Supervisor, and then-Board Member and now current Supervisor, actively worked against CAT, pressuring RIDA to deny approval and imploring them to reject CAT's and Triple Five's incontrovertible financial capabilities.

20. In the summer of 2023, signs that "the fix was in" all along began to emerge. The Town and the CDA gave indications that they believed CAT would not pass the RIDA review process. Then Town Councilman, CDA Board Member, and current Supervisor, Timothy Hubbard submitted a guest column to the Riverhead Local newspaper, voicing that he had "doubts about the sale of the EPCAL property to CAT." He also made comments suggesting that he believed that RIDA would reject the application, noting that "[The Project] has to get

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through the [R]IDA first. And quite honestly, I'm not sure that's going to happen." Hubbard is one of those who appoints RIDA's Directors.

21. Hubbard went even further by making a public announcement that "if I were on the IDA board, I would not be comfortable saying they are qualified and eligible. . . I think we can do much better. I strongly advocate for the development for that property, however this is not the right deal."

22. These statements by Hubbard indicated that he was privy to the internal affairs of RIDA with respect to the CAT review. Hubbard's comments were made months before the RIDA review process was complete and while CAT was continuing to respond to RIDA's requests for information about its finances. Hubbard, who was not a member of the RIDA Board or otherwise affiliated with RIDA, had no legitimate basis to make statements regarding the likelihood of CAT passing the RIDA review at that time or ever. Hubbard was aware that the RIDA review process was in progress, but not completed. His comments, which signaled to RIDA the outcome the Town wanted, also strongly suggest that the Town was in contact with RIDA behind the scenes during its review of CAT and that the outcome of RIDA's review was pre-determined.

23. As election day 2023 approached, public opposition to the sale of the Property to CAT emerged as a critical issue. The public sentiment against Triple Five's EPCAL development plans – though rooted in misunderstanding by the public – had reached a crescendo, and RIDA faced intense pressure from the Town Board, who appointed RIDA's members. Town and CDA officials – in flagrant breach of their obligations to CAT as its contractual counterparty – repeatedly urged RIDA, both publicly and privately, and notwithstanding the uncontradicted facts, to find CAT financially unqualified. Tim Hubbard's statements throughout 2023,

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including a prediction in October 2023 (prior to RIDA's completion of diligence) that RIDA approval would not "come to fruition," further demonstrate that RIDA's denial of CAT's application was a *fait accompli*; its outcome pre-arranged by the Board, the CDA, and RIDA.

24. To the Town Board, a denial of the authorizing resolution, just in time for the upcoming election on November 7, 2023, would be red meat for constituents who falsely believed that CAT intended to build a cargo jetport at the EPCAL site, despite CAT's numerous public denials and written submissions to RIDA and the Town, that it would not build a cargo jetport.

25. Ultimately, the Town Board had its way. While CAT took great pains to offer explanations to resolve open issues, including by repeatedly offering to meet with RIDA to address or clarify any issues or concerns with its financial submissions, RIDA abandoned the process it had commenced with CAT, reneged on its contractual and legal obligations to hold a public hearing on the CAT application, and announced a surprise meeting to rule on the application shortly after Town Supervisor Aguiar had privately demanded a decision. This meeting was announced by posting a "draft agenda" on the Town's website, without any notice to CAT. At this meeting, on October 23, 2023, RIDA approved a resolution ("Resolution 44-23") denying CAT an authorizing resolution *and* denying CAT's request for financial incentives before it was even ripe for consideration.

26. This decision contravened RIDA's legal obligation to hold a public hearing (and prior representation to the community and to CAT that it would hold a public hearing) on CAT's application, before it made any decision on the question of CAT's financial wherewithal. But RIDA did not hold the public hearing required under the law. Rather, at the meeting adopting Resolution 44-23, the RIDA Board presented a series of slapdash adverse findings cloaked under

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the guise of careful consideration. The result, however, was nakedly pretextual, replete with misrepresentations and obfuscations designed to evade an obvious and inescapable truth: Triple Five and CAT collectively have *vastly* more than enough cash resources available to develop EPCAL.

27. A day later, during an emergency session it convened, the Town, hiding behind Resolution 44-23, and despite knowing that RIDA's findings contradicted what the Town and the CDA knew about CAT's and Triple Five's significant financial ability and resources, acted to terminate the Purchase Agreement, further highlighting that this was the result of a planned scheme that RIDA and the Town had concocted and executed. Indeed, Town officials' words and actions have evidenced, acknowledged, and celebrated the scheme to evade the Town's obligations to CAT. Immediately upon voting to nullify the Town's contract with CAT, Town Supervisor Aguiar gleefully took credit for the scheme, announcing to the world that "she personally negotiated an amendment to the contract in March of 2022 that allowed the [T]own [B]oard to declare the contract null and void."

28. In its rush to "nullify" the Purchase Agreement ahead of Election Day (which was in approximately two (2) weeks), the Town and the CDA breached their obligation to provide CAT with its contractual right to cure RIDA's pretextual finding that it was in breach of its financial ability representation in the Purchase Agreement. As was its right under the Purchase Agreement, even though CAT had not breached its representation concerning its financial ability to perform the Project, CAT sought to cure the Town's claim that CAT did not have the financial ability to purchase and complete the development of the Property by agreeing to pay the balance of the $40 million purchase price in cash at closing and agreeing to post a letter of credit for CAT's additional equity obligations from its affiliate, whose unencumbered liquid capital

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currently exceeds $330 million. CAT further expressed that it was "ready, willing, prepared, and able" to close the transaction in compliance with the contract as soon as practicable. To date, the Town has not responded to CAT's notice of cure.

29. For the Town politicians seeking office in 2023 – including Hubbard – this stunt – purportedly terminating the Purchase Agreement for a Project they publicly mischaracterized and excoriated – worked. Running against the fictitious cargo jetport plan, they swept the opposition in the election on November 7, 2023. But their illegal scheme has landed both the Town and CAT in this Court, rather than engaging in badly needed development that will lift the Town's economic fortunes, and which is over two decades overdue.

30. As set forth herein, the Town, the CDA and RIDA repeatedly breached their contractual obligations to CAT under the Purchase Agreement, the Letter Agreement, and the Preliminary Agreement; the Town and the CDA defrauded and/or otherwise improperly induced CAT to enter into the Letter Agreement and the Preliminary Agreement; and the Town improperly interfered with RIDA's review of CAT's financial capability pursuant to the Preliminary Agreement in order to influence RIDA's determination.

31. Defendants not only repeatedly breached their duties and contractual obligations to CAT, but also violated New York state statutes by delegating critical duties and determinations to RIDA that the Town and the CDA could not legally delegate, and by RIDA failing to hold a public hearing as required by statute. CAT was unaware that the process that Defendants insisted upon was contrary to New York law and therefore void *ab initio*.

PARTIES

32. Plaintiff CAT is a Delaware limited liability corporation.

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33. Defendant Town is a municipal corporation organized under the laws of the State of New York having its principal offices at 200 Howell Avenue, Riverhead, New York 11901.

34. Defendant CDA is a municipal urban renewal agency pursuant to General Municipal Law of the State of New York Section 680-c having its principal offices at 200 Howell Avenue, Riverhead, New York 11901.

35. Defendant RIDA is a public benefit corporation pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended by Chapter 624 of the Law 1980 of the State of New York.

JURISDICTION AND VENUE

36. This Court has jurisdiction over this action pursuant to Section 301 of New York Civil Practice Law and Rules ("CPLR"), as the action arises out of a transaction of real property within the State of New York and all Defendants are located in the County of Suffolk.

37. Venue is proper in this Court pursuant to CPLR § 501 as the agreement entered by Plaintiff CAT, on the one hand, and the Town and the CDA, on the other, dated November 19, 2018, placed venue in the County of Suffolk.

38. Venue is proper in this Court pursuant to CPLR § 504, as Defendants are town and/or district corporations located in the County of Suffolk.

39. Venue is proper in this Court pursuant to CPLR § 507, as the instant action would affect the title to, or the possession, use or enjoyment of real property located in the County of Suffolk.

FACTUAL BACKGROUND

A. Triple Five and CAT

40. Triple Five is a third generation, family owned and operated, world-renowned development and finance conglomerate, with offices in major U.S., Canadian, and other global

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cities.[3] Triple Five, built by the Ghermezian Family, has developed, owns and operates North America's 1st, 2nd, and 3rd largest tourism, retail, and entertainment complexes of their kind and maintains an extensive portfolio of diverse assets and operations that currently employ over 3,000 people and have created over 50,000 jobs. Triple Five's wide-ranging experience is suited to creating successful mixed-use developments and activities worldwide that encompass the development, management and ownership of world-scale ventures in many fields.

41. Its diverse businesses include the two largest malls in North America – Mall of America in Minneapolis, Minnesota and West Edmonton Mall in Edmonton, Canada. The 5.3 million square foot West Edmonton Mall – in operation since 1981 – houses more than 800 commercial tenants and is recognized in the Guinness Book of World Records for featuring the world's largest indoor amusement park; the largest indoor triple loop rollercoaster; the largest indoor lake; the largest indoor wave pool; the largest parking lot; and the tallest permanent indoor bungee tower. Mall of America is the largest mall in the United States and the eleventh largest shopping mall in the world. Home to over 500 stores, Mall of America hosts over 40 million people annually.

42. Most recently, Triple Five developed American Dream – an entertainment and retail complex in the Meadowlands Sports Complex in East Rutherford, New Jersey. America Dream opened its doors in 2019 and is the second largest retail and entertainment center in the United States and third largest in North America. It is home to the nation's largest indoor theme park and largest indoor water park. Together with West Edmonton Mall and Mall of America, these Triple Five properties attract over 112 million visitors annually.

[3] See TRIPLE FIVE WORLDWIDE, www.triplefiveworldwide.com.

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and developing EPCAL. Justin Ghermezian, the Managing Principal of CAT, is the Vice Chairman of Triple Five and the son of the Chairman of Triple Five. CAT has the full economic and business support of Triple Five.

43. Triple Five formed its subsidiary CAT for the exclusive purpose of purchasing and developing EPCAL. Justin Ghermezian, the Managing Principal of CAT, is the Vice Chairman of Triple Five and the son of the Chairman of Triple Five. CAT has the full economic and business support of Triple Five.

B. CAT's Plan to Acquire and Develop EPCAL and to Fulfill Promises for Economic Development with Significant Job and Tax Revenue Expansion

44. The 2,567 acres site at issue, located at Calverton, New York, was originally owned by the United States Navy and was operated as a Naval Weapons Industrial Reserve Plant. Beginning in 1956, the Navy leased the site to the Grumman Corporation for the testing and assembly of aircraft, including the F-14 Tomcat. After Grumman merged with Northrop Corporation, the newly formed Northrop Grumman eliminated its operations on Long Island and vacated the site in 1996. At that point, the Town lost a major employer and source of economic growth.

45. In 1998, pursuant to Public Law 103-337, Section 2833, the site was conveyed from the Navy to the CDA for redevelopment "on the condition it be used for economic development to replace thousands of well-paid jobs and tax base lost by the Grumman closure." *See Enterprise Park (EPCAL)*, RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, https://www.riverheadida.org/epcal.php (last visited Dec. 17, 2023).

46. Since then, the Town has failed to develop EPCAL for economic use, failed to replace the jobs that left Riverhead with Grumman, and failed to put EPCAL to any meaningful use at all. EPCAL, one of the largest development sites in the entire New York Metropolitan Area, has sat fallow for over 25 years.

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47. In or around April 2017, Triple Five became involved with the Town's existing negotiations with a separate developer, Luminati Aerospace, and soon took over as the lead developer.

48. CAT engaged J. Petrocelli Contracting, Inc. and BLD Architecture, DPC to assist with its development plan, as well as consultants from industry-leading commercial real estate consulting firms, such as CBRE, and project management and cost consulting firms, such as Cumming Group, to provide research on market conditions and tenant demands to evaluate the construction costs and budget. CAT also consulted with multiple national commercial mortgage brokers, including, Avison Young, Cushman & Wakefield, Inc., and Eastdil Secured to review its plans and to opine on the availability of financing for the project. CAT further consulted with leasing brokers with strong Long Island presence, including Avison Young, Cushman Wakefield, and JLL, who identified potential tenants in the Long Island leasing market for the commercial and industrial development CAT proposed to build.

49. CAT planned to proceed with the development of EPCAL in phases. Phase 1 would develop the first one million square feet of the Property within five years of closing, while an additional up to nine million square feet would be developed in future phases, over time.

C. The Town Board Conducts An Examination of CAT's and Triple Five's Finances and Determines CAT to be a Legally "Qualified and Eligible" Buyer of EPCAL

50. Because EPCAL is a legally designated "urban renewal site," New York law required the Town and the CDA to hold a public hearing and make a formal determination that CAT was legally "qualified and eligible" to develop the EPCAL property.[4] Accordingly in 2018, CAT and Triple Five submitted documentation to the Town and the CDA that demonstrated their financial ability to acquire and develop EPCAL, including:

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[4] *See* N.Y. Gen. Mun. Law § 507(2)(c) and (d).

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- Two letters from Goldman Sachs, dated January 29, 2018, and August 15, 2018, respectively, stating that it was "highly interested" in working with CAT on arranging and structuring the debt financing for the development of EPCAL;

- Two letters from Triple Five's accounting firm, Grant Thornton LLP, dated April 11, 2018, and August 14, 2018, respectively, stating that Triple Five had adequate equity capital to complete the land purchase for $40 million and explaining the procedures performed to come to such conclusion;

- An economic analysis of Triple Five's trophy assets, namely the West Edmonton Mall and the Mall of America, based on audited financial statements and valuations prepared directly by the lenders on these projects;

- A letter from the CEO of Peoples Bank and Trust, a federally chartered financial institution in Canada attesting to the financial wherewithal of Triple Five;

- A Public Finance Authority Bond letter for a $800,000,000 bond offered to the American Dream project in New Jersey, supporting Triple Five's ability raise development financing and bonds; and

- A press release, dated September 19, 2017, stating that the debt related to the West Edmonton Mall carries an "A" rating.

