



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TPG RE III VOLT HOLDINGS, L.P.,)
)
Plaintiff,)
)
v.)
)
QUANTUM LOOPHOLE, INC. and)
QUANTUM DEV, LLC,)
)
Defendants,)
)
and)
)
QUANTUM MARYLAND JV, LLC)
and QLOOP JV, LLC,)
)
Nominal Defendants.)

C.A. No. 2024-1002-PAF

REDACTED PUBLIC VERSION
EFILED: October 2, 2024

VERIFIED COMPLAINT PURSUANT TO 6 DEL. C. § 18-110

Plaintiff TPG RE III Volt Holdings, L.P. (“Plaintiff” or “TPG”), by and through its undersigned counsel, hereby brings this action against Defendants Quantum Loophole, Inc. (“Quantum Loophole”) and Quantum Dev, LLC (“Quantum Dev”) and Nominal Defendants Quantum Maryland JV, LLC (“LandCo”) and Qloop JV, LLC (“FiberCo”) and states as follows:

NATURE OF THE ACTION

1. In 2021, TPG and Quantum Loophole embarked on a multi-hundred million dollar endeavor to develop a 2,100-acre former aluminum smelter in Frederick County, Maryland into a site that houses multiple data centers, as well as

to build a fiber optic loop connecting the site to data centers in Northern Virginia (the “Project”). Recognizing the economic potential of the Project, [REDACTED] [REDACTED]. The Project required significant planning, extensive infrastructure installation, land development, and community and regulatory management, including compliance with an environmental covenant due to the Project’s historic use.

2. Quantum Loophole represented it had the requisite expertise and experience to execute a project of this dimension. Quantum Loophole represented to TPG that it and its Founder and CEO Josh Snowhorn were the perfect partners. Mr. Snowhorn had supposedly “seen and done it all” over 20 years of “leadership in the interconnection industry.” And Quantum Loophole promised its “master-planned data center” would utilize a “10-year roadmap” to “meet[] the needs of today and transform[] the future of our environment, our communities, and our customers,” potentially generating \$3.1 billion in revenue, expanding the local tax base, and creating 50,000 jobs.

3. At first, TPG was led to believe Quantum Loophole was up to the task. The ensuing years, however, revealed that Quantum Loophole’s initial representations had been false and that the management of the Project has been rife with incompetence, malfeasance, and failure. It has become clear that Quantum Loophole’s team had no significant experience with land and infrastructure

development at this scale. Rather than ushering the Project to success, Quantum Loophole exhibited repeated “gross negligence,” “willful misconduct,” and “intentional and material misrepresentation.” This conduct became too frequent, too repetitive, and too costly for TPG to allow it to continue jeopardizing the Project. Quantum Loophole’s conduct also caused extreme frustration among the Project’s existing and potential new customers, imposing direct risk on the Project.

4. On September 17, 2024, TPG, the owner of [REDACTED] of LandCo and [REDACTED] of FiberCo, exercised its authority to remove Quantum Loophole as the Manager of those entities for cause. TPG further terminated the Development Agreement between Quantum Maryland LLC and Quantum Dev, a Quantum Loophole affiliate, and executed a new Development Agreement with Catellus Development Corporation (“Catellus”).

5. TPG’s termination of Quantum Loophole fully complied with the LandCo and FiberCo limited liability company agreements, both of which authorize TPG to terminate the manager of the company for “gross negligence, willful misconduct or intentional and material misrepresentation.”¹ Moreover, because

¹ A true and correct copy of the Limited Liability Company Agreement of LandCo (“LandCo Agreement”) is attached hereto as Exhibit 1. Capitalized terms not defined herein take the meanings given in the LandCo Agreement. A true and correct copy of the Limited Liability Company Agreement of FiberCo (“FiberCo Agreement”) is attached hereto as Exhibit 2. A true and correct copy of the First Amendment to Limited Liability Company Agreement of FiberCo is attached hereto as Exhibit 3.

