SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

POUGHKEEPSIE WATERFRONT DEVELOPMENT, LLC, and JM DEVELOPMENT GROUP, LLC,

Petitioners/Plaintiffs,

For a Judgment and Order pursuant to Article 78 of the Civil Practice Law and Rules and Complaint against,

-against-

THE CITY OF POUGHKEEPSIE COMMON COUNCIL, THE CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY, and THE CITY OF POUGHKEEPSIE,

Respondents/Defendants.

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VERIFIED PETITION/COMPLAINT

Index No. _____/19

Petitioners/Plaintiffs Poughkeepsie Waterfront Development, LLC ("PWD") and JM Development Group, LLC ("JM") (collectively, "Petitioners" or the "Developer") as and for their Verified Petition and Complaint against the City of Poughkeepsie Common Council, (the "Council"), the City of Poughkeepsie Industrial Development Agency (the "IDA") and the City of Poughkeepsie (the "City"), by their counsel Cuddy & Feder, LLP, respectfully allege as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

SUMMARY OF RELIEF SOUGHT

1. This action is to enforce contractual obligations owed by the City, Council and IDA to the Developer, and to nullify the Council's attempt to renege on its commitments under the guise of governmental action – in other words, to fix Respondents' broken promises.

2. The Developer has a legal right based on contract commitments from the City, IDA and Council to develop waterfront property for a mixed use and public recreational facility that

will serve to revitalize Poughkeepsie at a time when projects like this are sorely needed to aid economic recovery.

3. The Council recently (and unlawfully) flexed its municipal muscle in an effort to strip the Developer of its contractual and vested rights, after the Developer already invested years and millions of dollars into developing two out of three waterfront parcels in furtherance of the City's plans.

4. The Developer's rights have long been solidified in, among other documents referenced herein, Council Resolution R-10-41 (Ex. 1),[1] which authorized the City to convey the main waterfront parcel at issue, known as the DeLaval site, to the IDA, whereupon the IDA was then contractually obligated to lease that site and act as the Developer's landlord pursuant to a pre-negotiated, municipally approved 99 year lease. Ex. 2 (May 2009 Lease relating to DeLaval site).

5. The Council made a (futile) attempt to renege on this commitment by passing an October 5, 2020 "Resolution to Rescind Resolution R-10-41, Authorizing the Conveyance of the DeLaval Parcel to the City of Poughkeepsie Industrial Development Agency," Resolution R-20-79 (the "Illegal Resolution"). Ex. 3 at p.5. The City's Mayor (to his credit) vetoed the Illegal Resolution, but then the Council doubled down by overriding that veto by Resolution R-20-86 dated October 19, 2020 (the "Veto Override").[2] Ex. 4.

6. The Council's actions, coupled with the failure of the City to deliver the signed DeLaval lease between the IDA and the Developer along with the negotiated and approved PILOT (Payment In Lieu Of Taxes) agreement that the City has been contractually bound to deliver for over two years now, not only hurts the Developer who invested years and millions of dollars into this project, but it hurts the City as a whole.

[1] All referenced Exhibits are annexed hereto.
[2] The Veto Override claims the Illegal Resolution passed on or about October 2nd – the actual date was October 5th.

7. By virtue of Respondents' backing out of their legal and contractual commitments, it will now likely be years longer before visitors and residents can avail themselves of the benefits of a fully developed waterfront, and until all of this is legally sorted out, the City will continue to be deprived of revenues that could have otherwise been generated by now, had Respondents honored their commitments.

8. But the Illegal Resolution is explicit in stating that they will not honor these commitments – that is, unless the Developer now acquiesces by agreeing, within 45 days of the Illegal Resolution, to renegotiate contractual commitments that Respondents have already made – by "agreeing" to a new PILOT Agreement and by submitting a new site plan for Planning Board consideration – literally forcing the Developer back to the drawing board to completely renegotiate that which has already been agreed to and approved.

9. The Developer spent millions on environmental remediation, design and infrastructure based on a reasonable expectation that Respondents would honor their own resolutions and contract commitments. The Developer also reasonably acted on that expectation when the Developer invested approximately $50 million more in building a restaurant, catering facility and 136 apartments on the waterfront. This was all in reasonable anticipation of the Developer being able to have a right to finish the job it bargained for – to develop the DeLaval waterfront parcel, which in the meantime sits wasted and incomplete.

10. Respondents' resolutions approved the required agreements, which were to be delivered and signed as soon as the brownfield cleanup on each waterfront site in the project was completed, but Respondents failed to honor their binding commitments by delivering those documents, and then the Council passed its Illegal Resolution aimed at backing out of these commitments altogether.

11. The Illegal Resolution makes equally clear the consequences if the Developer declines to play ball – after investing seven figures into improvements (including design, engineering, brownfield cleanup, utility installation, grading, and even light pole base installation) and putting years of work into the project, the Developer will lose the deal and the City will pick someone else to move forward.

12. In short, this action seeks refuge from a shakedown, perpetrated under purported color of law, and to put this project back on track by compelling Respondents to honor their commitments and allow the Developer to finally proceed with its lease and PILOT agreement on the DeLaval site in accordance with the City's own resolutions, as well as the contractual and legal obligations governing those agreements and the project as a whole.

13. The Developer thus asks this Court to protect the Developer's contractual rights and to hold Respondents liable under CPLR Article 78 (against the Council to annul the Illegal Resolution and Veto Override and for mandamus compelling Respondents to deliver the DeLaval lease and PILOT agreement), under the New York Constitution (for violation of the Developer's due process and equal protection rights), under the applicable contracts, including other resolutions as set forth herein that constitute contracts as a matter of law, and at common law based on promissory estoppel and unjust enrichment, to the extent that performance is not completely compelled and the Court determines that the complete relief sought herein cannot be directly awarded under contract or pursuant to the resolutions discussed herein.