51. In addition to these submissions, on February 27, 2018 and March 19, 2018 the Town held over eight hours of public hearings on CAT's qualifications. Several representatives of CAT, and other interested persons, testified as to CAT's qualifications to develop the property.

52. The witnesses confirmed Triple Five's extensive experience developing very large, complex properties, its financial backing of CAT, and its plans and vision for the immediate and long-term development of EPCAL. During the March 19 hearing, Triple Five's Chief Financial Officer, Martin Walrath, former Vice President of Mellon Bank, submitted testimony regarding Triple Five's financial capacity and an evaluation of assets that established

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Triple Five had the wherewithal to finance projects far larger than the size and scope of the development before the Town Board. Martin Walrath had decades worth of commercial real estate finance experience, as did Margaret Blakey, and each provided substantial information about Triple Five's track record and real estate development expertise. The team's expertise was never seriously questioned by the Town or the CDA.

53. Following its due diligence, on November 7, 2018, the Town voted to approve CAT as a "qualified and eligible" developer, finding:

> Based upon the testimony and submittals received at the public hearing on February 27, 2018. . . and the continued public hearing on March 19, 2018. . . , and upon all the documentation and information received by the Agency, the Town Board, as the governing body of the [CDA] with respect to this matter, hereby designates Calverton Aviation & Technology LLC as a Qualified and Eligible Sponsor pursuant to the rules and procedures of the Agency and Section 507(2)(d) of the General Municipal Law for the redevelopment of the Property[.]

54. Then-councilman Hubbard was among those who voted in favor of the resolution, along with former councilpersons James Wooten and Jodi Giglio. In explaining his vote, Hubbard was emphatic that the Town had conducted thorough diligence on Triple Five, stating ***"I hereby find CAT qualified and eligible to move forward with the purchase of EPCAL***."

55. Further, as Councilman Wooten made clear when he stated that there was "no question" that CAT was financially qualified given its relationship to Triple Five, the Town always understood that CAT did not stand alone but instead had the full financial backing of Triple Five.

D. The Town and the CDA Enter a Contract to Sell a Portion of EPCAL to CAT

56. On November 19, 2018, the Town and the CDA entered into the Purchase Agreement to sell 1,643 of EPCAL's 2,070 remaining acres to CAT for a sale price of forty million dollars ($40,000,000).

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57. As of the signing of the Purchase Agreement, EPCAL was comprised of a single tax lot. Because the Town and the CDA wished to retain approximately 462 of these acres for preservation and municipal purposes, the Purchase Agreement contained a subdivision plan that would divide the single lot into eight smaller lots, three of which – lots 6, 7, and 8 – constituted the land CAT was purchasing. *See* Ex. A, Purchase Agreement.

58. The Purchase Agreement required that CAT represent and warrant, as of the date of closing, that it "has the financial ability and the skills and experience necessary to purchase and complete the development of the Property and to perform all of its obligations under [the Purchase Agreement]." *Id.* at Section XIII(A)(4).

59. For its part, the Town and the CDA represented and warranted that each "has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the 'Seller's Documents')." *Id.* at Section XII(A)(1). The Town and the CDA also represented and warranted that "the Seller's documents do not and will not contravene any provision of the legislative enactments pertaining to CDA or the Town … or any provision of any existing law or regulation to which CDA or the Town is a party or is bound[.]" *Id.* at Section XII(A)(2).

60. Further, at Section XXIII, the Purchase Agreement provided for "Further Assurances," whereby the parties agreed:

> [T]o do such other and further acts and things, and to execute and deliver such instruments and documents, as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.

Id. at Section XXIII.

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61. The Purchase Agreement also provided a process to cure any purported breaches of representations and warranties or other material defaults. In the event CAT breached a representation or defaulted, the Town and the CDA were required:

> [To] provide Purchaser with written notice of such breach or default promptly after Seller discovers same. If Purchaser fails to cure said breach or default within thirty [30] days after notice from Seller (or after ninety [90] days if Purchaser diligently commences to cure such breach or default, if such breach or default is not curable within thirty [30] days), then Seller's sole remedy shall be to terminate this Agreement…

Id. at Section XIX(A).

62. The Purchase Agreement also made it an obligation of the Town and the CDA to obtain approval of the eight-lot subdivision from New York State, and to file the approved subdivision map with Suffolk County. *Id.* at Section IX. The Purchase Agreement provides:

> This Agreement is subject to and contingent upon the Town's filing in the Office of the Clerk of the County of Suffolk of the Subdivision Map attached hereto as Exhibit A, or any amendment to the Subdivision Map agreed to in writing by the parties, which in either case contains a condition that the development yield attributable to Lot 8 may be applied to the development yield of Lot 6 (the date of the filing of the Subdivision Map…is herein referred to as the "Filing Date"). In the event the Filing Date does not occur within one (1) year from the end of the Due Diligence Period, either party can terminate this Agreement upon written notice to the other party[.]

Id.

63. The "Due Diligence Period" referred to was a 90-day (or longer if extended) period following the effective date of the Purchase Agreement during which CAT was required "to perform all inspections and environmental and zoning studies and to review all geotechnical, soils, wetlands and environmental reports that may be available[.]" *Id.* at Section V(A). Upon the completion of its due diligence, if CAT was satisfied, it was required to send a "Notice to

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Proceed" to the Town and the CDA, which would trigger the Town's one-year period to obtain approval of the Subdivision Map. *Id.* at Sections V(F), IX.

64. With respect to the *development* of the Property post-closing, CAT was required to agree to implement an "Intended Development Plan" which was appended to the Purchase Agreement as "Exhibit B." *See* Purchase Agreement at Section III and Exhibit B. The Intended Development Plan, implementation of which the Town, the CDA, and CAT agreed would occur after CAT acquired the Property, states that "[t]he development plan for the first phase has a number of steps" including:

> (2) Identifying prospective businesses to locate at the property….
>
> (3) Initiating conversations, which may include the convening of roundtables, with prospective businesses to locate at the property in order to discuss their space requirements and synergies between such potential businesses, determining the optimal mix of businesses, and ***obtaining commitments from the desired businesses***. (emphasis added).
>
> (4) Retaining an engineering firm with the necessary expertise to identify the portion of the property to be developed in the first phase and ***formulate a site plan*** that accommodates the stated needs of the businesses that have committed to locate at the property. (emphasis added).
>
> (5) Obtaining the necessary approvals of the site plan.

Id. at Exhibit B

65. CAT's agreement to pursue the Intended Development Plan imposed a *prospective* obligation on CAT, implementation of which was not contemplated or required to close on the sale of the Property. The agreement that the Intended Development Plan would be implemented post-closing was a matter of common sense and common business practice: CAT could not be expected to obtain commitments from tenants *prior* to obtaining the property and development and approval of a site plan was dependent on the obtaining such commitments.

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66. Moreover, CAT's implementation (or not) of the Intended Development Plan was not, and could not be, a factor in the Town's qualified and eligible assessment of CAT or of CAT's compliance with its "financial ability" representation set forth in Section XIII(A)(4) of the Purchase Agreement as that representation was only made through the closing. That is, because CAT's implementation of the Intended Development Plan was not required to, and could not, occur prior to closing, any purported failure by CAT to implement the Intended Development Plan prior to closing could not be a basis for the Town or RIDA to find CAT to have breached the Purchase Agreement.

E. <u>The Town Breached the Purchase Agreement By Failing to Obtain Approval of the Subdivision Map</u>

67. On or around May 16, 2019, CAT completed its due diligence and provided notice to the Town and the CDA of its intention to proceed to closing, starting the one-year clock for the Town to obtain the approval on the 8-lot subdivision.

68. On September 3, 2019, the CDA filed an application with the DEC requesting that the DEC permit the EPCAL subdivision. The EPCAL site includes 282.58 acres subject to protection under New York's Wild Scenic and Recreational Rivers Act ("WSRR"). As a result, a permit, known as the Part 666 permit, from the DEC was required for any new land use or development of the protected river area, such as the proposed subdivision. *See* 6 CRR-NY § 666.2.

69. On July 20, 2020, the DEC issued a Notice of Incomplete Application (the "First NIA") to the CDA on its application. The First NIA stated that:

> The Water Supply history provided in your SEQRA Consistency Analysis[5] (p. 32-37) must be revised to clearly indicate that

[5] SEQRA requires local, regional, and state government agencies to examine the environmental impacts, along with the social and economic impacts, for any project subject to their discretionary review. SEQRA requires agencies to engage in a twelve-step process to aid their analysis of the environmental, social, and economic impacts of a project.

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> Riverhead Water District (RWD) is not currently permitted by the Department to serve public water to this area. In July 2005 Riverhead Water District was issued a [Notice of Violation] for adding numerous extensions, including the EPCAL property, and operating wells without a permit. In 2009 RWD applied for a water withdrawal permit to serve the EPCAL Property; however, to date that permit has not been approved. In order to approve the application for RWD to serve the EPCAL property, RWD must demonstrate that it has sufficient capacity within the system to operate its entire service area using standard industry calculations and must demonstrate that [Suffolk County Water Authority ("SCWA")] has no objection to RWD serving this area.

70. In later court filings, the DEC explained its finding in clearer terms, stating:

> []DEC is required, by law, to perform a SEQRA consistency analysis in connection with reviewing the [CDA's] application. That analysis requires the applicant to name an entity that is presently able, both legally and capacity-wise to supply water to the project under a maximum build-out scenario.

71. The DEC found the CDA's application to be incomplete because it failed to provide the DEC sufficient information necessary for the DEC to satisfy *its* required SEQRA consistency analysis. To obtain the subdivision approval, the Town was required to identify for the DEC a legally approved and capable entity to supply water to EPCAL. The Town identified its own water authority (the Riverhead Water District or "RWD") as that entity. The problem was that – as the Town well knew when it submitted its application to the DEC – the RWD was not a legally authorized water supplier to EPCAL and it lacked the physical capacity to provide water to the proposed subdivision.

A "SEQRA Consistency Analysis" requires the agency to review and confirm, among other things, that the proposed action or project is consistent with the State and Federal law and policy. With respect to EPCAL, in or around 2015, in coordination with policies and rules established by the DEC and required by SEQRA, the CDA initiated an environmental review of a subdivision and zone change proposal at the EPCAL site, which proposed a 50-lot subdivision. The CDA's review led to, among other things, the preparation and adoption of a Draft Supplemental Generic Environmental Impact Statement ("DSGEIS"); the Final Supplemental Generic Environmental Impact Statement ("FSGEIS"); a Findings Statement pursuant to SEQRA ("Findings Statement"), and a Supplemental Findings Statement. Under SEQRA, the Town is required to demonstrate that the current proposed 8-lot subdivision and related development plan is consistent with FSGEIS, DSGEIS, the Findings Statement, and the Supplemental Findings Statement.

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72. The DEC noted that the Town "wishe[d]" to have its water authority supply water to EPCAL, but that the RWD was not qualified or able to do so. Instead, the DEC identified the Suffolk County Water Authority as the "legal" water supplier to EPCAL. For its part, the SCWA refused to cede its legal right to service EPCAL to the RWD, including because the RWD lacked the physical ability to do so.

73. Given the SCWA's objection and the RWD's lack of capacity, no amount of "wishing" by the Town was going to make the RWD a qualified water supplier to EPCAL as required by the DEC. The solution was simple. To obtain the DEC approval, the Town needed to identify the SCWA as the entity legally allowed and able to service EPCAL.

74. Thus, to satisfy its obligation to obtain the subdivision pursuant to the Purchase Agreement, the Town simply needed to acknowledge a fact: the SCWA was the legal water provider to EPCAL and the RWD was not. If the Town did so, the DEC could deem its application complete and process the permit.

75. The Town, however, refused to designate the SCWA as the legal provider of water for EPCAL in its Part 666 application. Instead, the Town filed a lawsuit against the DEC challenging its purported denial of its application.[6] On or around March 18, 2021, Riverhead filed an Article 78 action challenging the DEC's notices of incomplete applications, arguing that the DEC's notices were arbitrary and capricious.

76. As a result of the Town's dispute with the DEC (and its refusal to identify the EPCAL's legal water provider to the DEC), the Town was unable to file the required Subdivision

[6] On November 19, 2020, the DEC issued a second Notice of Incomplete Application (the "Second NIA"), requiring a comprehensive habitat protection plan and noting that Riverhead had not yet obtained approval from Suffolk County in writing.

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Map within the required timeframe, *i.e.,* by May 20, 2020. Given the Town's failure to do so, the Purchase Agreement provided CAT with a right to terminate the contract.

77. CAT, however, did not want to terminate the contract. It wanted to acquire and develop the Property. Accordingly, CAT issued a written, temporary stay of its right to terminate the Purchase Agreement due to the Town's failure to get the requisite approvals for the proposed subdivision. On May 7, 2020, approximately two weeks before the expiration of the deadline for the Town to file the Subdivision Map, CAT sent a letter to the Town stating that:

> As the Town will not timely file the Subdivision Map as required under the [Purchase] Agreement, [CAT] hereby provides the Seller with notice of its election not to exercise its right under the [Purchase] Agreement pursuant to Section IX and its intent to waive its termination right pursuant to Section IX for one (1) year from the date hereof.

78. The letter stated that CAT's "determination was made in reliance of the Town's good faith and diligent pursuit of satisfying [the Town]'s obligation to File the Subdivision Map." CAT further informed the Town that it "has received interest from several companies willing to proceed in accordance with the Intended Development Plan of the Property," which presents "an exciting opportunity for both the [Town, the CDA] and [CAT]" but "depends upon the Town satisfying its Subdivision Map filing obligations under the [Purchase Agreement]." *Id.* at 2. CAT and Triple Five assured the Town and the CDA that "we stand ready, willing and able to close upon the acquisition of the Property in accordance with all of the terms and conditions of the [Purchase] Agreement and look forward to working with the Town to complete this transaction." *Id.*

79. On May 19, 2021, during the pendency of the Town's litigation against the DEC, CAT sent the Town a second letter temporarily waiving its right to terminate the Purchase Agreement (the "May 2021 Waiver"). CAT informed the Town that it "hereby provides the

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[Town and the CDA] with its Notice to Proceed and agrees to extend the Filing Date for one (1) year from the date hereof in reliance upon the Town's continued good faith and diligent pursuit to satisfy its obligation under the [Purchase] Agreement and file the Subdivision Map." *Id.* at 1. CAT further informed the Town and the CDA that it had "the funds on deposit to close upon the purchase of Property, the financial ability, skills and experience necessary to complete the development of the Property as intended an to perform all of its obligations under the [Purchase Agreement]." *Id.* at 2.