Quantum Loophole's suspended CEO, Josh Snowhorn, was absent from the Project, a "Key Person Event" was triggered, permitting Quantum Loophole's removal under the LandCo and FiberCo Agreements. Additionally, Quantum Maryland, LLC, a wholly-owned subsidiary of LandCo, and Quantum Dev entered into the Development Agreement, which governs the rights and obligations of the Developer.² Quantum Dev, acting as the Developer, failed to act with "the degree of professional care, skill, judgement and diligence expected of developers regularly engaged with comparable projects, consistent with sound business practices." (the "Industry Standard"). Ex. 4 § 1.1(b) (defining "Industry Standard"). The failure to act consistent with the Industry Standard is a cause for termination of the Development Agreement in and of itself, *id.* § 6.1(c), but also led to material physical waste, damage, and destruction to the Project, permitting termination thereof, and allowing removal of Quantum Loophole under the LandCo Agreement and material, uncured breaches of the Development Agreement. Because the LandCo Agreement is reciprocal with the Development Agreement, Ex. 1 § 6.14, Quantum Loophole's failure to act according to the Industry Standard allowed TPG to remove Quantum Loophole as Manager of LandCo. *Id.* § 9.6(a)(viii).

² A true and correct copy of the Development Agreement is attached hereto as Exhibit 4.

6. Additionally, Quantum Loophole materially misrepresented a number of matters to TPG, including Quantum Loophole's intentional, material misrepresentations it made in March 2024 as to the budget it needed to complete the FiberCo portion of the Project. These misrepresentations resulted in TPG executing an amendment to the FiberCo Agreement with a significant increase in capital commitment based on a budget that Quantum Loophole told TPG was grossly insufficient just weeks later. Lastly, Quantum Loophole entirely ignored TPG's letter providing notice of these failures, making no effort to respond or cure any of the specified breaches.

7. Quantum Loophole's failures start at the top. Despite promising direct oversight, Mr. Snowhorn demonstrated only neglect. After years of only infrequent personal visits to the Project, the Quantum Loophole Board requested that Mr. Snowhorn establish residence in Maryland. Mr. Snowhorn represented in 2023 that he would move part-time to Maryland to manage the Project, but since then, he has visited the Project site just a handful of times. Instead, he attends Formula 1 races and engages in surfing expeditions across the world, which he at least partially paid for with Quantum Loophole funds until he was suspended on June 3, 2024 from his role as CEO for financial malfeasance and other neglect. Mr. Snowhorn was then forced to resign from his position as Chairman of the Quantum Loophole Board on June 25, 2024.

8. Quantum Loophole's management failures do not stop with Mr. Snowhorn. Not a single member of Quantum Loophole's senior management lives in Maryland or provides a regular on the ground touchpoint for local stakeholders, including contractors and customers. And after Quantum Loophole's incompetence led to a mass exodus of Quantum Loophole's directors, Quantum Loophole's Board is inquorate and unable to lead the Project *at all*. This gross dereliction constitutes willful misconduct that more than justifies TPG's decision to remove Quantum Loophole from the Project.

9. This mismanagement has taken a costly toll on the Project and TPG. As a result of Quantum Loophole's failures as detailed below, cost estimates for Phase 1 of the LandCo budget have more than [REDACTED] [REDACTED] Meanwhile, the estimated budget for FiberCo has nearly [REDACTED] [REDACTED] budget that Quantum Loophole represented to TPG to induce it to sign the initial FiberCo agreement. These budget overruns and misrepresentations forced TPG to contribute tens of millions of incremental capital to keep the Project afloat. The overall unexpected increases in the Project budget are indicative of the inexperience and mismanagement that Quantum Loophole brought to the Project. Quantum Loophole's mismanagement, gross negligence, and misrepresentation compromised the Project's ability to reach its full potential,

threatened customer relationships and potential future land sales to key customers, and materially degraded the Project's economic prospects.

10. These cost overruns were tragically avoidable. For example, Quantum Loophole refused to obtain a necessary water use and appropriation permit from the Maryland Department of the Environment ("MDE") so that it could lawfully remove ground water from the site to allow for the completion of critical Project infrastructure. When MDE revoked the Project's Environmental Management Plan as a result of Quantum Loophole conducting dewatering activities improperly and notified Quantum Loophole of its requirement to get a permit, Quantum Loophole *still* did not bother even applying for one. In lieu of a permitting process that could have been completed in as little as six weeks, Quantum Loophole instead incorrectly represented to TPG that the only way to keep Project construction on track and to close critical land and fiber sales on time was to embark on an untested overhaul of the Project's construction methods that involved redesigning the Project's entire piping network and added nearly a year and over [REDACTED] in costs to the Project.