14. Based on the foregoing, and as more fully set forth herein, the Developer is entitled to an Order and Judgment: (1) annulling the Council's Illegal Resolution and Veto Override pursuant to CPLR Article 78 and issuing an order of mandamus compelling the delivery of the signed DeLaval lease and PILOT agreement (following the City's transfer of the DeLaval deed to

the IDA, as the intended landlord); (2) finding that the contractual obligations as set forth herein were breached by Respondents; (3) compelling performance of those obligations; (4) holding Respondents liable for breaches of the Developer's due process and equal protection rights; and (5) awarding damages to be determined at trial based on the contractual breaches alleged herein (as well as under the doctrines of unjust enrichment and promissory estoppel for any reimbursements due to the extent the Court determines such are not governed by contract), including, but not limited to, payment to the Developer of all costs, disbursements, fees, including attorneys' and professional fees, which would also include reimbursement of every dollar that the Developer has spent in connection with this development project in the event that completed performance is not compelled, together with interest, costs and professional attorneys' fees, and such other relief as this Court deems just and proper.

The Parties

15. Petitioner Poughkeepsie Waterfront Development, LLC is a limited liability company having an address at 2951 US 9W, New Windsor, New York.

16. Petitioner JM Development Group, LLC is a limited liability company having an address at 2951 US 9W, New Windsor, New York.

17. Respondent the Common Council of the City of Poughkeepsie is the legislative branch of the City of Poughkeepsie, having an address at 62 Civic Center Plaza, Poughkeepsie, New York.

18. Respondent the City of Poughkeepsie is a municipal entity of the State of New York, having an address at 62 Civic Center Plaza, Poughkeepsie, New York.

19. Respondent the City of Poughkeepsie Industrial Development Agency is an agency of the City of Poughkeepsie, having an address at 62 Civic Center Plaza, Poughkeepsie, New York.

The Developer Wins The Project, Gets To Work In Reliance On Respondents' Resolutions And The Parties Work Together While The Project Gets Built

20. The facts giving rise to this action date back to summer 2001 when the City first issued a Request for Proposals ("RFP") Ex. 5 (RFP).

21. That RFP sought development of 13.9 acres along 2,250 linear feet of the Hudson River, known as the DeLaval site, together with PURA 14 (Poughkeepsie Urban Renewal Agency site #14), which consisted of two parcels totaling 5.5 acres. Also included in the development was the Poughkeepsie Sewer Treatment site (also known as the "STP" site).

22. For the DeLaval site, the City sought a mixed used development with destination attractions including entertainment (restaurants, hotels, museums, theaters, specialty retail, commercial recreation, such as for boating) and space for general public recreation, including a walkway, a bikeway, boat launch, marina and attractively landscaped open space.

23. The PURA 14 site would ultimately become the Water Club, a 136 apartment unit facility constructed by the Developer, while the STP site would host the Developer's restaurant, Shadows on the Hudson, and the Grandview Catering Facility (the sites are also complimented by a marina built by the Developer).

24. In or around August 2001, Petitioners' proposal, which was submitted by the Bonura family (well-known local developers who have invested over $50 Million in projects in the City) and their company called Poughkeepsie Landing, LLC (Ex. 6) were chosen and they were given preferred developer status.

25. That proposal contemplated a series of three two-story buildings with a mix of restaurant and specialty retail space on the ground floor with office space above along with a marina, large boat dock, kayak/canoe launch, public grass open spaces to be operated and maintained by the Developer with the same hours as other City parks, shared parking suitable for

all uses and an interpretive sculpture garden.

26. The City's acceptance of the Developer's proposal was memorialized in Council Resolution R-01-113, which identified one of Petitioners' principals, Joseph A. Bonura, as the chosen developer, (that resolution referenced Mr. Bonura together with his related companies as "Developer").

27. The original plan was that the City would lease the 13.4 acre DeLaval site for 99 years after the city completed the brownfield cleanup for that site.

28. The initial plan for the 5.5 acre PURA 14 site was that it was going to be sold to the Developer for $300,000 after the City cleaned up that brownfield.

29. The Bonuras also agreed to take responsibility for cleaning up and developing the STP site – an adjacent contaminated parcel which housed the former City Sewer Treatment Plant, which site was abandoned in the 1970s, Because that contamination was caused by the City, it was ineligible for any cleanup grant funds.

30. With their plan in place, the Developer got to work, including in documenting and agreeing with the City with respect to how work would proceed, who would be responsible for which facet, and how the Developer would provide funding for site development and cleanup aspects, as well as how it would be protected if, for any reason, the City ultimately did not satisfy its obligations relative to Developer's possessory and development rights to the parcels.

31. For example, on or about September 16, 2002, the City and the Developer (by Joseph A. Bonura or an entity to be formed) entered into an Environmental Review Agreement to ensure that all of the Developer's expenses relating to site plan design would be reimbursed if the City did not ultimately move forward with the project. Ex. 7 (9/16/02 Environmental Review Agreement).

32. From 2002 to 2004, the parties continued to work on documents governing how the process would move forward, including but not limited to an Environmental Review Statement ("EIS") and the leases and PILOT agreements that would govern Respondents' relationship with the Developer, which were ultimately approved by the City, the Council and the IDA.

33. Also during that timeframe, the environmental review process was fully underway, including full underground investigations, and the land use process moved forward, with the Developer procuring administrative approvals, such as from the Planning Board, and moving forward with actual construction as permitted.

34. In furtherance of the parties' plan on March 1, 2004, a lease and PILOT agreement were executed for the STP site.

35. In or around that same timeframe, a sale agreement for PURA 14 was executed, and the Developer put down a $25,000 deposit for same.

36. A PILOT agreement was also executed by the IDA and Petitioner PWD for the DeLaval site on March 29, 2004. Ex. 8 (3/29/04 DeLaval PILOT).

37. While the parties intended that the DeLaval site would also be leased from the IDA to the Developer (after the City conveyed the DeLaval site to the IDA for that purpose), as of March 2004, this could not yet be accomplished.