80. The May 2021 Waiver again reminded the Town and the CDA that several companies expressed interest to locate their business to the EPCAL site in accordance to the Intended Development Plan, but the development of the EPCAL site depended upon the Town satisfying its Subdivision Map filing obligations under the Purchase Agreement. As with the May 2020 Waiver, CAT represented that it stood "ready, willing and able to close upon the acquisition of the Property in accordance with all of the terms and conditions of the [Purchase] Agreement and look forward to working with the Town to complete this transaction" and "to proceed with the intended development of the Calverton Aviation & Technology Hub at EPCAL."

F. The Court Denies the Town's Article 78 Petition Against DEC

81. On or around October 22, 2021, the Court dismissed the Town's Article 78 action, finding that "the challenged aspects of these Notices are not final determinations that inflict an actual, concrete injury upon petitioners."

82. Despite the court's holding that the Town's failure to obtain the DEC permit was caused entirely *by the Town* and *only the Town* stood in the way of obtaining the permit to subdivide, the Town refused to designate the SCWA as the water provider. Thus, the Town's

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failure to obtain the permit, and its resulting failure to file the Subdivision Map as required by the Purchase Agreement, was its own fault.

G. The Town and the CDA's Fraudulent Scheme to Escape Their Obligations to CAT

83. With the Project stalled as a result of the Town's failure to get the subdivision approved, a vocal minority of residents, who were simply against any effort to develop the Property, expressed growing opposition to the sale of EPCAL to CAT.

84. Meanwhile, the Town had been trying to get out of the Purchase Agreement. During her very first regular town board meeting as Town Supervisor, Aguiar noted that the Town had already explored whether it could get out of its contractual obligations with CAT. "We've had three lawyers look at [the Purchase Agreement] – at a cost of $100,000 – and they all said the same. We have to go forward."

85. In February 2022, Supervisor Aguiar reiterated her understanding that the Town had to honor the Purchase Agreement noting that it could not be canceled "without an empirically documented default" by CAT.

86. Resigned to the fact that the Town could not simply terminate the Purchase Agreement and walk away, and with the Town refusing to take the steps to obtain the subdivision identified to it by DEC and the Court, the Project remained at an impasse. Without the subdivision, CAT was informed that it would be impossible to close on the transaction. CAT had two options: it could file a lawsuit against the Town and the CDA for failing to obtain the subdivision – which could take years to resolve – or it could seek an alternative path forward. At the time, interest rates were at historic lows and CAT was increasingly concerned that favorable market conditions for development of the property would not last. Accordingly, CAT sought alternatives to litigation.

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87. To break the impasse, and move the Project forward again, the Town, the CDA and CAT considered an alternative to allow for the transaction to close without final approval of the subdivision and without resolution of the water rights dispute with SCWA. The parties agreed to involve RIDA, a public benefit corporation created in 1980 to promote, encourage, and facilitate development of economic opportunities in Riverhead. RIDA conducts its business through its Board of Directors, which is currently comprised of Chairman James Farley, Deputy Chair Lori Ann Pipcynzski, Treasurer Lee Mendelson, Secretary Tony Barresi, and Member Douglas Williams. Its only employee is the Executive Director and Chief Executive Officer, Tracy Stark-James.

88. RIDA's primary, if not sole, function as an agency is to determine whether or not to extend tax incentives or other assistance to encourage real estate, industrial, and other development projects in Riverhead. RIDA does not routinely determine, and CAT is not aware of any prior instance where it has determined, whether real estate developers are financially qualified and eligible to acquire and develop properties or whether development projects should or should not be undertaken.

89. Notwithstanding this, the Town and the CDA insisted that CAT engage RIDA to move the sale of EPCAL and the Project forward. In sum, the CDA and CAT would enter into an agreement to temporarily transfer the property to RIDA. RIDA, for its part, would in turn lease certain of the lots to CAT and others to the CDA. Upon final resolution of the subdivision issue, fee simple ownership of the Property would transfer to CAT. CAT would pay the CDA $40 million under the Purchase Agreement upon entering into the ground lease with RIDA, and CAT also agreed to take on the obligation to obtain approvals for the Property subdivision at its sole cost.

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90. The Town also required that CAT agree to submit to assessment and confirmation by RIDA that CAT still had the financial wherewithal required to proceed under Section XIII(A)(4) of the Purchase Agreement.[7] If RIDA found that CAT had the financial ability to purchase and complete the development of the Property, it was required to issue an authorizing resolution, and the Property purchase would proceed to closing, with RIDA and CAT proceeding to enter into a lease and project agreement. If RIDA denied the authorization, the Town would have the option to declare the Purchase Agreement "null and void." In an effort to further pressure CAT into agreeing, Supervisor Aguiar stated publicly that, if Triple Five did not move forward with RIDA, she would no longer "support" the sale of the land to Triple Five. What Ms. Aguiar did not disclose at the time of CAT's contracting with RIDA, however, was her understanding that RIDA, whose members the Town appoints, would do as the Town directed, including by refusing to issue an authorizing resolution thereby creating for the Town an escape-hatch out of the Purchase Agreement.

91. In or about February 2022, after CAT had expressed concern about shifting decision making to RIDA concerning CAT's continued financial ability to purchase the Property and complete the Project, the Town's attorneys assured CAT's attorneys that RIDA would approve the Project, that the second review was, essentially, pro forma, but that these terms were non-negotiable. Faced with the prospect of miring the Project in years of litigation if it refused to acquiesce to the Town's demand, and in reliance on the Town's affirmative representations the RIDA financial review would be a rubber stamp approval.

92. On March 4, 2022, CAT representatives Margaret Blakey, Justin Ghermezian, Alan Glazer and Chris Kent and Town representatives Aguiar, then-Town Attorney Dawn

[7] As Supervisor Aguiar stated in a public IDA meeting on August 23, 2023, the amendment was to offer "a second opportunity at qualified and eligible."

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Thomas, and Deputy Town Attorney Marie Prudenti held a meeting to address CAT's concerns about involving RIDA as had been demanded by the Town and CDA. At the meeting, the town representatives confirmed Town and the CDA's dedication to the project with CAT and their desire for it to proceed. Aguiar went so far as to say that she wanted to be "crystal clear" that the Town fully supports closing on the deal with CAT. She further assured CAT that the concept of involving RIDA, and closing via a ground lease, was solely in order to get the project started prior to completion of the subdivision process.

93. The CAT and Town representatives also addressed the provision that granted the Town a right to "nullify" the Purchase Agreement in the event RIDA denied CAT's application, to which CAT had objected. To assuage CAT's concerns and to induce CAT to proceed with the RIDA process, the Town representatives assured CAT that the provision was for purely optical reasons, and that they, and the entire Town Council, intended to honor the Purchase Agreement regardless of whether RIDA approved CAT's application or not.

94. Based on the representations of the Town's attorney's and Supervisor Aguiar, CAT agreed to apply to RIDA, confident that, so long as RIDA acted in good faith, CAT could confirm its continued compliance with Section XIII(A)(4) of the Purchase Agreement and knowing that, if somehow RIDA reached a contrary conclusion, the Town intended to nevertheless honor the Purchase Agreement.

95. Subsequent to the March 4 meeting , the Town, the CDA, and CAT entered into the Letter Agreement, pursuant to which CAT and the CDA agreed to make a joint application (the "Joint Application") to RIDA to conduct the financial review and to pursue a resolution authorizing the contemplated deed transfer and lease. As a critical part of the consideration, the

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Letter Agreement expressly obligated the Town to provide CAT with "reasonable assistance" related to CAT's obtaining the Lease and Project Agreement from RIDA.

96. The Letter Agreement provided that, in the event that RIDA issued an authorizing resolution finding that CAT satisfied its obligation to provide financial assurance to the Town and the CDA, "the parties shall proceed to close in accordance with the Agreement[.]" Ex. B, Letter Agreement at Packet Pg. 27. With the Letter Agreement, the Town and the CDA ceded the right to determine the future of the project to RIDA. In the event RIDA found CAT financially qualified, the transaction would close (and neither the Town nor the CDA could stop it). If RIDA did not issue an authorizing resolution, the Town would have a right – conditioned on RIDA's consideration of "*all* financial and project information submitted in connection with the Joint Application" (emphasis added) – to declare the Purchase Agreement "null and void." *Id.*

97. In accordance with the Letter Agreement, the Town Board and the CDA issued parallel resolutions on or around March 24, 2022 (the "Town Resolutions") which authorized the Letter Agreement. The Town Resolutions also required CAT and the CDA to file the Joint Application to the IDA within six months.

98. The Letter Agreement did not make closing contingent on CAT's implementation of the Intended Development Plan, *i.e.*, identifying prospective tenants, obtaining commitments from those tenants, developing a site plan, and obtaining approvals of a site plan.

H. CAT and the CDA Submit the Joint Application and Enter a Preliminary Agreement with RIDA

99. Between March 2022 and September 2022, CAT assembled financial and project due diligence materials to submit to RIDA as part of its Joint Application with the CDA. On

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September 9, 2022, CAT and the CDA filed the Joint Application to RIDA along with materials demonstrating CAT's financial capability to complete Phase 1 of the Project.

100. On September 21, 2022, RIDA approved RIDA Resolution 44-22 ("Resolution 44-22"), which authorized RIDA to enter into the Preliminary Agreement. Resolution 44-22 also included provisions allowing RIDA to delay consideration of the Joint Application until after the Project had received the requisite approvals:

> Section 3. Nothing herein shall be construed as committing the Agency to consider the inducement of the Project, the holding of a public hearing, or approval of the acquisition, construction, equipping and financing of the Project until such time as: . . (iii) the Company has provided the Agency with evidence that all necessary site plan approvals, architectural review, zoning approvals, and permits with respect to the Facility have been approved.

101. The same day, RIDA, CAT, and the CDA executed the Preliminary Agreement, which included the following terms:

- RIDA agreed to undertake "due diligence" in order to determine "whether to undertake the Project and provide any financial assistance." Ex. C, Preliminary Agreement, Section 1.

- CDA agreed "to cooperate in good faith with [RIDA's] due diligence of the Project and the Application[.]" *Id.* at Section 3(a).

- RIDA also agreed that the "execution of the Lease and Project Agreement" depended solely on it finding, "after a review of all relevant information," that "the Project complied with the Act," CAT had obtained "all necessary government approvals," RIDA had held "a public hearing with respect to the Project and any potential Financial Assistance, and "the "approval of the members of [RIDA]." *Id.* at Section 4(b).

- Nothing in the Preliminary Agreement conditioned RIDA's execution of the Lease and Project Agreement on CAT's demonstration of financial wherewithal to complete its obligations under the Purchase Agreement.

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102. Prior to entering the Preliminary Agreement, RIDA was aware of the terms of the Purchase Agreement including the Intended Development Plan. RIDA was aware that the Town, the CDA, and CAT all agreed that identification of prospective tenants, obtaining commitments from tenants, development of a site plan, and obtaining approval of a site plan were not a condition of closing and – as commercial reality dictated – would be pursued by CAT *after* closing.

103. RIDA was thus also aware that the status of CAT's implementation of the Intended Development Plan, including obtaining commitments from tenants and site plan approval, were not relevant to any consideration of whether CAT complied with its financial ability representation set forth in Section XIII(A)(4) of the Purchase Agreement.

I. CAT Submitted Detailed Documentation Unequivocally Demonstrating Its Financial Wherewithal

104. After RIDA formally accepted CAT's and the CDA's Joint Application, over the course of the following months, CAT submitted responsive documents addressing various requests and demands made by RIDA during the diligence process. On or around January 11, 2023, CAT submitted:

- A term sheet from Cirrus Real Estate Partners, a seasoned commercial real estate investment management firm that has originated billions of commercial real estate loans regarding acquisition financing for the Project;
- An August 26, 2022 letter from Grant Thornton confirming that the market value of certain Triple Five marketable securities was at least $250,000,000 as of July 21, 2022; and
- An August 19, 2022 letter from Merrill Lynch confirming that the Ghermezian family held at least $50,000,000 in equity or cash holdings at the bank.

105. On or around March 15, 2023, CAT submitted:

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- Certificates of Incorporation for entities within the CAT ownership structure; and

- The Intended Development Plan attached to the original Purchase Agreement.

106. In or around April, 2023, CAT submitted:

- A detailed business plan for Phase 1A of the EPCAL project development, along with biographies of the relevant personnel highlighting their relevant expertise.[8]

107. On or around May 1, 2023, CAT submitted:

- A Project Pro Forma consistent with the business plan, showing completion of Phase 1A in 2030 (within sixty (60) months of obtaining development approvals);

- A letter from Avison Young regarding the viability of the financing plan, and substantial interest in providing construction financing to the Project;

- A letter from Cushman & Wakefield regarding the strength of the current market, with low vacancy rates, rising rental rates, and substantial demand from a variety of end users, including industrial, medical, pharmaceutical and technology tenants;

- A letter of commitment to provide funds to the Project issued by a Triple Five affiliate; and

- A letter from counsel for the owner of American Dream ("Amereams") confirming that CAT had no financial obligations with respect to American Dream.

108. On or around May 3, 2023, CAT submitted:

- The Non-Consolidated Financial Statements for FY 2022 of the CAT affiliate that provided the letter of commitment to provide funds, with an accompanying independent auditor's report by Grant Thornton; and

[8] Just as in 2018, Triple Five provided documents to RIDA during its due diligence detailing the extensive relevant experience and expertise in real estate financing and development of officers such as Margaret Blakey, who has over 30 years of experience in real estate investment banking and capital markets at Credit Suisse, Goldman Sachs, and Capmark. Just as in 2018, the team's credentials were never seriously questioned.

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- A list of third parties recommended by CAT as qualified to review and assess the CAT's business Plan, CAT's mortgage plan, and the local leasing market.