11. Separate and apart from its dewatering failures, Quantum Loophole received over 80 environmental violations from MDE despite the presence of experienced environmental counsel and civil engineers who could have assisted with MDE compliance, as well as clear MDE guidelines posted online.

12. Quantum Loophole also repeatedly failed to follow through on commitments it made to state and local governments. It assured Frederick County that it would complete a five-million gallon sewer pump station but, to date, has made only minimal progress, forcing a substantial acceleration of the pace—and cost—of work to meet this entirely foreseeable deadline.

13. Quantum Loophole also executed a Letter of Understanding with Frederick County requiring it to begin work on certain road improvements to allow for critical parcel sales but then, either in ignorance or incomprehension of its own agreement, failed to do so, in spite of ample notice provided by its own engineers. This gross negligence again required substantial and costly catch-up work as the Project rushed to meet a deadline the could have easily been foreseen.

14. Quantum Loophole's hiring and supervision of subcontractors has likewise been grossly negligent: its contracted construction company built in the wrong place, laying fiber optic conduits on local farmland without appropriate authorization. Another contractor allowed heavy equipment to become trapped on private property for months because of that contractor's trespassing. Yet another contractor failed to obtain necessary access agreements before beginning work. Another contractor allowed a permit to lapse, which happened concurrently with a material environmental violation, putting the entire Project at risk. The Project now

faces substantial liability from three concurrent lawsuits for these easily avoidable failures on top of the costs to re-do the work the right way, in the right locations.

15. Quantum Loophole's project management is similarly in disarray. It consistently approves change orders without obtaining necessary approvals under the LandCo and FiberCo agreements and without verifying the relevant work in the field, fails to conduct a competitive bid process for all major contracts, fails to maintain a master Project schedule, cost forecasts, and logs of change order requests and approvals, fails to collect insurance certificates or endorsements on vendor contracts, and fails to maintain a detailed, line-item Project budget regularly updated to reflect completed work, change orders, and expected costs (and time) to complete. It also allowed the same vendor, [REDACTED], to serve in the roles of both General Contractor and Construction Manager, thereby depriving the Project of critical checks and balances. Each of these failures demonstrates Quantum Loophole's inability and/or unwillingness to undertake basic project management steps necessary to keep a project of this size and complexity on track.

16. Quantum Loophole's myriad failures soon led to significant customer frustration and dissatisfaction. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████ Faced with these myriad failures and customer frustrations, Quantum Loophole openly embraced TPG’s suggestion to bring on Catellus to take over the Project’s development work, including expressing such support in a Board-issued press release:



17. Quantum Loophole’s own President and co-founder stated that he was “excited to welcome the [Catellus] team’s experience and expertise” and “firmly believe[d] [Quantum Loophole’s] partnership with Catellus will benefit Frederick County and the Quantum Maryland project overall.” Former director ██████████ even introduced Catellus at a public hearing. These announcements satisfied key

existing and potential customers who recognized the Project's renewed potential with Catellus at the helm.

18. But Quantum Loophole failed to properly work with Catellus and still would not perform its duties as mandated. Faced with mounting costs due to Quantum Loophole's gross negligence and willful misconduct, TPG was forced to deliver a notice of default³ to Quantum Loophole on August 15, 2024. That Default Notice gave Quantum Loophole thirty days to cure its defaults. But tellingly, TPG's Notice was met with silence: A full thirty days passed without Quantum Loophole curing any of the defaults or even deigning to respond.

19. Faced with a mountain of mismanagement, budget over-runs, and regulatory failures, as well as extreme frustration on the part of existing and prospective customers, TPG had no choice but to remove Quantum Loophole as Manager and terminate the Development Agreement. It did so on September 17, 2024, issuing a 15-page letter detailing Quantum Loophole's gross negligence, willful misconduct, material misrepresentations, failure to meet the Industry Standard, and more.⁴

³ A true and correct copy of the notice of default ("Default Notice") is attached hereto as Exhibit 5.

⁴ A true and correct copy of the Notice of Termination and Removal ("Removal Notice") is attached hereto as Exhibit 6.

20. Since that termination, Quantum Loophole has refused to accept its replacement and instead has actively interfered with TPG's management of LandCo and FiberCo. Far from fulfilling its contractual obligation to cooperate in good faith in the transition of management, Quantum Loophole continues to hold itself out to customers and contractors as Manager of both entities and blocks TPG and its agents from attending meetings with key stakeholders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. Tellingly, Quantum Loophole tried to scrub its former support for Catellus from the internet, including deleting the press release from its website and other announcements from its social media pages. Instead, Quantum Loophole tried to block Catellus' involvement while faulting TPG for making a change that Quantum Loophole itself publicly celebrated less than two short months ago.