38. This is because the cleanup of DeLaval had to first be completed in order for the City to receive millions of dollars in reimbursable grant money from the New York State Department of Environmental Conservation – the City has to remain the owner to receive those funds before the City could then convey DeLaval to the IDA, which was to then lease it to the Developer. The reason the IDA, and not the City had to be the landlord, is so that project could be subject to a PILOT agreement, which could only be valid if the IDA is the landlord.

39. Also on March 1, 2004, the Council, as Lead Agency, completed the environmental review of the project and issued its Statement of Findings. Ex. 9 (3/1/04 Statement of Findings). It then issued a Final Environmental Impact Statement ("FEIS") on February 2, 2005.

40. Further environmental review was completed with a supplemental FEIS and Supplemental Statement of Findings issued in July 2005. Ex. 10 (7/05 Statement of Findings).

41. From 2004 to 2007, the Developer cleaned up the STP site at its own expense, and after that, it built the Shadows on the Hudson Restaurant and the Grandview catering facility.

42. With respect to the DeLaval site, like the others, remediation was planned because it was a brownfield, but when planning for the start of that work, it was discovered that the contamination was more extensive than anticipated in 2001 when the RFP was issued.

43. The Developer then worked with the City to come up with and implement plans for the site development and remediation.

44. The City did not have a practical economic way to restore the DeLaval site to a pristine and completely clean environmental state, so the solution was to remove grossly contaminated soils, while leaving soils with minor contamination capped to prevent public contact.

45. It was agreed that, with this approach, the Developer would install all underground utilities, including water, sewer, telephone, cable, gas, storm water mitigation and site lighting before the cap was installed so that the utilities could run in clean corridors to simplify future maintenance. It was also agreed that the Developer would prepare pad sites for future buildings so that underground utilities could connect without disturbing the environmental cap.

46. This approach would require the Developer to invest even more significant time and money into City-owned land before the lease with the IDA was signed (as noted above, the cleanup had to be finished before the IDA could own the parcel and then lease it to the Developer),

while saving the City money by allowing the brownfield cleanup to be completed and the soil cap only installed once (at the point of remediation, instead of having to disturb the site and cap it when construction started).

47. On March 1, 2007, the City and Developer, by PWD, entered into a Site Development Agreement for the DeLaval site, which recognized that the site was contaminated and subject to a restoration project, and established parameters for site planning and development while the restoration work was being undertaken. Ex. 11 (3/1/07 Site Development Agreement).

48. That Site Development Agreement recognized that "Developer intends to expend a significant amount of its funds" for site planning and development before contemplated development agreements were finalized. *Id.*

49. That Agreement also recognized the need "to provide financial protection to Developer should the final agreements not be signed because of reasons which are the sole responsibility of the City." *Id.* (The Council's current attempt to force the Developer to re-trade terms is an illustration of such an event.)

50. For the Developer's protection, the Site Development Agreement thus required the City to reimburse Developer for the "actual costs of the site plans for the Premises and actual costs of the site development work, including grading and utility work," in the event the City did not deliver final agreements (subject to certain other conditions, which in this case were all satisfied, as discussed further below).

51. With the Site Development Agreement now in place, from fall 2007 into Spring 2008, the Developer spent considerable time and money designing the DeLaval buildings, site plan, and utility and grading plans.

52. The next step was the City Planning Board approving the Grading and Utility Plan

for the DeLaval site on July 22, 2008 to facilitate the brownfield cleanup for DeLaval, and, as noted above, the site development work was ultimately completed by the Developer.

53. That work was not without its setbacks, however, as between 2007 and 2009, the City's remediation contractor, Stamford Wrecking, wound up litigating with the City over work on the DeLaval site (the City alleged that the contractor did not perform the work it was supposed to do), leaving the remediation project unfinished.

54. By 2009, the City determined it would not be able to execute the brownfield cleanup of the PURA 14 site due to an estimated $4 million cost, coupled with a lack of grant funds. The City and Developer agreed that instead of the City selling PURA 14 for $300,000 and losing $3.70 Million on the transaction, it would instead lease the PURA 14 site to the Developer for 99 years, with a PILOT agreement to help offset the Developer's cost of taking on the cleanup burden that the City was obligated to complete.

55. On May 18, 2009, the IDA approved entry into the leases for the DeLaval and PURA 14 sites (the PURA 14 lease was to replace the existing sale agreement with PWD) as well as new PILOT Agreements for each of those two sites to apply to the Developer's tenancy. Ex. 12 (2009 PILOT for DeLeval); Ex. 13 (2009 PILOT for PURA 14); Ex. 2 (2009 DeLaval lease).

56. The IDA's Resolution R-09-2 dated May 18, 2009, titled "Authorizing Execution of Lease and Pilot Agreement for DeLaval Property; and Lease and Pilot Agreement for PURA 14 Property with Poughkeepsie Waterfront Development LLC" provided that:

> . . . the City Of Poughkeepsie Industrial Development Agency (CPIDA) have previously ***entered into several agreements*** with Poughkeepsie Waterfront Development, LLC for development of the Southern Waterfront area, and it is necessary to replace former agreements with updated agreements with dates, deadlines and similar terms updated to reflect the now advanced stage of the environmental remediation of the DeLaval parcel and the agreement of the Tenant to lease the PURA 14 site and undertake to remediate

> the contamination of that site by application to the state Brownfields program

Ex. 14 (R-09-2) (emphasis added).

57. It further provided that **"*the said Leases proposed for the PURA 14 parcel and the DeLaval parcel, and the PILOT agreements for the same parcels, are hereby approved and the chairman is authorized to execute them with the proposed Tenant* . . ."** *Id.* (emphasis added).

58. By its terms, the IDA's Resolution R-09-2 recognized the ***binding*** contractual commitments that were (and still are) in existence, and acknowledged that the 2009 PILOT Agreement and leases for both the DeLaval and PURA 14 sites were finalized, negotiated and approved for signature.