109. On or around May 5, 2023, CAT submitted:

- A letter from the CFO of Triple Five affirming that the CAT affiliate funding CAT's equity obligations held a portfolio of securities whose market value exceeded $200,000,000 as of December 31, 2023.

110. On or around June 20, 2023, CAT submitted

- A letter explaining how the documentation provided in connection with RIDA's due diligence was more substantial than the submissions during the 2018 qualified and eligible determination process;

- Background information about Michael Oseen, CFO of Triple Five; and

- An updated Term Sheet from Cirrus Real Estate Partners regarding acquisition financing for the Project.

111. In the June 20, 2023 submission, CAT further explained that the Town had already determined CAT to be a "Qualified and Eligible" sponsor in 2018 and that the information provided to RIDA was "substantially stronger and more detailed than what was presented in the Q+E Sponsor process in 2018." As compared to its earlier submissions to the Town, the information CAT had already provided to RIDA to date included:

- More conservative assumptions, such as higher projected cost for Phase 1 ($250 mm vs $160 mm);

- A commitment letter from a CAT affiliate with an audited net worth substantially above the target equity threshold of $75 mm (as opposed to the letter from Grant Thornton submitted during the first Q&E process stating that Triple Five had adequate equitable capital to complete the $40 million land purchase); and

- Letters from national brokerage firms who had reviewed the project which expressed interest in working with CAT to arrange construction financing for the project.

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J. RIDA's July 17, 2023 Request for Information

112. On or around July 17, 2023, RIDA sent a letter to CAT requesting additional information and materials for RIDA's review of the Joint Application (the "July 17 Request"). Much of the information RIDA requested, as it well knew, was impossible for CAT to provide at this stage of the development process, before it had even acquired the Property. More importantly, RIDA was well-aware that these types of agreements, which mostly, if not exclusively, dealt with the Intended Development Plan, were post-closing issues and were thus not required by the terms of the Purchase Agreement to illustrate that CAT had the financial ability to purchase the Property.

113. For instance, RIDA requested "a detailed project description, including the proposed specific use of each building and the estimated timeline for construction, leasing, and occupancy of the same." While CAT did its best to provide a detailed description of its plans for the Property, as they existed, CAT could not provide (nor could any developer have provided at this stage of the process) detailed information regarding the "specific uses" of buildings, precise timelines for construction, or which tenants would occupy them and when. Again, RIDA was aware, at the time it issued its commercially unreasonable requests, that what tenants would occupy the Property and how each building would be used by those tenants were questions that, pursuant to the Purchase Agreement, were to be dealt with *after the closing* on the Property purchase, during CAT's implementation of the Intended Development Plan.

114. Moreover, as the Purchase Agreement and Intended Development Plan establish, CAT was not required to market the project to tenants, engage an engineer, and develop a site plan until after the sale closed, it acquired the Property, and all necessary Town zoning requirements had been met. As RIDA well knew, the demanded information was years away from being known by CAT, or anyone else for that matter.

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115. Furthermore, the Town itself – in accordance with the terms of the Purchase Agreement – had repeatedly told CAT and RIDA that it would not engage in the process of approving site plans, zoning issues, or taking any other steps with respect to the development plan until after RIDA issued its decision. On August 23, 2023, during a public information session hosted by RIDA, Supervisor Aguiar rushed out of her office and interrupted the meeting to proclaim that "it is very disturbing for me to know and to hear that [CAT] is waiting for site plan approval. That is totally not acceptable. That is not the deal." She then asserted that her understanding of the March 2023 agreement was that it "indicated that as soon as the IDA determines that they're qualified and eligible or not, a determination will be made and there will be a resolution to that effect" and that "there will not be consideration of a site plan."

116. In response to the Supervisor's comments, CAT's counsel Christopher Kent indicated that CAT shared the Town's view as to the process, *i.e.,* RIDA would first address the question of CAT's financial abilities, the Property sale would close, and then the "project approvals" like the site plan could proceed:

> We believe really that there would be two closings on this transaction. The first closing would be on the ground lease. At that time, we would be paying the $40 million to secure an interest in the property. . .. We're prepared to close **on the lease** of the property at the time they can determine us to be financially capable."
>
> As far as closing **on the Project**, which will require an additional IDA action [i.e. a decision on whether to grant financial assistance to CAT], we don't believe that we could close on the Project until we go to the Town Board for site plan approval to complete the appropriate SEQRA determination on the project. . . At that point, we would close on the IDA project. That's the point we would be seeking economic incentives, inducements… [after] we have an approval on the site plan from the Town Board.

117. To the extent the Town Board or RIDA had a different understanding of the intended ordering of the RIDA process, or of the fact that the Town would not proceed with

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project approvals prior to closing on CAT's purchase of the Property, no one expressed that to CAT.

118. Further, the Purchase Agreement itself contemplates that site plan approvals would not take place until after the closing. In the Purchase Agreement, CAT agreed that it "intends to develop the Property as set forth in the Development Plan attached hereto as Exhibit B (the 'Intended Development Plan')." Purchase Agreement at III. The "Intended Development Plan" – which was to be undertaken after the closing, *i.e.,* as it reflects CAT's future intentions for the development, included "[o]btaining the necessary approvals of the site plan." Purchase Agreement at Exhibit B(5). Thus, there was no question, as between CAT and the Town, that site plan approvals would be sought after closing.

119. By way of a second example, RIDA requested that CAT provide "term sheets or letters of intent (as opposed to expressions of interest) from responsible lenders for construction and/or permanent financing." This request was also designed by RIDA to be impossible for CAT to satisfy. As RIDA well knew, no "responsible lender" would ever provide a commitment to any construction project more than two years before any construction could possibly commence. The Project at EPCAL was not immune to the realities of the financing market, and no developer, CAT included, could obtain the commitments to financing RIDA demanded. Indeed, if RIDA's demands are treated as base requirements for any development in Riverhead or at EPCAL, no developer will ever satisfy them.

120. Similarly, RIDA requested extensive information that had no bearing whatsoever on CAT's financial ability to acquire and develop the Property. For instance, RIDA demanded that CAT provide a "[c]lassification of what specific aviation uses would and would not be permitted at the site." This request has no bearing at all on CAT's finances. Nevertheless, CAT

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noted that studies and findings adopted by the Town already detailed those permitted uses and could be expanded by site specific applications in the future. CAT further explicitly stated that its plan for EPCAL did not include use as a commercial airport or cargo jetport.

121. Further, RIDA demanded a "[m]emorandum describing site plan approval process." As the Purchase Agreement makes clear, the site plan development and approval process was not to be commenced until after closing, and, thus, could not be a factor in RIDA's assessment of whether CAT, as backstopped by Triple Five, had the financial wherewithal to close on the Property purchase. Nevertheless, CAT provided as detailed of a response as was possible at the time, and explained in detail its plan to submit a formal site plan application to the Town within six months of acquiring the Property.

122. Regardless of RIDA's bad faith demands on CAT, on July 31, 2023, CAT submitted a letter and supplemental material to RIDA in support of the Joint Application providing even more evidence of its financial wherewithal. This submission included a letter from Grant Thornton confirming that a subset of assets held by Triple Five were valued at **over $1** billion in net equity value**,** a financing plan with letters from reputable nationally recognized mortgage brokers supporting the reasonableness of CAT's financial assumptions, a commitment from a CAT affiliate to lend up to $100 million in equity, a detailed business plan, a memorandum describing the site plan approval process, and a term sheet for acquisition financing.

123. Pursuant to the Preliminary Agreement, RIDA was contractually obligated to conduct a "review of all relevant information," prior to executing its Lease and Project Agreement with CAT. RIDA's information demands, however, strongly suggested that RIDA was fundamentally confused about the financial information that CAT had provided, or

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otherwise misunderstood basic commercial custom and practice for project-financed development projects. Accordingly, and in order to ensure that RIDA did indeed conduct a proper "review" of the information it was receiving from CAT, as it was contractually obligated to do, CAT repeatedly offered to meet with RIDA in person to "aid RIDA's review" of the submission, to "go over its details," and "to address or clarify any open issues ahead of the August 7th public information session," explaining that it thought an in-person meeting would be "desirable, logical and well advised." RIDA refused every such request.

K. <u>RIDA Failed to Hold a Legally Required Public Hearing on the Joint Application, as it Promised CAT</u>

124. RIDA, pursuant to the Preliminary Agreement and New York law,[9] was contractually and statutorily obligated to hold a public hearing on CAT's application, which would allow public discussion and questioning of CAT by RIDA. While CAT's and the CDA's Joint Application was before it, RIDA, consistent with its contractual and legal obligations, repeatedly represented that it would not make a substantive determination regarding Resolution 44-23 until after the promised public hearing was held.

125. On September 20, 2022, RIDA Chairman, James Farley publicly acknowledged in an e-mail to members of the community that RIDA had a legal obligation to hold a public hearing and made clear that RIDA intended to follow the law and hold a hearing:

> [T]he Agency will conduct a public hearing in accordance with the Industrial Development Agency Act. At such public hearing, the members of the public will be able to present to the Agency their comments, in writing or in person, with respect to the application and the proposed projects, and the financial and economic benefits being sought by CAT/CDA. The date and time of such public hearing has not yet been set by the Agency but you should rest assured that your materials and remarks will be accepted at such a

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[9] *See* N.Y. Gen. Mun. Law, § 859-A (2).

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> hearing and fully considered in the board's assessment of the application for the proposed projects.

126. RIDA's then counsel, William Weir from the law firm Nixon Peabody, also explicitly acknowledged RIDA's legal obligation to hold a public hearing and sent an e-mail to CAT's counsel on September 20, 2022 that stated that RIDA would conduct a public hearing "as required by the IDA Act."

127. Later, on April 20, 2023, in a RIDA press release announcing a public information session, the agency noted that "this will not be the Agency's public hearing (**which will be held at a later date**)." (emphasis added).

128. On August 8, 2023, RIDA and CAT held an information session further addressing community concerns regarding the Project. Two weeks later, on August 23, 2023, at a second public information session, RIDA stated that the information session "was a courtesy, it is not the public hearing. We will be having a public hearing."

129. RIDA, however, reneged on its promise to hold a public hearing, in violation of its contractual and legal obligations. Pursuant to Article 18A, Section 859-A(2) of the General Municipal Law, before RIDA can provide financial assistance in excess of $100,000,

> ***[t]he agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency***. . . . At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project. (emphasis added).

N.Y. Gen. Mun. Law § 859-A(2).

130. Further, under N.Y. Gen. Mun. Law § 507(2)(d), a municipal real estate sale executed under that provision must be "approved by the governing body after a public hearing held not less than ten days after the publication of such notice." As a RIDA authorization would

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have, in effect, been an approval of the progression of the sale,[10] a public hearing was therefore a statutory requirement that was ignored.

L. RIDA Misrepresented That It Would Not Consider Financial Assistance Before CAT Obtained Certain Approvals

131. RIDA also represented to CAT (and the Town) that it would not consider the aspect of CAT and the CDA's application that sought "financial assistance," *i.e.,* tax breaks, until *after* it conducted an analysis of CAT's financial ability. The financial assistance decision was intended to be entirely separate from, and to have no influence on, RIDA's review of CAT's finances.

132. RIDA represented that its review of CAT and the CDA's Joint Application would proceed in two parts, first addressing CAT's financial ability and then later addressing the request for financial assistance. Resolution 44-22, the resolution that authorized RIDA to enter the Preliminary Agreement, provided in § 3 that RIDA had no obligation:

> to consider the inducement of the Project, the holding of a public hearing, or approval of the acquisition, construction, equipping and financing of the Project until such time as. . . . (iii) the Company has provided the Agency with evidence that all necessary site plan approvals, architectural review, zooming approvals, and permits with respect to the Facility have been approved.

133. There was a straightforward reason for this provision: consideration of financial assistance was premature until after CAT acquired the Property and obtained approval of concrete plans from the Town. That is, it was logically irrational (and never intended by the Town, the CDA, or CAT) for RIDA to address whether to provide the project with "financial

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[10] As discussed below, since RIDA's authorization of the transfer and lease agreement would have been, in all but name, an approval of the sale, the Town's delegation of such an approval power to RIDA was also illegal under § 507(2)(d).

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assistance" until after CAT had closed on the Property purchase and the requisite development plans had been submitted, site approvals obtained and permits issued.

134. Moreover, it is RIDA's express policy that the agency will not consider projects for financial assistance until *after* site plans and other necessary approvals from the Town are obtained and complete. On June 25, 2023, RIDA's director, Tracy Stark-James, while discussing a separate RIDA project, stated unequivocally that RIDA "does not approve projects before they clear other regulatory processes, including a site plan. . . ."

135. As set forth above, RIDA entered the Preliminary Agreement fully aware that CAT and the CDA's Joint Application could not possibly include site plan approvals, as the Purchase Agreement did not obligate CAT to obtain site plan approvals until after closing as part of its Intended Development Plan. *See supra* at ¶ 54; Purchase Agreement at Section III (obligating CAT to develop the Property in accordance with the Intended Development Plan) and Purchase Agreement, Exhibit B(5) ("stating that the Intended Development Plan," included "[o]btaining the necessary approvals of the site plan.")

136. RIDA's own policy further establishes that its "due diligence" on CAT was flawed, and that the demands it made upon CAT to produce information relevant to "financial assistance" were premature and out of sequence. Pursuant to its own policy, RIDA was not permitted to consider the aspect of CAT and the CDA's Joint Application that sought financial assistance until after a site plan and other approvals were obtained.

137. CAT found itself in a "Catch-22." RIDA purported to require an approved site plan and other specific project information as part of its consideration of whether CAT was financially qualified, but the Town would not consider or approve a site plan until after RIDA found that CAT was financially qualified. As set forth above, that was not Supervisor Aguiar's

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or CAT's understanding of the intended RIDA process; both believed it would proceed in two steps. By collapsing its consideration of CAT's financial qualifications with its consideration of whether CAT was entitled to financial assistance on the Project, an issue that could not be ripe before CAT closed on the Property purchase and obtained an approved site plan and other project approvals, RIDA deliberately manufactured an approval process that CAT could never pass and that would inevitably result in a denial of the Joint Application.