22. Even more astonishing, Quantum Loophole has now lifted its suspension of CEO Josh Snowhorn and reinstated him to the Board *after* TPG's termination. Quantum Loophole now asserts that he is "in charge" of the Project.

23. TPG brings this action to put an end to Quantum Loophole's disruption. TPG and Catellus are the parties needed to restore stability to the Project and get it back to operating efficiently and effectively in order to meet its full potential, that

potential having been put in jeopardy by Quantum Loophole's gross negligence, willful misconduct, and material misrepresentations. TPG requests that this Court enter a declaration confirming that Quantum Loophole has been terminated as Manager of LandCo and FiberCo and that the Development Agreement with Quantum Dev has been terminated, enjoining Quantum Loophole from purporting to act as Manager of LandCo and FiberCo, ordering Quantum Loophole to perform its contractual obligation to cooperate with the transition of management, and awarding TPG damages and attorneys' fees for Quantum Loophole's persistent bad faith, gross negligence and willful misconduct, material misrepresentations, and its recent interference with the management of LandCo and FiberCo.

THE PARTIES

24. Plaintiff, TPG RE III Volt Holdings, L.P., a Delaware limited partnership, is a holding company that was established to invest in projects like the Project. TPG is a member and [REDACTED] majority owner of Quantum Maryland JV, LLC and member and [REDACTED] majority owner of Qloop JV, LLC.

25. Defendant Quantum Loophole, Inc. is a Delaware corporation and is a member of Quantum Maryland JV, LLC and Qloop JV, LLC. Quantum Loophole is also the former Manager of Quantum Maryland JV, LLC and Qloop JV, LLC.

26. Defendant Quantum Dev, LLC is a wholly-owned subsidiary of Quantum Loophole and a Delaware limited liability corporation. Quantum Dev is also the former Developer under the Development Agreement.

27. Nominal Defendants Quantum Maryland JV, LLC, and Qloop JV, LLC are both Delaware limited liability companies. TPG and Quantum Loophole are the two members of Quantum Maryland JV, LLC and Qloop JV, LLC. Quantum Maryland, LLC and Qloop, LLC, both Delaware limited liability companies, are wholly-owned subsidiaries of LandCo and FiberCo, respectively, with all membership interest vested in the respective parent limited liability companies.

JURISDICTION AND VENUE

28. This Court has jurisdiction to hear disputes over contested matters relating to the removal of managers of Delaware limited liability companies and to interpret, apply, and enforce Delaware limited liability company agreements pursuant to 6 *Del. C.* §§ 18-110, 18-111.

29. This Court has jurisdiction to issue a declaratory judgment in this action pursuant to 10 *Del. C.* § 6501

30. This Court has jurisdiction pursuant to 10 *Del. C.* § 341, which gives the Court of Chancery jurisdiction “to hear and determine all matters and causes in equity.”

FACTUAL BACKGROUND

A. TPG And Quantum Loophole Embark On A Multi-Hundred Million Dollar Joint Venture To Develop A Large-Scale Data Center Site

31. In 2021, TPG and Quantum Loophole embarked on a multi-hundred million dollar joint venture to develop a 2,100-acre site in Frederick County, Maryland that would eventually host multiple data centers. Quantum Loophole represented to TPG, other investors, and Frederick County that it had the significant experience and expertise needed to execute the successful development of the infrastructure on a large site required to support the future development of multiple data centers. Quantum Loophole represented to TPG—and the public—that it would be the ideal partner to run the Project, which, when completed, could bring a great boon to the local economy by creating nearly 50,000 jobs, generating \$3.1 billion in revenue, and expanding the tax base by hundreds of millions of dollars in tax revenue over the life of the business.⁵ According to Quantum Loophole, its “master-planned data center” site would utilize a “10-year roadmap” to “meet[] the needs of today and transform[] the future of our environment, our communities, and our customers.”⁶ Quantum Loophole publicly represented that its “careful, master

⁵ Quantum Loophole, “Economic Impact,” <https://quantumloophole.com/community/economic-impact/> (Ex. 7).