59. In the case of the PURA 14 lease and PILOT, they were eventually signed in December 2009. Ex. 15 (PURA 14 lease).

60. With respect to DeLaval, although the lease and 2009 PILOT for that parcel referenced in that resolution were not subsequently executed, the approval by the IDA of the DeLaval lease and PILOT confirmed that the material terms were agreed upon and there was nothing left to be negotiated, such that the IDA is bound by the DeLaval lease terms and PILOT as a matter of law, regardless of the fact that the only ministerial action left to take was the signing of the DeLaval lease and 2009 DeLaval PILOT. Ex. 14 (R-09-2).

61. To further solidify the Developer's rights, on March 1, 2010, Respondent Council passed Resolution R-10-41 which authorized the conveyance of the DeLaval parcel (which is owned by the City) to the IDA for leasing to the Developer, such that the IDA would become the Developer's landlord. Ex. 1 (R-10-41). Resolution R-10-41 constitutes a contractual agreement that the Council cannot unilaterally cancel.

62. By September 2010, the City finally worked through the issues with its remediation

contractor, who then vacated the site with the work unfinished.

63. Then, as a follow-up to the Council's vote to approve the conveyance of the DeLaval parcel so that it could be leased from the IDA to the Developer, on September 30, 2010, the City and Petitioner JM signed a License Agreement (the "License Agreement") (Ex. 16), which re-confirmed this contractual commitment, specifying that "The City and JM have agreed that the City through its Industrial Development Agency (IDA) will lease the Site to JM." Ex. 16 ¶ 1.

64. In addition to confirming the IDA's contractual obligation to lease the real property to the Developer (once it was conveyed by the City as authorized by Resolution R-10-41), the License Agreement memorialized additional commitments between the City and the Developer.

65. For example, although the RFP originally contemplated that the City would perform environmental cleanup at the DeLaval and PURA 14 sites (which were brownfields) (Ex. 5 at § II.A.),[3] at the time the License Agreement was signed, they still needed to account for the unfinished remediation work.

66. Following up on the difficulties with the prior contractor, and in the interest of moving the project forward, the Developer agreed to spend its time and resources completing the cleanup for the City, which was grateful for the Developer's agreement to step in to finish this work.

67. As a result, the Developer agreed in the License Agreement to engage in environmental remediation of the property, despite that it was the City's initial obligation. In consideration therefor, it was also agreed in the License Agreement that JM would perform the "remediation work as an essential part of the lease agreement between the parties and that the remediation work is a site improvement necessarily required prior to construction by JM of

[3] The RFP contemplated that the Developer was to clean up the STP site, also a brownfield.

buildings and other improvements pursuant to the site lease." Ex. 16 (License Agreement) ¶ 11.

68. It was also agreed that "if the City fails to deliver the site lease to JM within forty-five (45) days after DEC's approval of the final environmental easement for the site, the City shall reimburse to JM the actual costs reasonably incurred by JM for design, performance and completion of the remediation work, site grading, and installation of underground utilities on the site and for the marina service building." Ex. 16 (License Agreement) ¶ 12.

69. As noted, the Developer did perform its work in accordance with the License Agreement, including in the 2010-2011 timeframe, with the Developer installing underground utilities, doing site grading in accordance with Planning Board approvals, and completing the brownfield clean-up for the City, such that after spending seven figures, the work was finally completed so that the development could move forward.

70. That work was subject to additional delays, however, which occurred due to issues between the New York Department of Environmental Conservation, the City and its environmental contractor, such that the Final Certificate of Completion for the environmental remediation was not issued until January 2014, or more than 10 years after the City began its brownfield cleanup obligation.

71. With the DeLaval and PURA 14 sites now cleaned, in January 2015, the Developer moved forward with designing and building on the PURA 14 site, resulting in the development of the Water Club, which concluded in May 2017. Part of the rationale for this sequence, whereby residential facilities would be built first, was to ensure that when the commercial uses planned for DeLaval were ready, those businesses would have a built-in customer base consisting of the residents of the Water Clubs 136 apartment units.

72. With the PURA 14 site now developed, in spring 2017, the Developer then moved

toward the next phase, by updating plans and improving designs for the DeLaval parcel. The Developer started making these changes in recognition of a change in market demand from 2001 when the concept was first presented, in that as of 2017, commercial and office space was now less desirable than residential space (a trend that has sharply accelerated in the wake of the pandemic), and the original plan for DeLaval did not include any residential portion. The Developer spent in excess of $200,000 developing these plans, which included significantly more public amenities compared to the original plan.

73. In that same timeframe, the Developer presented these proposed changes to the City, and they were well-received. In light of the City's willingness to work toward these changes which would be better reflective of market conditions (thereby contributing to an overall more successful project than originally proposed), the Developer requested changes to the lease for DeLaval to allow for more residential density in addition to commercial and recreational uses.

74. The Developer also paid for supplemental environmental review and a report that it presented to the City highlighting the modified proposal.

75. That same year, in May 2017, the Developer applied for $2 million Consolidated Funding Application ("CFA") in grant funding from the New York State Empire State Development Corporation for the DeLaval site. That grant was awarded in fall 2017, which grant now lies in jeopardy if Respondents do not honor their obligations by allowing the project to move forward.

76. Having received a positive reception to the modified plan, and to give City officials a better idea about ways the original design could be enhanced to make the waterfront into a jewel attraction for the City's residents and visitors, the Developer also supplied the City with renderings highlighting additional amenities that would come with the revised plan.

77. To illustrate the benefits of the proposed modifications, in fall 2017, the Developer published a Project Narrative for the Southern Waterfront Development Project at Poughkeepsie Landing. After recounting some of the history laid out above, that Narrative indicated that "At this time the Developer is ready to move forward with final site plan approval and construction at the DeLaval site." Ex. 17 (11/27/17 Project Narrative).

78. That Project Narrative included details of the numerous ways the Developer intended to make the DeLaval site a marquis public recreational destination, including a riverfront promenade, a farmer's market and craft fair space, an amphitheater, public restrooms, a large boat dock, free public parking, a kayak/canoe launch, a riverfront pool area, a historic kiosk and art installations, and an entry fountain and carnival court. Ex. 17.