M. <u>The Town Board Improperly Influenced RIDA's Review of CAT's Financial Qualifications</u>

138. While the Letter Agreement contractually obligated the Town to provide CAT "reasonable assistance," and the CDA to "diligently pursue a final authorizing resolution from [RIDA]," each organization did the exact opposite by actively campaigning against the Joint Application.

139. On or around May 2, 2023, at a public Town Board meeting, Supervisor Aguiar called the contract "one of the worse contracts this town ever created."

140. On or around July 5, 2023, then-Councilman Tim Hubbard submitted a guest column to the Riverhead Local newspaper, voicing that he had "doubts about the sale of the EPCAL property to CAT." He also made comments suggesting that he believed that the IDA would reject the application, noting that "[The Project] has to get through the IDA first. And quite honestly, I'm not sure that's going to happen."

141. As of July 2023, there was no legitimate basis for Councilman Hubbard to have a view regarding the likelihood of the sale to CAT. RIDA was still in the process of requesting and reviewing data and CAT's application was not even fully submitted. Hubbard's comments suggest that the Town already knew that RIDA would reject CAT's application before CAT had even submitted its final documentation.

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142. Similarly, on October 9, 2023, when confronted by the press with evidence that a public relations firm that had done work for CAT was a donor to his campaign for Town Supervisor (the implication being that he was beholden to CAT), Hubbard stated that he did not think the firm's donation was an issue because he did not expect the sale of the property to CAT to "come to fruition." He stated:

> "I imagine at some point in time, he would work for [CAT] if they came to fruition. . . But I don't think it's coming to fruition. So I don't think it's really even going to become an issue."

143. Hubbard also took the opportunity to support termination of the Project during the interview on October 9, 2023, saying that "this deal [with CAT] can't end soon enough," even though he had not reviewed CAT's submissions to RIDA and admitted he had "no idea" whether CAT had submitted certified financial statements, which CAT had in fact already done.

144. Behind the scenes, the Town sought to accelerate RIDA's termination of the project in time for the November election. Supervisor Aguiar asked RIDA in two separate private letters not to hold any additional public information sessions and "to please hold the public hearing and/or make a determination on the qualified and eligible status through a resolution."

145. Throughout much of the electoral year, the Town Board bowed to political pressure and publicly criticized the project. On or around August 23, 2023, at a RIDA open meeting where CAT presented information relating to its plans and financial wherewithal, Supervisor Aguiar was highly critical of the EPCAL project, stating "[w]e need to have a public hearing. . . . Let's see what plan. I heard a lot of pretty words in the last hour. . . . Let's stop this here." Supervisor Aguiar also sought to expedite RIDA's handling of the case:

> I am asking the IDA, I know we're in – you're in the financial review. But you have forensic individuals. That's their expertise. It shouldn't take three weeks, a month, another hearing for the

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> experts to tell us if those documents are valid and the money is there. . . I beg you. Move this forward. Let's make a determination.

146. On September 21, 2023, the candidates for Town Board and Town Supervisor, including Hubbard, made public statements criticizing the project. Hubbard commented that "if I were on the IDA board, I would not be comfortable saying they are qualified and eligible. . . I think we can do much better. I strongly advocate for the development for that property, however this is not the right deal."

147. On October 18, 2023, a local press editorial noted that Hubbard "says the deal is a bad one and sees an exit through the Riverhead Industrial Development Agency, which he expects will find Triple Five unqualified."

148. Then-Supervisor Aguiar's and then-Councilman Hubbard's negative public comments about the Project were intended to reiterate to RIDA what its marching orders had been all along, namely, to get the Town out of its obligations under the Purchase Agreement by denying the Joint Application on whatever pretextual basis RIDA could muster.

N. RIDA Succumbs to Political Pressure, Stops Its Due Diligence Process Prematurely, and Issues a Pretextual Determination on the Joint Application

149. As Election Day rapidly approached, with several on the Town Board facing stiff reelection challenges, and with EPCAL continuing to be the target of vocal opposition from a subset of community members who oppose its development, the Town Board all but ordered RIDA to terminate its diligence even if that meant RIDA had to abandon its contractual and legal obligation to hold a public hearing on the Joint Application. On the evening of Friday, October 19, 2023, RIDA posted on its website a draft agenda that included consideration of a resolution to make determinations with respect to the Joint Application the following Monday, October 23,

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2023. No final agenda was uploaded to the website nor was direct notice provided to CAT or Triple Five.

150. Alarmed by the sudden announcement, CAT expressed concern to RIDA that it could rush to judgment, and submitted an additional set of responses to questions from the August 23, 2023 public meeting, including a CAT proposal to include a covenant that the Property could not be used as a cargo jetport. The letter also highlighted that another CAT affiliate owned by the Ghermezian family had raised, closed, and fully funded over $1 billion in new money within the last thirty days.

151. Prior to RIDA's decision, CAT also advised RIDA in writing that they were willing to pay the full purchase price in cash at closing.

O. RIDA Denies the Joint Application in Breach of the Preliminary Agreement

152. On October 23, 2023, RIDA, doing for the Town what the Town itself had determined it was not able to do under the Purchase Agreement, held a Board meeting at which it stated its intention to adopt Resolution 44-23, declining to issue an authorizing resolution **and** denying the application for financial assistance, both without a public hearing. To buttress its predetermined and pretextual conclusions, RIDA announced a series of meritless "findings" and "statements" purportedly to support its denial of the authorizing resolution and the financial assistance application. RIDA's efforts to justify its action, however, only demonstrated its bad faith.

i. RIDA Repeatedly Mischaracterized Routine Intercompany Lending as Speculative Reliance on Third Party Mezzanine Loans

153. Findings 1 through 6 of Resolution 44-23 claim that CAT had no evidence of eligible equity to fund the project, characterizing CAT as entirely reliant on an unsecured third-party mezzanine loan. This is false, and wildly mischaracterizes CAT's submissions to RIDA

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and its finances. As RIDA, the Town and the CDA were well aware, CAT had the full support of the Triple Five behind it, and CAT provided documentation from Grant Thornton, who calculated that selected assets held by Triple Five had a market equity value exceeding $1 billion.

154. Further, CAT provided audited financial statements of a CAT affiliate under Triple Five's corporate umbrella. That entity signed a commitment letter, committing $100 million to the Project. CAT was transparent with RIDA regarding the affiliate's finances and assets. By August 23, 2023, the entity possessed over $300 million in available liquid assets, more than three times the proposed developer equity contribution of $100 million. Thus, there was conclusive evidence submitted to RIDA of CAT's access to equity to fund its Project obligations.

155. Notably, these showings of CAT's and Triple Five's financial wherewithal were far more substantial and detailed than the evidence that the Town Board, including Hubbard, had found adequate to demonstrate CAT's qualified and eligible status in November 2018.

156. RIDA also repeatedly mischaracterized the intercompany loan from a Triple Five affiliate of CAT as uncertain or risky "mezzanine financing." It was not. The proposed loan was not to be subordinate to more senior debt within CAT's capital structure, nor was it to take priority over preferred or common equity in CAT, which are earmarks of a mezzanine loan. Rather, it was a commitment by Triple Five to take readily available liquid funds out of one of its corporate pockets (the affiliate lender) and place them in the corporate pocket of another affiliate (CAT) when needed.

157. RIDA relied on this mischaracterization of the funding commitment from CAT's affiliate to invent a range of other fictitious financial concerns, including pretextual concerns

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over the security of the CAT affiliate's assets. For example, RIDA identified the fact that a portion of the affiliate's assets are encumbered as somehow introducing unreasonable risk to the arrangement. RIDA failed to note, however, that the affiliate's unencumbered equity, at the time of the submission, was in excess of $300 million.

158. Second, RIDA suggested that the lack of a letter of credit from the affiliate constituted a risk to CAT's ability to finance the Project. This so-called financing infirmity, however, ignores custom and practice concerning intercompany lending for project financing, which does not routinely require affiliates to give any security to each other. Rather, if one of the entities has assets, it can typically guarantee the obligations of the other.

159. Third, RIDA insisted that CAT's affiliate should transfer, pledge, or liquidate its securities and capitalize CAT directly, as proof that it would follow through on its commitment. The request, however, had no commercial or other justification, particularly since the lion's share of this equity, which was to fund the build out of Phase 1 of the Project, would not be needed by CAT for years and, only then, in increments over five (5) years and not as a lump sum.

160. RIDA tried to offer additional support for its conclusion that CAT's financing was somehow infirm by citing to an undisclosed report prepared by Satty, Levine & Ciacco CPAs ("Satty"). RIDA only provided a vague summary of Satty's purported conclusions that provide no support for RIDA's sweeping conclusions. The limited disclosure RIDA provided into Satty's report – including Satty's conclusion that CAT "did not provide data to demonstrate that they had the ability to acquire the Mezzanine Financing" – reflects that Satty had an inaccurate understanding of CAT's access to capital. Particularly since, all along, and as the Town and the CDA understood, CAT's credit-worthiness was not at issue. Triple Five has access to oceans of

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capital, and it was Triple Five, not CAT, who had shown that, as but one available capital source, CAT had an affiliate, holding over $300 million in liquid securities, available to finance CAT.

161. Tellingly, while RIDA was contractually obligated to review all of CAT's relevant information, its findings suggest that it was either incapable or unwilling to do so.

ii. RIDA Penalized CAT's Inability to Fulfill Demands that RIDA Knew or Should Have Known Were Impossible to Fulfill

162. RIDA compounded its errors by including a series of grossly premature findings. In findings 7, 8, 10, 13, and 14, RIDA used CAT's inability to fully respond to its commercially unreasonable requests against CAT. During its diligence, RIDA made numerous demands for documentation and information knowing CAT could not comply at this stage of development, including by demanding final term sheets from lenders, firm commitments from construction lenders (though construction was years away), and identification of specific contemplated buildings, uses and tenants, all detailed subject matters that any developer would have been years away from providing.

163. CAT had contracted to develop a multi-use property with a broad range of permitted uses. While CAT's stated goal was to develop a multi-use park for technological and industrial uses, the precise uses of each of the various flex and logistical buildings could not yet be determined because the use of each would depend significantly on the tenants. But neither tenants nor CAT could make material commitments to each other when CAT did not yet own the Property.

164. Since CAT was not in a position to provide this information and documentation, RIDA accused CAT of failing to provide requested documents and repeatedly insisted that CAT

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was "vague" in its submissions.[11] But CAT was not vague; RIDA's demands were commercially unreasonable and impossible for any developer to satisfy.

iii. RIDA's Findings Regarding Financial Assistance Were Premature and Prejudiced Consideration of CAT's Financial Capability

165. Findings 12, 13, and 14 address CAT's application for financial assistance. As set forth above, the Town and CAT had understood that RIDA's consideration of CAT and the CDA's application for financial assistance was not to be conducted at the same time as its analysis of CAT's financial wherewithal. Thus, findings with respect to financial assistance should not have been included in RIDA's analysis of CAT's finances. Further, RIDA improperly pointed to "gaps" in CAT's application with respect to financial assistance to support the erroneous conclusion that CAT's financial submissions were too vague and incomplete for RIDA to approve, when the "gaps" could only be filled by documents that RIDA knew CAT could not provide at this stage of development.

iv. RIDA's Conclusions Were Meritless and Pretextual

166. Based on its defective findings and assertions, RIDA purported to adopt the following three amendments to a draft of Resolution 44-23:

> Section 2. Based on the foregoing findings of the Agency, the Agency is unable to confirm that the Company has provided assurances satisfactory to the Agency of the Company's financial ability to perform under the terms of Section XIIIA(4) of the Agreement.
>
> Section 3. Based on the foregoing findings of the Agency, the Agency hereby denies the Application and declines to provide any

[11] Further, RIDA misused purported gaps in CAT's submissions to make faulty arguments about CAT's financial wherewithal. For example, RIDA asserted in Resolution 44-23 that it could not determine the finance-ability of the project without knowing what the specific uses of the Property would be. This conclusion is faulty for two reasons. First, the Town Board was perfectly capable of finding that CAT was qualified in November 2018 without requiring (or requesting) a detailed breakdown of the use of each and every building. Second, the uses would not materially alter the development costs. RIDA had construction plans and detailed estimates of the costs of the project produced by established third parties with extensive experience in their respective fields. Those costs would be largely unaffected by how the constructed buildings would be used.

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> "financial assistance" (as such term is defined in the Act) for the Project.
>
> Section 5. The Agency, after their consideration of all financial and project information submitted in connection with the Application, is not issuing an "authorizing resolution" as contemplated by the Agreement.

167. Leaving aside that most, if not all, of RIDA's findings are facially wrong, or contrary to custom and practice regarding how real estate projects are financed, the Town and the CDA lacked any credible basis to rely on them. Moreover, on the question of CAT's financial ability to purchase and complete the development of the Property, which is the sole RIDA holding upon which the Town and the CDA purported to terminate the Purchase Agreement, RIDA did not even issue a conclusive finding. Rather, it issued an equivocal one stating, in substance, that it was unable to confirm (or deny) that CAT had provided satisfactory assurances to perform under Section XIII(A)(4) of the Purchase Agreement. Accordingly, the Town and the CDA, in exercising their discretion pursuant to the Letter Agreement about whether to act on RIDA's non-conclusive finding, needed to make their own independent determination before reaching any decision about what to do.

P. Town Supervisor Aguiar and Town Councilman Hubbard Celebrate RIDA's Denial of the Joint Application and Claim Credit for It

168. RIDA informed attendees of the October 23, 2023 meeting that Resolution 44-23 still needed to be certified and that it would take a few days to prepare a certified version and post on the RIDA website. To date, RIDA still has not publicized a certified version of the resolution they purported to adopt.

169. Eager to be seen celebrating the demise of the Project, Town Supervisor Aguiar broke the meeting's protocol and grabbed the microphone to tell the IDA "I just want to say thank you. You did your job well." Of course, unless Supervisor Aguiar was being updated on a

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regular basis by RIDA, or was otherwise controlling their diligence, she would have had no idea whether RIDA had or had not done its job well. Indeed, what Supervisor Aguiar was praising RIDA for doing is what she had known they would do from the moment in February 2022 that she had insisted that CAT engage them to do another qualified and eligible assessment of CAT's financial ability.