⁶ Quantum Loophole Home Page, available at: <https://quantumloophole.com/> (Ex. 8).

planned campus design” would “provide[] all you need for success,” that it would “make[] a positive community impact,” and “create a positive effect on [the] environment[].”⁷ And Quantum Loophole stated that it could “deliver speed to market for your data centers ... shaving years of effort off the planning process.”⁸ Quantum Loophole told TPG that Mr. Snowhorn was the man who could do it all—and in fact had “seen and done it all” over 20 years of “leadership in the interconnection industry.” TPG relied on Quantum Loophole’s, Mr. Snowhorn’s, and other Board members’ representations, partnering in a joint venture that would entail the investment of at least [REDACTED] of TPG’s capital with the expectation that Quantum Loophole’s and Mr. Snowhorn’s alleged expertise would combine with TPG’s vision and resources to result in a successful Project.

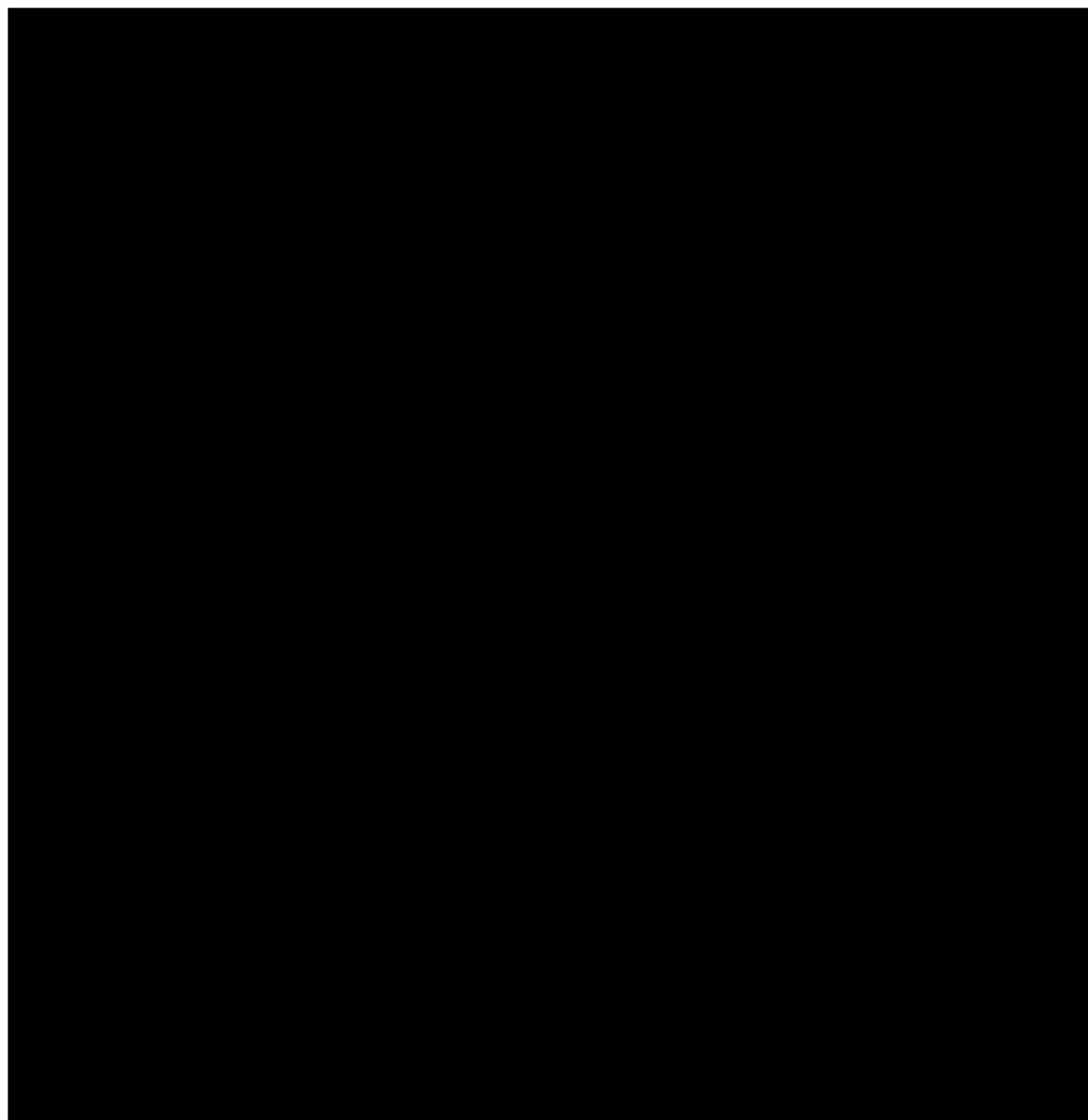
B. TPG And Quantum Loophole Entered Into Agreements And Formed LandCo And FiberCo As Delaware Limited Liability Companies