79. The Project Narrative also detailed the plans for commercial development, residential development, a marina, and space for a future building (such as potentially, an aquarium, or additional mixed use space). Ex. 17.

80. The Project Narrative also emphasized the economic benefits of the revised proposal, projecting that this $27 Million project would bring over $300,000 per year to the City in direct rent and property taxes, plus a portion of approximately $825,000 in sales tax, as well as creating over 150 construction jobs and over 100 full time equivalent jobs, thereby attracting new people to the City.

81. The Project Narrative also included detailed renderings showing how unique architectural designs would compliment the riverfront, such as this rendering, by way of illustration:

Ex. 17. In short, things were moving along, and the Developer and the City were cooperating and deciding how to make it all even better.

Then The Council Illegally Tried To Pull The Deal

82. Although these plans were initially met with cooperation and approval, in January 2018, everything changed.

83. New Councilmembers were voted into office, together with a new Council Chair. That Council then consolidated its power, by replacing the members of the IDA board (which had included City officials) with people opposed to the Developer's participation in the project.

84. By that point, the Developer had put in 17 years of good faith work and development, including performing and paying for environmental cleanup that the City could not afford, designing and developing the Water Club, the Shadows on the Hudson, the Grandview catering facility and a marina, and designing and modifying the plan for DeLaval with exciting amenities that would make the waterfront a premier attraction.

85. But the new Council and its hand-picked IDA weren't interested in reciprocating that good faith, as evidenced by the Council's early refusal to meet with the Developer at all.

86. In fact, the newly elected Chair of the Common Council refused to meet with or even return a phone call to the Developer, rejecting (or ignoring) letters and emails requesting the opportunity to discuss and present the project.

87. To its credit, the City administration, led by the Mayor, continued to try to work with the Developer, recognizing the benefits of the Developer's proposed modifications to the DeLaval portion of the project, but the Council was having none of it.

88. The Developer tried to move forward anyway. With the hope that the Council and new IDA members would realize that the revised plan was good for the City, the Developer invested in revised designs, and approximately $15,000 in application fees with the Planning Board in April 2018, seeking to move forward with the proposed modified design.

89. In May 2018, after about six months of the Developer requesting to be heard, the Council finally gave the Developer an audience, allowing it to present the improved design to the Council as part of an informal meeting, where no vote was considered.

90. Despite the Developer's efforts to convince the Council as to why proposed changes (with the addition of some residential) would be more beneficial than the original design, after several discussions on the topic with multiple officials and stakeholders, it became clear that the City, the Council and the IDA could not achieve consensus to approve the Developer's revised proposal, despite the Developer's data suggesting the revision would greatly enhance the value of the project for the general public.

91. Throughout those discussions, the Developer made clear that, while it seemed to be in the City's best interests to revise the project as suggested to increase residential and to add amenities, if a revised plan could not be agreed upon, the Developer would nevertheless honor the terms of the parties' agreements and build the site as originally proposed by the Developer and

accepted in the RFP process.

92. Once it became clear that there was insufficient appetite to improve on the design, the Developer proceeded as promised.

93. Toward that end, on August 15, 2018, having at that point expended seven figures and performed the necessary environmental cleanup work, grading and installation of utilities and developed the PURA 14 and STP sites, JM sent the City a letter enclosing the environmental easement referenced in Paragraph 12 of the License Agreement (a condition to the lease delivery) and requesting that the City deliver to JM the May 2009 site lease and PILOT for DeLaval to be provided by the IDA, which the City contractually agreed to deliver in the License Agreement. Ex. 18 (August 15, 2018 Letter).

94. While the Mayor and the City administration had consistently been supportive to that point, the Council and IDA had by the time of the Developer's August 2018 demand effectively highjacked any chance of progress by declining to live up to their obligations to honor the 2009 lease and PILOT for DeLaval, despite that the Council had previously approved the conveyance by the City of the DeLaval parcel to the IDA so that IDA could become the Developer's DeLaval landlord. Ex. 14 (R-09-2); Ex. 1 (R-10-41).

95. Had Respondents complied with their contractual obligations, the 2009 DeLaval lease and PILOT, which had already been negotiated and approved and was therefore binding (the obligation to deliver the signed lease at that point was by that point purely ministerial), would have been delivered as signed by Respondent IDA, the lease would then would have been counter-signed by JM, and rather than facing this lawsuit, the City's residents would likely already be enjoying the completed, newly renovated waterfront on the DeLeval parcel.

96. Instead, the waterfront – perhaps one of the City's best potential features for

economic revitalization – sits largely dormant, undeveloped and with the promise of a public oasis undelivered. This, notwithstanding that the Developer was ready to move forward in accordance with the documents, resolutions and agreements that were agreed to and approved by the parties hereto, as indicated by the Developer's demand for lease execution and delivery in its August 2018 correspondence.

97. The waterfront remains undeveloped to today because the City did not comply with the Developer's demand for the DeLaval lease and PILOT agreement delivery.

98. Instead, the project's opposition (the Council and the IDA) appear to have taken over the narrative, as evidenced by correspondence dated December 14, 2018 (Ex. 19) and February 19, 2019 (Ex. 20), where the City Administrator wrote to inform the Developer that, rather than deliver the lease and PILOT agreement to the Developer as contractually required, the City would now instead place an executed deed to convey the DeLaval parcel to the IDA into escrow, following which the transfer to the Developer would then be effected, but only after the Developer agreed to negotiate a revised PILOT Agreement with the IDA.

99. By the Council's latest maneuvers – the Illegal Resolution and Veto Override – Respondents' have doubled down on that message, in essence saying: forget the deal we agreed to and renegotiate to give us more favorable terms, including a more favorable PILOT (where the Developer pays more in lieu of taxes than what was originally agreed to), and agree to submit a revised site plan which the City then may or may not approve, or lose your contract rights entirely.

100. Of course, the law does not allow for one contracting party to refuse to perform unless the other side agrees to renegotiate the deal, and in that regard, neither the City nor the other Respondents had any legal right to make such demand.