170. Town Councilman Hubbard (now Town Supervisor) told the press that, as he watched the Zoom video of the IDA hearing, he and his wife were "giving each other high fives."

171. After the meeting, Supervisor Aguiar declared in an interview "I'm going to call for an immediate emergency executive session with the board and we're going to work towards returning as soon as possible the land back to the residents for its appropriate use." Aguiar said aloud what was supposed to be buried by pretext: killing CAT's project was not about finances. It was about the Town having grown tired of the Ghermezian family, who they derisively view as outsiders, and about greed in wanting to re-trade a deal the Town no longer liked or was willing to honor.

172. As the Democratic candidate for Town Supervisor, Angela Devito, observed:

> Normally, the IDA meets on the 1st Monday of every month. . . This special meeting is two weeks before the election. They would have next met on November 6th, [the night before the election]. Now the next town board meeting at which they would take up is November 9th after the election. I know the town supervisor sent them two letters threatening that [RIDA had] better do some action soon. . . . [P]olitically it stinks. It's the most crass opportunism ever.

173. That same evening, after the 5 p.m. RIDA meeting concluded, the Supervisor's office released a detailed press release regarding the actions taken at the RIDA meeting and a series of proposed actions moving forward, including an emergency meeting and a land

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appraisal. The statement included coordinated and choreographed statements from both the Supervisor and her fellow Republican running to be her successor, Tim Hubbard, whose comments were seemingly shoe-horned into the Supervisor's release to signal to voters that the party's candidate for Town Supervisor also played a significant role in killing the Project.

174. In the press release, Aguiar stated that she "[could] not express my gratitude enough to the IDA for their focus, determination and hard work in *evaluating countless documents and materials* in connection with the CDA and CAT's application." (emphasis added). The Supervisor ignored that RIDA's finding with respect to CAT's financial ability was equivocal, amounting to nothing more than a punt back to the Town for a more conclusive determination.

Q. <u>The Town Board Votes to Terminate the Purchase Agreement</u>

175. The next day, on October 24, 2023, The Town Board announced at 1 p.m. that it would hold an emergency meeting that same day at 4 p.m.

176. At the meeting, the Town Board voted to terminate the Purchase Agreement. Specifically, the Town, through its Resolution 2023-788, and the CDA, through its Resolution CDA-2023-3, resolved that:

> based upon the IDA Resolution adopted on October 23, 2023 affirmatively determining not to issue an authorizing resolution, the Agreement of Sale between CDA, Town of Riverhead and CAT, dated November 19, 2018, is hereby declared null and void and of no further force and effect[.]

177. Further, the Town and the CDA purported to authorize the escrow agency designated by the Purchase Agreement, First American Title Insurance, to release to CAT the first and second deposits the agency is holding in escrow under Section II(B) of the Purchase Agreement.

178. The meeting lasted less than thirty minutes and the members voted unanimously.

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179. Supervisor Aguiar boasted that she had "personally negotiated an amendment to the contract in March of 2022 that allowed the [T]own [B]oard to declare the contract null and void[.]" As Aguiar addressed a member of EPCAL Watch at the meeting, she even bemoaned that she had not been given enough credit back in March 2022 for adding the provision that the Town misused to terminate the contract wrongfully, complaining that "unfortunately that provision did not get much attention and people did not pay any much attention to that, to that amendment to the contract, however, today it became very critical[.]" Aguiar's vote was a "resounding yes" to terminate the deal.

180. None of the members of the Town Board attempted to reconcile RIDA's determination with the Board's own finding in November 2018 that CAT was qualified and eligible.

181. Tim Hubbard, who previously emphasized the great lengths he went to in deciding that CAT was qualified and eligible in 2018, commended RIDA's "spectacular job" in concluding the exact opposite, even though he presumably had not seen the majority of the diligence materials himself.

182. Supervisor Aguiar did not bother to question why RIDA had decided to address the financial assistance application extensively, even though she previously stated that RIDA's resolution would need to be limited to the question of CAT's financial wherewithal.

183. Rather, within twenty-four hours of RIDA's denial of its issuance of an authorizing resolution, the Town and the CDA acted reflexively to terminate the Purchase Agreement. By so doing, the Town Board unanimously squandered what had been five years' worth of progress and development at EPCAL, while disregarding the millions of dollars in actual equity, and thousands of hours of sweat equity, that CAT and Triple Five had expended in

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good faith in an effort to purchase the Property and bring this desperately needed and long overdue Project to fruition.

184. The Town Board was so eager to kill the project that it could not wait until Resolution 44-23 was actually certified before attempting to terminate it, basing their action on a resolution that did not actually exist yet. On this basis alone, the Town's termination of the contract on October 24, 2023 was defective and devoid of legal effect.

185. The speed with which the Town rushed to terminate the contract shows that the Town knew that RIDA was going to give them exactly the cover they needed to get out of the Purchase Agreement. Whatever semblance of due consideration the Town Board was supposed to give its decision was mere formality: the outcome was pre-decided. The Town Board had no regard for the validity of RIDA's findings or proper process. It only had eyes on getting out of the Purchase Agreement and on sealing an electoral win.

186. Indeed, Town Board members could not help but hint to the public that they were aware that the RIDA "due diligence" process was only ever intended to be a means to exit the contract under what they mistakenly believed was an adequate legal pretext.

187. For example, during a Town Board meeting on June 21, 2023, a critic of the project noted that Supervisor Aguiar had previously "publicly stated that she will advocate for termination of the contract as soon as she is legally able to." Aguiar responded "Yes, that is exactly how I stand, and I won't change." When asked when she believed she would be legally able to terminate the deal, she replied:

> When legal advice is provided to me. . . when [our attorneys are] ready to give us and say this is the time, we researched it or whatever it is they have to do legally. **You're an attorney, you know sometimes you have to take steps. When they tell me that it's time and the [T]own is protected** and you can walk

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> away from the contract, I'll speak to the Board and it will be a Board decision collectively. (emphasis added).

188. The "steps" Aguiar referenced are clear: preparation of a facially legal RIDA resolution denying authorization to CAT.

189. During the October 24, 2023 Town Board meeting itself, Councilman Rothwell stated:

> I think this was the best *legal* course we could possibly take. I commend the IDA for spending as much time as necessary to prevent any further legal entanglements. . . (emphasis in original recording).

190. Both Rothwell and Aguiar's statements made clear that RIDA's true purpose in Resolution 44-23 was to carefully construct a seemingly legal pretext to escape the contract.

191. On October 26, 2023, the Town, through counsel, transmitted both the RIDA and Town Board resolutions to CAT.

192. On October 31, 2023, the Town, through counsel, notified the escrow agent, First American Title Insurance Company, that the Purchase Agreement had been "terminated" and purported to authorize the release of the first and second deposits held in escrow.

193. On November 1, 2023, CAT, through counsel, sent a letter to the escrow agent objecting to that authorization and stating that the Purchase Agreement remained in full force.

194. Buoyed by popular goodwill from killing a deal they helped make unpopular, the Republican candidates for Town Board and Supervisor won in a clean sweep on November 7, 2023.

195. On November 9, 2023, during a regularly scheduled meeting, the Town Board authorized an appraisal of an unspecified real estate property through Town Board Resolution 837. Upon information and belief, including Supervisor Aguiar's public statements that she

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intended to have the EPCAL property appraised as soon as possible, the property in question is very likely the Property at issue here.

196. When confronted by a member of the public on the unusual lack of specificity, Town Attorney Erik Howard expressly stated that the identity of the property would be kept confidential temporarily "in contemplation of litigation or other legal action."

R. CAT Cures Its Purported Breach of Its Financial Ability Representation

197. Prior to the Town Board's October 24, 2023 vote to nullify the Purchase Agreement; the Town provided no formal notice to CAT of RIDA's finding that it was "unable to confirm that [CAT] has provided assurances satisfactory to the Agency of [CAT's] financial ability to perform under the terms of Section XIII(A)(4) of the Agreement." To the extent the Town Board or the CDA agreed with RIDA, or accepted RIDA's statement as sufficient evidence of a breach of CAT's breach of its representation under Section XIII(A)(4) regarding its financial ability, they were required to provide CAT formal notice of that breach, and CAT, in turn, was allowed thirty days to commence to cure that breach. The Town and the CDA failed to provide CAT such notice and instead moved to "nullify" the Purchase Agreement prior to expiration of CAT's cure period.

198. In response, on November 21, 2023, CAT provided the Town and the CDA with notice of its cure of any purported defaults of its representation under Section XIII(A)(4). Specifically, CAT informed the Town that it was prepared to proceed immediately to closing on the transaction with $40 million in cash, without any contingency on its ability to obtain acquisition financing. CAT further agreed to provide a commitment, backed by a letter of credit from an affiliate holding over $330 million in liquid, unencumbered assets, to fund CAT's equity obligations for the build out of Phase 1 of the Project. With these commitments, CAT has "cured" any purported breach of the Purchase Agreement arising out of RIDA's pretextual

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finding regarding its "inability" to confirm CAT's financial ability to perform its obligations under the Purchase Agreement.

199. To date, the Town has ignored CAT's proposed cure, in violation of Section XIX. Instead, on or around November 29, 2023, the Town issued a public notice determining that a public hearing would be held on December 5, 2023 considering a proposed amendment to zoning related to the Property that would eliminate the overwhelming majority of aviation uses at EPCAL, including flight instruction, flight training, and aeronautical uses, as well as prohibit registration or licensing of any portion of the Property with any federal, state or local government entity or agency thereof, or the listing of the Property on aviation charts or maps.

200. Such an amendment would violate the Purchase Agreement, which provides that:

> [T]he Property shall be exempt from all changes in zoning laws, ordinances, and other regulations that change the land uses permitted under Article LXIII of the Town's Zoning Code as in effect on the Effective Date (other than any such land uses that are prohibited under Section VI(A)(10) of this Agreement[.]

Purchase Agreement at Section XII(B).

201. CAT, through its counsel, reminded the Town of the ramifications of this provision in a letter sent to Town Attorney Erik Howard on or around December 4, 2023.

202. Despite this reminder, the Town proceeded to hold the public hearing on December 5, 2023, demonstrating the intent of the Town's employees and elected officials to completely disregard CAT's proposed cure and their ongoing obligations under the Purchase Agreement.

203. At the hearing, the public and the Town's agents and officials discussed the appropriate scope of the proposed amendment, making no mention of any ongoing obligations to CAT, before opening the amendment to public written comment.

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204. On or around December 8, 2023, Town Attorney Erik Howard mailed a letter to CAT's counsel in response to the December 4, 2023 letter, stating that the Town had terminated the Purchase Agreement on October 24, 2023. No mention was made of CAT's actions to cure the alleged breach of Section XIII(A)(4), nor of CAT's right to cure.

CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT
(AGAINST THE TOWN AND THE CDA)

205. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through _____ as if fully set forth herein.

206. Plaintiff seeks an immediate and definitive declaration that the Letter Agreement and the Preliminary Agreement, as well as the relevant provisions of the Town Board, the CDA, and RIDA resolutions enabling them are void because the CDA and the Town violated New York State statutory and common law in delegating their powers and duties with respect to the sale of the Property to RIDA.

207. The Town's and the CDA's illegal delegations of their powers and duties with respect to the sale include:

208. **First**, the CDA's delegation of its duty to designate a "qualified and eligible sponsor" to RIDA violates New York General Municipal Law § 507(2)(d).

209. Pursuant to New York General Municipal Law § 507(2)(d), the firm or corporation purchasing land under subject to the statute should be "designated by the [urban renewal] agency as a qualified and eligible sponsor" in accordance with established rules and procedures. Here, the urban renewal agency is the CDA, not RIDA.

210. The CDA delegated its statutory obligation to designate a qualified and eligible sponsor to RIDA through the 2022 Letter Agreement, the 2022 Town Resolutions, and the 2022

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Preliminary Agreement through which it designated RIDA to examine CAT's financial capacity, skill, expertise, and experience to acquire and redevelop the Property.

211. The CDA's delegation of the duty to designate the sponsor as qualified and eligible is an impermissible delegation of its statutory duty and a violation of the statute.

212. **Second**, the Town's delegation of its obligation to approve the sale of the Property, even in part, violates New York General Municipal Law § 507(2)(d).

213. Under § 507(2)(d), a "sale, lease or other disposition" authorized by that statute must "be approved by the governing body" – in this case, the Town Board. Here, the sale of EPCAL to CAT was authorized under § 507(2)(d), and, accordingly, it was impermissible for the Town to delegate its power to approve the sale, even in part.

214. Yet the 2022 Letter Agreement, 2022 Preliminary Agreement, and 2022 Town Resolutions granted RIDA the power to issue an authorizing resolution that would permit RIDA to approve the sale to CAT and proceed to execution of the Lease and Project Agreement.

215. The Town's delegation of its approval power is an impermissible delegation of its statutory power (and duty) under § 507(2)(d) and therefore is void *ab initio*.

216. **Third**, the CDA impermissibly delegated its quasi-judicial obligations with respect to the sale of EPCAL to RIDA.

217. Under the common law of New York State, an agency is not permitted to delegate its powers that are characterized as "quasi-judicial."

218. The CDA's process of designating a sponsor as qualified and eligible involves submission of evidentiary exhibits, public presentations and testimony, findings of fact to which legally prescribed standards are applied, and a final determination as to CAT's rights to proceed

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with the Project. Such qualities reflect that the determination was quasi-judicial in nature, not merely ministerial.

219. The CDA's delegation of its powers to designate qualified and eligible Sponsors is an impermissible delegation of a quasi-judicial determination process.

220. For all three of the above reasons, delegation of the powers and duties to approve the sale process and to designate CAT as qualified and eligible are impermissible.

221. As these powers and duties are central to the 2022 Letter Agreement, 2022 Preliminary Agreement, and 2022 Town Resolutions and are therefore not severable, each must be declared void accordingly.

222. Equally, any purported termination of the contract based on these void provisions must also be declared void.

COUNT II
DECLARATORY JUDGMENT
(AGAINST THE TOWN AND THE CDA)

223. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 222 as if fully set forth herein.

224. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

225. CAT performed all material obligations under the Purchase Agreement.

226. Under the Purchase Agreement, "[i]n the event that [CAT] breaches any of its representations contained in this [Purchase] Agreement in any material respect . . . , [the Town and the CDA] shall provide Purchaser with written notice of such breach or default promptly after [they] discover[] same." Purchase Agreement at Section XIX(A).

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227. Upon receiving such notice, CAT must cure such breach "within thirty [30] days," "or after ninety [90] days if [CAT] diligently commences to cure such breach…, if such breach… is not curable within thirty [30] days)." *Id.*

228. To the extent that RIDA's determination that "it is unable to confirm that [CAT] has provided assurances satisfactory to [RIDA] of [CAT's] financial ability to perform under the terms of Section XIII(A)(4) of the Agreement" constitutes a finding that CAT breached its representation in Section XIII(A)(4) of the Purchase Agreement that it "has the financial ability and the skills and experience necessary to purchase and complete the development of the Property and to perform all of its obligations under this Agreement;" CAT has cured such purported breach or default through the letter it sent to the Town on November 21, 2023.

229. With that letter, CAT committed to close on the property by fully funding the acquisition price in cash at closing, without any contingency on CAT's ability to secure financing to fund the land acquisition.

230. CAT further agreed to provide a commitment, backed by a letter of credit, to fund its equity obligations for the build out of Phase 1 of the Project from an affiliate Company holding over $300 million in liquid, unencumbered assets.

231. However, as of the commencement of this action, Defendants have not responded to CAT's November 21, 2023 letter.

232. Accordingly, CAT is entitled to a judgment from this Court that it has cured the purported breach of its representation in Section XIII(A)(4) of the Purchase Agreement.

COUNT III
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

233. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 232 as if fully set forth herein.

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234. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

235. CAT performed all material obligations under the Purchase Agreement.

236. Under the Purchase Agreement, the Town and the CDA represented and warranted that they have "full power and authority to execute and deliver . . . all other documents now or hereafter to be executed and delivered by it pursuant to" the Purchase Agreement. Purchase Agreement at Section XII(A)(1).

237. Contrary to the Town and the CDA's representations, the Town and the CDA lacked legal right or authority to delegate to RIDA the right or responsibility to determine and approve whether CAT is qualified and eligible to sponsor the EPCAL project, as well as whether to approve the sales of the Property.

238. Accordingly, the Town's and the CDA's attempted delegation of their respective obligations respecting the sale of EPCAL to CAT in the Letter Agreement and the Preliminary Agreement violate the representation and warranty under Section XII(A)(1) of the Purchase Agreement.

239. The Town and the CDA's breaches were material. Among other things, the Town and the CDA's breaches made it impossible to proceed to close the sale of the EPCAL site to CAT.

240. As a result of the Town and the CDA's breaches, CAT has been injured, and continues to be injured, as described herein.

241. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

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242. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT IV
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

243. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 242 as if fully set forth herein.

244. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

245. CAT performed all material obligations under the Purchase Agreement.

246. Under the Purchase Agreement, the Town is obligated to file "in the Office of the Clerk of the County of Suffolk of the Subdivision Map" within one year upon receipt of CAT's Notice to Proceed at the end of the Due Diligence Period. Purchase Agreement at Section IX. Further, in the event that the Town failed to file the Subdivision Map by the Filing Date, "either party can terminate [the Purchase] Agreement upon written notice to the other party. . . ." *Id.*

247. CAT submitted its Notice to Proceed on May 20, 2019. It also twice waived its right to terminate the Purchase Agreement and agreed to extend the Filing Date for one year "in reliance upon the Town's continued good faith and diligent pursuit to satisfy its obligation under the [Purchase] Agreement and file the Subdivision Map."

248. The Town and the CDA failed to obtain the approval for the subdivision necessary for the sales of the EPCAL Property. As a result, the Town and the CDA failed to meet their obligation to file the Subdivision Map.

249. As a result of the Town and the CDA's breaches, CAT has been injured, and continues to be injured, as described herein.

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250. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

251. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT V
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

252. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 251 as if fully set forth herein.

253. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA on the other.

254. CAT performed all material obligations under the Agreements.

255. Under the Purchase Agreement, the Town and the CDA represented and warranted that "[a]ll necessary proceedings of CDA and the Town have been duly taken to authorize the execution, delivery, and performance of this Agreement . . . ." Purchase Agreement at Section XII(A)(1).

256. The Town and the CDA further represented and warranted that "the execution and delivery of [the Purchase Agreement] by Seller and the consummation by Seller of the transactions contemplated hereby do not and will not require any filing with, or consent or approval of, any third party[.]" *Id.* at Section XII(A)(2).

257. Contrary to the Town and the CDA's representations, the Town and the CDA have been on notice since July 2005 that the RWD is not permitted by the DEC to serve public water to the EPCAL site.

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258. In order for the DEC to approve the Town and the CDA's application for the RWD to serve the EPCAL site, which would have led to the approval of the Town and the CDA's application for the subdivision contemplated in the Purchase Agreement, the RWD must demonstrate, among other things, that SCWA, a thirty party, has no objection to and thereby approves the RWD serving the EPCAL site.

259. The requirement for SCWA's approval and consent in order for the Town and the CDA to meet the Filing Date under the Purchase Agreement is a direct breach of their representation under Section XII(A)(2) of the Purchase Agreement.

260. Alternatively, the completion of the Town and the CDA's application for subdivision, which would have satisfied the Town and the CDA's obligations under Section IX of the Purchase Agreement and permitted the parties to proceed to closing, does not depend on the RWD being designated as the provider for public water at the EPCAL site—the Town simply needed to identify the SCWA as the entity legally allowed and able to service EPCAL.

261. Contrary to their representation and warranties under Section XII(A)(1) of the Purchase Agreement that "[a]ll necessary proceedings of CDA and the Town have been duly taken to authorize the execution, delivery, and performance of this Agreement[,]" the Town and the CDA refused to acknowledge that the SCWA possessed the right to service EPCAL and, months after the deadline to file the subdivision approval had passed, filed a lawsuit against the DEC challenging its notices of incomplete application.

262. Even after the Supreme Court of New York dismissed its action against the DEC and held that "SCWA is able to provide water to the property and that the success of the Agency's permit application does not depend on RWD being designated as the provider," the

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Town and the CDA refused to recognize the SCWA as the legal provider of public water for the EPCAL site.

263. The Town and CDA's conduct constitute a breach of their representations and warranties under Section XII(A)(1) of the Purchase Agreement.

264. The Town and the CDA's breaches were material. Among other things, the Town and the CDA's breaches made it impossible to proceed to close the sale of the EPCAL site to CAT.

265. As a result of the Town and the CDA's breaches, CAT has been injured, and continues to be injured, as described herein.

266. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

267. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT VI
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

268. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 267 as if fully set forth herein.

269. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

270. CAT performed all material obligations under the Agreements.

271. The Town and the CDA breached their obligations under Section IX of the Purchase Agreement, which requires the Town to file the approved subdivision map with the

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County of Suffolk within one year upon receipt of CAT's Notice to Proceed at the end of the Due Diligence Period, which CAT submitted on May 20, 2019.

272. As detailed herein, the Town and the CDA refused to proceed with the subdivision application by recognizing SCWA as the legal provider of public water for the EPCAL site. That refusal persisted for years after their receipt of CAT's Notice to Proceed dated May 20, 2019, and after they had initiated a lawsuit against the DEC and lost.

273. The Town and the CDA's conduct constitute a breach of the implied covenant of good faith and fair dealing, and they acted in a manner that deprived CAT of its right to receive the benefits of the Purchase Agreement.

274. The Town and the CDA's breaches were material. Among other things, the Town and the CDA's breaches made it impossible to proceed to close the sale of the EPCAL site to CAT.

275. As a direct result of the Town and the CDA's breach of the implied covenant of good faith and fair dealing, CAT has not received the benefit of its bargain in entering into the Purchase Agreement and has been injured, and continues to be injured, as described herein.

276. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

277. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT VII
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

278. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 277 as if fully set forth herein.

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279. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

280. CAT performed all material obligations under the Agreements.

281. Under Section XXIII of the Purchase Agreement, "[t]he parties agree… to execute and deliver such instruments and documents, as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of [the Purchase] Agreement." Purchase Agreement at Section XIII.

282. The Town and the CDA, in direct contradiction to their contractual obligations to act "in furtherance of the purposes" of the Purchase Agreement, obstructed and hindered CAT's efforts and progress in the purchase and development of the Property by:

(a) Failing to designate SCWA as the legal server of water to EPCAL or otherwise proceed with the Part 666 permit;

(b) Failing to obtain the subdivision approval or to meet the Filing Date;

(c) Actively and persistently seeking to terminate the Purchase Agreement, including by forcing CAT to enter into the 2022 Letter Agreement and the 2022 Preliminary Agreement;

(d) Interfering with and influencing RIDA's decision making process by directly pressuring RIDA to make a premature decision;

(e) Interfering with and influencing RIDA to rule against CAT through publicly and privately expressing strong disfavor of CAT's purchase and development of the Project;

(f) Failing to correct the erroneous public belief that CAT intends to build a commercial cargo jetport at the Property; and

(g) Irrationally and unfairly relying on RIDA's baseless determination on CAT's financial wherewithal and declaring the Purchase Agreement "null and void" through expedited special meetings for political gain.

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283. The Town and the CDA's breaches were material. Among other things, the Town and the CDA's breaches made it impossible to proceed to close the sale of the EPCAL site to CAT.

284. As a direct result of the Town and the CDA's breach of Section XXIII, CAT has not received the benefit of its bargain in entering into the Purchase Agreement and has been injured, and continues to be injured, as described herein.

285. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

286. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT VIII
(BREACH OF CONTRACT)
(AGAINST THE TOWN AND THE CDA)

287. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 286 as if fully set forth herein.

288. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

289. The Letter Agreement, dated March 3, 2022, and the accompanying resolutions, dated March 24, 2022, constitute a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

290. The Preliminary Agreement, dated September 21, 2022, constitutes a binding and valid contract between CAT, the CDA, and RIDA.

291. CAT performed all material obligations under all three agreements.

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292. The Town and the CDA breached their obligations under Section IX of the Purchase Agreement, which requires the Town to file the approved subdivision map with the County of Suffolk within one year upon receipt of CAT's Notice to Proceed at the end of the Due Diligence Period, which CAT submitted on May 20, 2019.

293. As detailed herein, the Town and the CDA breached the Agreements through their unfair, irrational, baseless reliance on RIDA's determination that "[RIDA] is unable to confirm that [CAT] has provided assurances satisfactory to [RIDA] of [CAT's] financial ability to perform under the terms of Section XIII(A)(4) of the Agreement" to declare the Purchase Agreement "null and void."

294. The Town and the CDA's reliance on RIDA's determination constituted a breach of the implied duty of good faith and fair dealing with respect to its obligations under the Letter Agreement because:

- The Town and the CDA's Qualified and Eligible analysis conducted in 2018 designated CAT as a Qualified and Eligible Sponsor pursuant to the rules and procedures of the Agency and Section 507(2)(d) of the General Municipal Law for the redevelopment of the EPCAL Property;

- CAT provided more financial assurance in 2022 and 2023 than when the Town and CDA designated and approved CAT as a Qualified and Eligible Sponsor in 2018;

- RIDA's denial of CAT's application was based on RIDA's finding that CAT "failed to provide a specific project definition" and that "the financeability of the project cannot yet be adequately assessed" without a specific project plan. However, as the Town and the CDA are well-aware, the Purchase Agreement did not provide any level of "project definition" beyond the Intended Development Plan, which is part of the Purchase Agreement and which required CAT to obtain "necessary approvals of the site plan" *after* closing; and

- The Town and the CDA relied on RIDA's manufactured findings that CAT failed to provide materials and information

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that could not be provided until after the transaction closed and further approvals were provided by the Town.

295. All of the breaches alleged herein by the Town and the CDA were willful and/or malicious in nature. As such, any contractual restrictions or limitations on such claims are not enforceable.

296. As a direct result of the Town and the CDA's breach of the implied covenant of good faith and fair dealing, CAT has not received the benefit of its bargain in entering into the Purchase Agreement and has been injured, and continues to be injured, as described herein.

297. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

298. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT IX
BREACH OF CONTRACT
(AGAINST THE TOWN AND THE CDA)

299. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 298 as if fully set forth herein.

300. The Purchase Agreement constitutes a binding and valid contract between CAT, on the one hand, and the Town and the CDA, on the other.

301. CAT performed all material obligations under the Agreements.

302. The Town and the CDA breached their obligations under Section XIX of the Purchase Agreement, which allows CAT to cure any alleged breach or default within 30 days (or within 90 days if the cure was diligently commenced but is not curable within 30 days) upon prompt notice of such alleged breach or default.

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303. To the extent that RIDA's determination that it was "unable to confirm that [CAT] has provided assurances satisfactory to [RIDA] of [CAT's] financial ability to perform under the terms of Section XIII(A)(4) of the Agreement" constitutes notice of CAT's alleged breach of its representation and warranty under Section XIII(A)(4) of the Purchase Agreement, CAT properly cured on November 21, 2023.

304. All of the breaches alleged herein by the Town and the CDA were willful and malicious in nature. As such, any contractual restrictions or limitations on such claims are not enforceable.

305. As a direct result of the Town and the CDA's breach, CAT has not received the benefit of its bargain in entering into the Purchase Agreement and has been injured, and continues to be injured, as described herein.

306. Specific performance is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

307. Alternatively, CAT is entitled to damages caused by the Town and the CDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT X
DECLARATORY JUDGMENT
(AGAINST RIDA, THE TOWN, AND THE CDA)

308. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 307 as if fully set forth herein.

309. Plaintiff seeks an immediate and definitive declaration that RIDA Resolution 44-23, as well as Town Board Resolution 2023-788 and CDA Resolution 2023-3, are void because RIDA violated New York State law by failing to hold a mandated public hearing prior to its

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determination and the Town and the CDA relied on that faulty resolution in issuing Resolutions 2023-788 and 2023-3.

310. Under Section 859-A(2) of the General Municipal Law, before RIDA can provide financial assistance in excess of $100,000, "[t]he agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency. . . . At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project." RIDA ruled on the financial assistance application before it without holding such a hearing.