101. The bottom line remains that on May 28, 2009, the Council passed its resolution

authorizing a new 2009 PILOT and DeLaval lease, which resolution legally carries the force of a contract, requiring that both the 2009 PILOT and the lease for DeLaval which were approved in that resolution be deemed effective.

102. The Site Development Agreement and License Agreement also remain in effect.

103. The Developer performed its obligations under those Agreements, thereby entitling it to proceed under the lease and to develop the DeLaval site in accordance with the proposal that was accepted in response to the RFP.

104. Having satisfied *its* side of the bargain since the Developer tendered its demand for the lease for DeLaval in mid-2018, the ball has remained in the City's court to honor its contract obligation to deliver same.

105. Yet, the City did not do so, because the Developer declined to kowtow to demands in response to the Developer's August 2018 request for lease delivery that the Developer renegotiate to give the City more favorable terms on the deal.

106. This resulted in a stalemate, until October 5, 2020, when the Council decided to pass its Illegal Resolution designed to completely strip the Developer of its rights.

107. That Illegal Resolution, followed by the Veto Override, leaves the Developer with the untenable choice of either agreeing to resubmit a new project plan for Planning Board consideration and to renegotiate a new PILOT, or face the rescission of R-10-41, which, according to the Illegal Resolution, would automatically take effect if the Developer did not comply with the Council's demands within 45 days. Ex. 3 (October 5, 2020 Resolution).

108. The effect of that threatened illegal rescission would be the Council unilaterally revoking its obligation to arrange for the conveyance of the DeLaval land to the IDA for leasing to the Developer, as required by the License Agreement.

109. The Council's October 5, 2020 Resolution codified the message the City sent in response to the August 2018 demand for the lease – except this time, with a specific (and completely illegal) ultimatum: renegotiate a new PILOT and start over with a site plan submission to the Planning Board within 45 days or lose all of your rights.

110. As a further sign of bad faith on the Council's part, there was also no meaningful warning to the Developer that this illegal rescission attempt was in the works.

111. The last substantive contact prior to the Illegal Resolution occurred when the Developer called for a meeting of representatives of the City Council and City Administration, which was granted in July 2020 via zoom.

112. There, the Developer discussed its goals and ideas for how to move the project forward in the wake of the pandemic and was looking forward to follow-up discussions with other Council members. The Developer followed up with another Council Member at an in-person meeting on July 28, 2020 to discuss the future of the project and request an audience with the entire Council.

113. Then out of the blue the Developer found out the morning of October 5, 2020 of the City's intention to vote on the resolution to rescind rights.

114. The fact that all of the actions complained of herein were taken by a municipal entity does not strip them of their illegality.

115. Just as one party to a private contract cannot demand that the other party agree to change the deal, and then unilaterally rescind that contract if the other side doesn't succumb to that demand, the Council had no legal right to arbitrarily and capriciously resolve to strip the Developer's rights if the Developer declined to seek brand new project agreements and approvals, as the Illegal Resolution and Veto Override required.

116. The Council's attempt to strip the Developer's rights strikes at the heart of contract law, and smacks of corrupt use of municipal power to try to strongarm a citizen into changing the terms of a contractual deal.

117. The Council, which has legal representation, has to know that the Developer had no legal obligation to renegotiate a new PILOT agreement or submit a new proposed site plan, nor did Respondents have any legal right to refuse to honor their contractual commitments in response to the Developer declining to renegotiate the deal.

118. Yet by the Illegal Resolution and Veto Override, the Council is clearly pretending otherwise, and to add insult to that injury, since the passage of that Illegal Resolution, the Council's attorneys have sent multiple communications to the Developer reiterating the Council's demand that the Developer acquiesce, under threat of losing all of its rights. Ex. 21 (October 2020 correspondence from the Council and its attorney). But repeatedly threatening to strip the Developer of its rights under the subterfuge of enforcing the Illegal Resolution does not make that Resolution any less illegal.

119. And if Respondents succeed in stripping those rights, they not only leave the waterfront stagnant and devoid of its potential, and of the jobs that would have been created, and the tax revenue that would have been generated, but their actions will also result in the City having to reimburse the Developer for the seven figures it invested into planning and developing the site, as well as also harming the City's overall economic potential value – had the DeLaval site been developed, it was to be a major component of the overall project, which could have increased pedestrian traffic and attracted new people to the City.

120. The Developer estimates that the absence of this attraction results in surrounding projects losing value, including the over $50 million in projects that the Bonura family has invested

in the City, including the two parcels adjacent to DeLaval, where the Water Club, the marina, the Shadows on Hudson and the Grandview catering facility were developed and where these projects now face a great risk of losing value in light of the stalled development.

121. The Developer seeks to avoid all of these adverse consequences to the City by a Judgment in this action compelling Respondents to honor the Developer's contract right to finish developing the waterfront, including by honoring the DeLaval lease and 2009 PILOT that the City bound itself to by virtue of its May 2009 resolutions.

122. But in the event the Developer's request for this Court to compel performance is not granted, then in the alternative, and at a minimum, the Developer is entitled to all of its damages, including but not limited to full reimbursement of all costs, expenses and fees paid by Developer to date.

123. The Site Development Agreement mandates this result, as it specifies that the Developer is to be reimbursed in the event that: (a) the City makes a final determination that it will not enter into agreements with the Developer; and (b) the Developer is not in default of is obligations under the Site Development Agreement; (c) and the Developer has not abandoned or significantly delayed the site planning or site work; and (d) the Developer timely furnishes invoices to the City within thirty days after the City's final determination not to enter into the agreements.

124. Unless the Illegal Resolution and Veto Override are nullified by this Court (thereby allowing the project to move forward), then all of the above will have now taken place (except that as of this filing the thirty days to furnish invoices has not yet been triggered – that thirty day period of time will start running from November 19th, when the Council indicated its intended rescission will take effect if the Developer does not acquiesce to its demand to change the deal).

125. Pursuant to the Site Development Agreement, in the event that this Court were to

determine that Respondents are not bound to perform their contractual obligations, including honoring those obligations embodied in resolutions, the Developer is thus entitled to recover all of its actual costs for the site plans and site development work as set forth above.

126. The 2010 License Agreement also requires the Developer to be reimbursed for same.

127. The Developer is thus clearly entitled either to have its contractual commitments honored so that it can move forward with the project, or to damages in lieu of such relief.

128. In sum, this Court's intervention is necessitated to remedy multiple deprivations of the Developer's rights. The Council is bound to follow (and cannot legally renege upon) its own resolutions, the City is bound to deliver to the Developer the signed DeLaval lease by the IDA, the PILOT Agreement that was agreed to for DeLaval must be enforced according to its terms, and all artificial obstacles thrown into the Developer's path by Respondents must be removed, so that the Developer can finally proceed with building the project that Respondents contractually agreed to let the Developer build, together with an award to Developer of its damages in an amount to be determined at trial, which would include (in the alternative event that performance is not compelled), every dollar expended by Developer in development and furtherance of the project, plus all costs, attorneys' fees and such other and further relief as the Court deems just and proper.

AS AND FOR A FIRST CAUSE OF ACTION
(For Nullification Of The Illegal Resolution And Veto Override Pursuant to CPLR Article 78, Against The Council)

129. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

130. In violation of the standards of CPLR Article 7803 (2)-4), the Illegal Resolution and Veto Override were ultra vires, in excess of the Council's jurisdiction and lawful authority,

made in violation of lawful procedures, affected by errors of law, were arbitrary and capricious and an abuse of the Council's discretion, and unsupported by substantial evidence in the record.

131. Accordingly, Respondent is entitled to a Judgment of this Court, pursuant to CPLR Article 78, overturning the Illegal Resolution and Veto Override and declaring same to be null, void and of no legal effect.

AS AND FOR A SECOND CAUSE OF ACTION
(For Mandamus Pursuant to CPLR Article 78 Against All Respondents)

132. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

133. Pursuant to Council Resolution R-10-41, the City is obligated to convey the DeLaval parcel to the IDA, which, in turn is obligated to executed and deliver the DeLaval lease and PILOT agreement which were approved and authorized for signature pursuant to IDA Resolution R-09-02.

134. Respondents have failed to adhere to their obligations as set forth in their own above-referenced Resolutions, without legal excuse or justification, and as such Respondents failed to perform a duty enjoined upon them by law, thereby warranting mandamus pursuant to CPLR 7803(1).

135. The requirements set forth in Resolutions R-10-41 and R-09-02 are, by their terms, ministerial in nature, such that their performance by Respondents is mandatory.

136. Respondents have nevertheless failed to perform in accordance with their own Resolutions.

137. Accordingly, the Developer is entitled to a Judgment of this Court, pursuant to CPLR Article 78, granting mandamus relief directing Respondents to perform their obligations pursuant to Resolutions R-10-41 and R-09-02, including directing the City to convey the DeLaval

site to the IDA, and directing the IDA to then deliver the executed lease and PILOT for DeLaval in accordance with those Resolutions.

AS AND FOR A THIRD CAUSE OF ACTION
(For Breach of Contract Against All Respondents/Defendants)

138. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

139. The City entered into valid, enforceable contracts with the Developer, including the Environmental Review Agreement, the Site Development Agreement, and the License Agreement, which, in tandem with the Resolutions and documents outlined in the Petition contractually obligated Respondents to work with the Developer in developing the waterfront, and more particularly, the DeLaval site.

140. IDA Resolution R-09-2 and Council Resolution R-10-41 also constitute valid enforceable contacts with the Developer as a matter of law.

141. The Environmental Review Agreement, the Site Development Agreement, and the License Agreement each specified that the Developer is entitled to reimbursement of the funds it invested into the project in the event Respondents do not comply with their obligations, including but not limited to the obligation of the City (as specified in the Site Development Agreement and License Agreement) to convey the DeLaval site to the IDA, as also authorized by Council Resolution R-10-41, and the IDA to sign and deliver the DeLaval lease and PILOT agreements as also authorized by the IDA pursuant to Resolution R-09-2.

142. It was incumbent on the City pursuant to contract to convey the DeLaval site to the IDA.

143. It was incumbent upon the IDA pursuant to contract to sign and deliver the DeLaval lease and DeLaval PILOT as authorized and mandated pursuant to resolution in 2009.

144. It was incumbent upon the Council to honor its Resolution R-10-41 and refrain from acting in a manner that would deprive the Developer of its rights pursuant thereto.

145. Respondents/Defendants breached their obligations pursuant to the above-referenced contract commitments by the above-described failure of the City to convey the DeLaval parcel to the IDA, the failure of the IDA to deliver the signed DeLaval lease and PILOT agreements as authorized per IDA Resolution R-09-2, and the illegal attempted rescission by the Council of its Resolution R-10-41 by virtue of its passage of the Illegal Resolution and the Veto Override.

146. As a direct and proximate result of the aforementioned breaches of contractual obligations, the Developer is entitled to an Order of this Court compelling Defendants/Respondents to: (a) in the case of the City, convey the DeLaval parcel to the IDA and arrange for the IDA to deliver the signed DeLaval lease and PILOT agreement; (b) in the case of the IDA, deliver the signed DeLaval lease and PILOT agreement; and (c) in the case of the Council, revoking its Illegal Resolution and Veto Override (in the alternative event that they are not declared null and void pursuant to the Article 78 relief sought herein) such that its Resolution R-10-41 will be in full force and effect, such that the City can then convey the DeLaval parcel according to its terms.

147. In the alternative event that this Court declines to compel performance of these contractual agreements, then pursuant to the above-referenced contracts, the Developer is entitled to damages, which were directly and proximately caused by the breaches alleged herein, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(For Breach of The Implied Covenant of Good Faith And Fair Dealing Against the Council and IDA)

148. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

149. Implied in the above-referenced contracts as specified in the prior Cause of Action is a covenant of good faith and fair dealing, which includes an obligation to refrain from acting in a manner that deprives the Developer of the benefits of the fruits of the bargain and frustrates performance of obligations to the Developer.