311. Similarly, under Section 507(2)(d) of the General Municipal, a municipal real estate sale executed under the provision must be "approved by the governing body after a public hearing held not less than ten days after the publication of such notice." As a RIDA authorization would have been, in substance, an approval of the progression of the sale, a public hearing was required.

312. Despite two statutory provisions requiring a public hearing, and its own acknowledgment that a public hearing would be held, RIDA failed to hold a public hearing.

313. To the extent that any contract or resolution by the municipality or an agency purported to give discretion to RIDA as to whether to hold a public hearing or not, any such provision was void as a violation of New York State Law.

314. As such, CAT is entitled to a judgment from the Court that Resolution 44-23 is invalid because of RIDA's failure to adhere to statutory requirements.

315. Equally, Town Board resolution 2023-788 and CDA 2023-3 are both void as each is based on the invalid RIDA resolution.

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COUNT XI
BREACH OF CONTRACT
(AGAINST RIDA)

316. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 315 as if fully set forth herein.

317. Under Section 4(b)(i) of the Preliminary Agreement, RIDA was obligated to review "all relevant information" prior to making a finding as to whether the Project complied with Title I of Article 18-A of the General Municipal Law of the State of New York and Chapter 624 of the Laws of 1980 of the State of New York.

318. RIDA failed to consider "all relevant information" by wrongfully and illegally failing to hold a public hearing on CAT and the CDA's Joint Application and by denying CAT the promised opportunity to present information to RIDA at that hearing.

319. CAT was entitled to the opportunity to present relevant information at the public hearing. RIDA's denial of refusal to hold a public hearing on CAT and the CDA's application violated Section 4(b)(i) of the Preliminary Agreement.

320. Under Section 4(b)(iii) of the Preliminary Agreement, "execution of a Lease and Project Agreement" was subject to RIDA "holding a public hearing with respect to the Project and any potential Financial Assistance therefore[.]"

321. RIDA breached Section 4(b)(iii) of the Preliminary Agreement by denying CAT and the CDA's Joint Application without holding a public hearing with respect to the Project.

322. RIDA further breached its obligation under the Preliminary Agreement and accompanying resolutions to conduct its qualified and eligible analysis of CAT *prior to* conducting an assessment of CAT and the CDA's application for financial assistance and improperly conflating the two analyses, as was the intention of the parties.

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323. RIDA's breaches alleged herein were willful and malicious in nature. As such, any contractual restrictions or limitations on such claims are not enforceable.

324. As a direct result of RIDA's breach, CAT has not received the benefit of its bargain in entering into the Preliminary Agreement and has been injured, and continues to be injured, as described herein.

325. Specific performance directing RIDA to execute the Lease and Project Agreement is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

326. Alternatively, CAT is entitled to damages caused by RIDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT XII
BREACH OF CONTRACT
(AGAINST RIDA)

327. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 326 as if fully set forth herein.

328. The 2022 Preliminary Agreement constitutes a binding and valid contract between CAT and the CDA, on the one hand, and RIDA on the other.

329. As detailed herein, RIDA breached the implied covenant of good faith and fair dealing with respect to its obligations under the 2022 Preliminary Agreement by:

- Requiring CAT to provide evidence regarding plans for the Project that it well knew were impossible for CAT to provide prior to closing the transaction;
- Misrepresenting to CAT the process by which it would conduct its analysis and shutting down that process with virtually no notice to CAT;
- Failing to comply with the law as it made a ruling without conducting a promised public hearing on CAT's financial

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qualifications as required by New York General Municipal Law §859-A(2) if RIDA were to approve the project;

- Announcing pretextual findings regarding CAT's purported failure to demonstrate its financial qualifications, when CAT in fact provided extensive, irrefutable evidence of its qualifications;

- Making baseless determinations regarding CAT's financial wherewithal and its entitlement to financial benefits;

- Violating its own process by considering the application for financial assistance before CAT could obtain other governmental approvals;

- Inappropriately conflating consideration of CAT's financial ability with its request for financial assistance application, prejudicing the process for both; and

- Ignoring both CAT's and the Town Board's intention and understanding that financial wherewithal and financial assistance determinations should be considered separately.

330. All of the breaches alleged herein by RIDA were willful in nature. As such, any contractual restrictions or limitations on such claims are not enforceable.

331. CAT performed all material obligations under the Agreements.

332. RIDA's breaches alleged herein were willful and malicious in nature. As such, any contractual restrictions or limitations on such claims are not enforceable.

333. As a direct result of RIDA's breach, CAT has not received the benefit of its bargain in entering into the Preliminary Agreement and has been injured, and continues to be injured, as described herein.

334. Specific performance directing RIDA to execute the Lease and Project Agreement is the only adequate remedy available to CAT because the land at the EPCAL site is unique.

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335. Alternatively, CAT is entitled to damages caused by RIDA's breach of the Purchase Agreement, if this Court determines for any reason that specific performance is not available or appropriate.

COUNT XIII
PROMISSORY ESTOPPEL
(AGAINST THE TOWN AND THE CDA)

336. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 335 as if fully set forth herein.

337. The Town and the CDA made a series of false representations intended to persuade Plaintiff to enter the Letter Agreement and Preliminary Agreement. These representations include:

- The Town representatives' representation in the March 4, 2022 meeting with CAT that the Town and the CDA supported the project and intended to close the transaction with CAT;
- Supervisor Aguiar's representation in the March 4, 2022 meeting with CAT that the Town would proceed with the sale regardless of RIDA's conclusion as to CAT's financial capability; and
- Deputy Town Attorney Annemarie Prudenti's representations in the March 4, 2022 meeting with CAT that the RIDA evaluation was purely for appearances, that the Town had no concerns about CAT's financial wherewithal;
- The Town's affirmative assurances to CAT that RIDA would confirm CAT's financial capability and approve its application;
- The Town's assurances to CAT that the RIDA review process was solely intended to expedite the closing of the transaction in order that CAT could proceed with Project; and
- The Town's assurances to CAT that the RIDA review process was, in substance, a pro forma exercise.

338. The Town's assurances that it would proceed with the sale regardless of RIDA's analysis were clear, unambiguous, and intended to reassure Plaintiff that the Town would not

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inflict the very harm that the Town actually and intentionally inflicted on Plaintiff, *i.e.,* termination of the Purchase Agreement on pretextual grounds. As such, it was reasonable and foreseeable that CAT would rely upon such promises in entering the Letter Agreement and Preliminary Agreements.

339. CAT was substantially harmed by its justified reliance on Town's false assurances, as they enabled the Town and the CDA to wrongfully deprive CAT of the Property that it has a contractual right to purchase. The Town and the CDA knew that no lawful means existed to terminate the Purchase Agreement and therefore issued the false promises and assurances to CAT in order to manufacture false grounds to terminate the contract. Had Town officials not actively misled CAT, it would have been impossible for them to wrongfully terminate the Purchase Agreement.

340. The Town and the CDA should therefore be equitably estopped from terminating the Purchase Agreement and from enforcing any of their purported rights under the Letter Agreement.

COUNT XIV
FRAUDULENT INDUCEMENT OF THE LETTER AGREEMENT AND THE PRELIMINARY AGREEMENT (AGAINST THE TOWN AND THE CDA)

341. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 340 as if fully set forth herein.

342. The Town and the CDA made multiple false representations of material facts to CAT with the intent to persuade CAT to enter the Letter Agreement and Preliminary Agreement, including all of the misrepresentations referenced in paragraph 337.

343. The Town and the CDA knew these statements were false at the time they made them to CAT. The Town and the CDA misrepresented made their intentions, plans, and

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commitment to the deal with CAT, and the true purpose of the Letter Agreement and Preliminary Agreements was to create a pretextual grounds for Defendants to do precisely what they promised CAT they would not: terminate the deal.

344. The Town and the CDA misrepresented material facts regarding their intention, plan, and commitment with regard to the deal with CAT with the intent to deceive and for the purpose of inducing CAT to enter into the Letter Agreement and Preliminary Agreements.

345. CAT was substantially harmed by its justified reliance on Town's false representations, as they enabled the Town and the CDA to wrongfully deprive CAT of the Property, which it had a contractual right to purchase. The Town and the CDA knew that no lawful means existed to terminate the Purchase Agreement and therefore issued the false promises and assurances to CAT in order to manufacture false grounds to terminate the contract. Had Town officials not actively misled CAT, it would have been impossible for them to wrongfully terminate the Purchase Agreement.

346. As a result, CAT is entitled to rescission of both the Letter Agreement and the Preliminary Agreement, a declaration that the purported termination of the Purchase Agreement based on these fraudulently contracts is invalid, and to specific performance of the Purchase Agreement.

347. CAT is also entitled to any and all damages caused by the Town and the CDA's fraudulent conduct.

COUNT XV
FRAUDULENT MISREPRESENTATION
(AGAINST THE TOWN AND THE CDA)

348. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 347 as if fully set forth herein.

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349. The Town and the CDA made multiple false representations of material facts to CAT with the intent to persuade CAT to enter the Letter Agreement and Preliminary Agreement, including all of the misrepresentations referenced in paragraph 337.

350. The Town and the CDA knew these statements were false at the time they made them to CAT. The Town and the CDA misrepresented made their intentions, plans, and commitment to the deal with CAT, and the true purpose of the Letter Agreement and Preliminary Agreements was to create a pretextual grounds for Defendants to do precisely what they promised CAT they would not: terminate the deal.

351. The Town and the CDA made the misrepresentation on the materials facts regarding their intention, plan, and commitment with regard to the deal with CAT with the intent to deceive and for the purpose of inducing CAT to enter into the Letter Agreement and Preliminary Agreements.

352. CAT was substantially harmed by its justified reliance on Town's false representations, as they enabled the Town and the CDA to wrongfully deprive CAT of the Property, which it had a contractual right to purchase. The Town and the CDA knew that no lawful means existed to terminate the Purchase Agreement and therefore issued the false promises and assurances to CAT in order to manufacture false grounds to terminate the contract. Had Town officials not actively misled CAT, it would have been impossible for them to wrongfully terminate the Purchase Agreement.

353. As a result, CAT is entitled to a declaration that the purported termination of the Purchase Agreement based on these fraudulently contracts is invalid and to specific performance of the Purchase Agreement.

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354. CAT is entitled to any and all damages caused by the Town and the CDA's fraudulent conduct.

COUNT XVI
NEGLIGENT MISREPRESENTATION
(AGAINST THE TOWN AND THE CDA)

355. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 354 as if fully set forth herein.

356. Defendants made multiple false representations of material facts to CAT to persuade CAT to enter the Letter Agreement and Preliminary Agreement, including all of the misrepresentations referenced in paragraph 337.

357. The Town and the CDA negligently or recklessly represented to CAT with respect to their intention and plan with regard to the deal with CAT, and offered CAT concrete assurances that far exceeded what the Town was willing to commit to in practice.

358. As contractual partners through the Purchase Agreement, and longstanding partners in the development of the Property, the Town and CDA had a special relationship with CAT that imposed a duty to provide accurate information to the Plaintiffs. The Town and the CDA each assumed an affirmative duty to act "in furtherance of the purposes" of the Purchase Agreement, which meant to cooperate with CAT in effecting both the sale and the development of EPCAL. The Town and the CDA were fully aware that failure to speak with care in pre-contractual discussions regarding the Letter Agreement and the Preliminary Agreement, including their intentions with respect to honoring the Purchase Agreement and the nature of the RIDA process, would be harmful to CAT. The Town and the CDA directly interacted with CAT through their agents on a regular basis beginning in 2017 concerning the development of the Project. CAT was justified in relying on the Town and the CDA to make honest representations in good faith as part of the relationship between the parties.

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359. Plaintiff was substantially harmed by its justified reliance on Town's negligent misrepresentations as they enabled the Town and the CDA to wrongfully deprive CAT of the Property, which it has a contractual right to purchase. The Town and the CDA knew that no lawful means existed to terminate the Purchase Agreement and therefore issued the false promises and assurances to CAT in order to manufacture false grounds to terminate the contract. Had Town officials not actively misled CAT, it would have been impossible for them to wrongfully terminate the Purchase Agreement.

360. CAT is entitled to any and all damages caused by the Town and the CDA's negligent conduct.

COUNT XVII
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(AGAINST THE TOWN)

361. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 through 360 as if fully set forth herein.

362. The Town was aware of the Preliminary Agreement between RIDA, CAT and the CDA, whereby RIDA was required to conduct a reasonable and fair assessment of CAT's financial wherewithal in good faith.

363. The Town interfered with RIDA's assessment of CAT's financial wherewithal, including by:

- Privately sending letters to RIDA demanding that it come to a premature determination on CAT's application that was prejudicial to CAT's rights;
- Town Board members, who appoint the RIDA board, making public statements encouraging RIDA to deny the CAT application;

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- Supervisor Aguiar interrupting a RIDA meeting to make a speech urging RIDA to come to a premature determination, ending with this "let's stop this here"; and

- Town Board members engaging in other private communications with RIDA concerning its review of CAT's application with the intention of influencing RIDA's review.

364. The Town Board's public and private pressuring of RIDA directly contributed to RIDA violating its own legally required processes and coming to a premature, baseless determination that was prejudicial and substantially harmful to CAT's property rights under the Purchase Agreement.

365. CAT is entitled to any and all damages caused by the Town's illegal interference with RIDA's performance under the Preliminary Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the defendants as follows:

1. Adjudicate and declare that the 2022 Letter Agreement, the 2022 Town Resolutions, and the 2022 Preliminary Agreement are void and unenforceable;

2. Adjudicate and declare that CAT is entitled to specific performance under the Purchase Agreement and that the parties shall proceed to closing on sale of the Property;

3. Compensatory damages in an amount to be determined at trial;

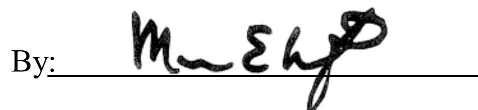
4. Prejudgment and post-judgment interest;

5. Costs and attorney's fees incurred in connection with this action; and

6. Such further and other relief as this Court deems just and proper.

Dated: New York, New York
January 8, 2024

KASOWITZ BENSON TORRES LLP

By: 

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