150. By virtue of the IDA's refusal to comply with its own Resolution R-09-2 and the Council's attempt to rescind its Resolution R-10-41, the IDA and the Council, respectively have breached the implied covenant of good faith and fair dealing.

151. As a direct and proximate cause of said breach, the Developer is entitled to an Order of this Court compelling Defendants/Respondents to: (a) in the case of the IDA, deliver the signed DeLaval lease and PILOT agreement; and (c) in the case of the Council, revoke its Illegal Resolution and Veto Override such that its Resolution R-10-41 will be in full force and effect, such that the City can then convey the DeLaval parcel according to its terms.

152. In the alternative event that this Court declines to compel performance of these contractual agreements, then pursuant to the above-referenced contracts, the Developer is entitled to damages, which were directly and proximately caused by the breaches alleged herein, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(For Unjust Enrichment Against All Respondents/Defendants)

153. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

154. The Developer has performed services for Respondents/Defendants which substantially benefited Respondents/Defendants to the detriment of the Developer, which has expended millions of dollars in work and improved the subject parcels at issue herein to the benefit of Respondents/Defendants.

155. In the alternative event that the contractual remedies sought herein are not fully awarded to the Developer, then the Developer is entitled to a Judgment and Order finding that Respondents/Defendants have been unjustly enriched.

156. As a direct and proximate cause of this unjust enrichment, the Developer is entitled to damages, which were directly and proximately caused by such unjust enrichment, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
(For Promissory Estoppel Against All Respondents/Defendants)

157. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

158. In the alternative event that the Court declines to award the contract-based remedies sought therein, then the Developer is entitled to relief by virtue of promissory estoppel.

159. Respondents/Defendants made clear and unambiguous promises, including: (a) in the case of the City, to convey the DeLaval parcel to the IDA and arrange for the IDA to deliver

the signed DeLaval lease and PILOT agreement; (b) in the case of the IDA, to deliver the signed DeLaval lease and PILOT agreement; and (c) in the case of the Council, to refrain from rescinding Resolution R-10-41.

160. The Developer reasonably and foreseeably relied upon these promises, including by expending millions of dollars into the project as set forth herein.

161. By reason of such reliance upon the above-refenced promises, the Developer is entitled to damages, which were directly and proximately caused by such promissory estoppel, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

AS AND FOR AN SEVENTH CAUSE OF ACTION

(For Damages Based Upon Violation of New York State Constitution (Article 1, § 11), Against All Respondents/Defendants)

162. The Developer repeats, re-alleges, re-avers and incorporates by reference all prior allegations set forth herein.

163. Article 1, § 11 of the New York State Constitution provides, in relevant part, that: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

164. Respondents/Defendants have violated the Developer's equal protection rights as a result of their unequal treatment of the Developer relative to similarly situated persons who have not been subject to arbitrary and selective treatment, as evidenced by the Respondents/Defendants' refusal to abide by their own Resolutions and the Council's passage of the Illegal Resolution and Veto Override.

165. As a direct and proximate result of the violations of the Developer's equal protection rights, the Developer has been damaged in an amount to be determined at trial.

WHEREFORE, Petitioners pray for an Order and Judgment of this Court directing:

1. On the First Cause of Action, a Judgment of this Court, pursuant to CPLR Article 78, overturning the Illegal Resolution and Veto Override and declaring same to be null, void and of no legal effect.

2. On the Second Cause of Action, a Judgment of this Court, pursuant to CPLR Article 78, granting mandamus relief directing Respondents to perform their obligations pursuant to Resolutions R-10-41 and R-09-02, including directing the City to convey the DeLaval site to the IDA, and directing the IDA to then deliver the executed lease and PILOT for DeLaval in accordance with those Resolutions.

3. On the Third Cause of Action, an Order of this Court compelling Defendants/Respondents to: (a) in the case of the City, convey the DeLaval parcel to the IDA and arrange for the IDA to deliver the signed DeLaval lease and PILOT agreement; (b) in the case of the IDA, deliver the signed DeLaval lease and PILOT agreement; and (c) in the case of the Council, revoking its Illegal Resolution and Veto Override (in the alternative event that they are not declared null and void pursuant to the Article 78 relief sought herein) such that its Resolution R-10-41 will be in full force and effect, such that the City can then convey the DeLaval parcel according to its terms; and in the alternative event that this Court declines to compel performance of these contractual agreements, damages, which were directly and proximately caused by the breaches alleged herein, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

4. On the Fourth Cause of Action, an Order of this Court compelling Defendants/Respondents to: (a) in the case of the IDA, deliver the signed DeLaval lease and

PILOT agreement; and (c) in the case of the Council, revoke its Illegal Resolution and Veto Override such that its Resolution R-10-41 will be in full force and effect, such that the City can then convey the DeLaval parcel according to its terms; and in the alternative event that this Court declines to compel performance of these contractual agreements, damages, which were directly and proximately caused by the breaches alleged herein, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

5. On the Fifth Cause of Action, damages including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

6. On the Sixth Cause of Action, damages, including but not limited to all of the funds expended by Developer in connection with the project, together with consequential damages, lost profits and all other damages available at law in an amount to be determined at trial.

7. On the Seventh Cause of Action, damages in an amount to be determined at trial.

8. On all Causes of Action, an award to the Developer of its costs and attorneys' fees, together with such other and further damages as the Court deems just and proper.

Dated: White Plains, New York
November 4, 2020

CUDDY & FEDER LLP
Attorneys for Petitioner
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White Plains, New York 10601
(914) 761-1300

By: _____
Andrew Schriever
Kempshall C. McAndrew

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

Joseph Bonura Jr., being duly sworn, deposes and says:

I am a principal of each Petitioner in the above-captioned proceeding. I have read the annexed Verified Petition, and the same is true to my knowledge, except as to those matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Joseph A Bonura Jr

Sworn to before me this
4th day of November 2020

DANA M DEANER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6384799
Qualified in Orange County
My Commission Expires 12-17-2022

Notary Public