32. To manage the Project, TPG and Quantum Loophole formed two parent Delaware limited liability companies, LandCo (which owns the land on which the Project sits and oversees land and site development) and FiberCo (which oversees a fiber optic cable loop that will connect the Project site to data center infrastructure in Northern Virginia and owns the easements needed to implement that loop), and

⁷ Quantum Loophole, “Offering,” available at: <https://quantumloophole.com/offering/> (Ex. 9).

⁸ *Id.*

two wholly owned subsidiaries and Delaware limited liability companies, Quantum Maryland, LLC and Qloop, LLC, to conduct the day-to-day business of the Project. *See* Figure 1. TPG invested [REDACTED] in LandCo, making it a [REDACTED] majority owner, while Quantum Loophole invested [REDACTED], making it a [REDACTED] minority owner. Ex. 1 § 3.1; *id.* Ex. A. The LandCo Agreement designates TPG as the Investor and as a Member and designates Quantum Loophole as the Operating Member and the “initial Manager.” *Id.* Preamble.



33. On June 23, 2021, LandCo became the sole Member of Quantum Maryland, LLC pursuant to the Amended and Restated Limited Liability Company

Agreement of Quantum Maryland, LLC. Ex. 10 § 3.⁹ In the Development Agreement, also dated June 23, 2021, Quantum Maryland, LLC engaged Quantum Dev as the initial Developer to “assist [Quantum Maryland, LLC] in the planning and development of the Project.” Ex. 4 § 1.1(a).

34. On April 14, 2023, TPG and Quantum Loophole formed FiberCo. Initially, TPG committed [REDACTED] and held [REDACTED] of the equity interest and Quantum Loophole committed [REDACTED], but the FiberCo Agreement was amended on March 29, 2024 to reflect the increased capital commitments of both members. Ex. 2, Ex. A; Ex. 3 § 2(a). As of March 29, 2024, TPG owned [REDACTED] of the equity interest in FiberCo. *See* Ex. 3, Ex. A. As of the date of this Verified Complaint, TPG owns [REDACTED] of the equity interest in FiberCo.

35. The FiberCo Agreement designated TPG as the Investor and as a Member and designated Quantum Loophole as the Operating Member and the “initial Manager.” Ex. 2 Preamble.

36. Under the LandCo Agreement, and a substantially-similar provision in the FiberCo Agreement, Quantum Loophole was required to “conduct and direct the day-to-day activities of the Company in accordance with this Agreement and the approved Business Plan, the Pre-Development Budget, the Development Budgets

⁹ A true and correct copy of the Limited Liability Company Agreement of Quantum Maryland, LLC is attached hereto as Exhibit 10.

and the Annual Budgets and consistent with the Performance Standard.” Ex. 1 §

6.1(b). In both agreements, the “Performance Standard” is defined as follows:

“Performance Standard” means utilizing the degree of care and skill expected of prudent developers, advisors and operating members of comparable projects, consistent with sound business practices, and taking such steps as are in the best interests of the Company, but in all cases subject to the availability of sufficient Company funds and any limitations on the discretion of the Manager pursuant to this Agreement, any other agreement, applicable laws or regulations and other restrictions and circumstances beyond the reasonable control of the Manager.

Ex. 1 Art. I (Definitions); Ex. 2 Art. I (Definitions).

37. Both the LandCo and FiberCo Agreements include for-cause removal provisions authorizing TPG to remove Quantum Loophole as Manager for, among other things, “gross negligence, willful misconduct or intentional and material misrepresentations.” Ex. 1 § 9.6(a)(i); Ex. 2 § 9.6(a)(i). If Quantum Loophole is removed as Manager of LandCo, TPG is automatically permitted to terminate the Development Agreement. *See* Ex. 1 § 9.6(d); Ex. 4 §§ 6.1(e) (listing Manager removal under the LandCo Agreement as an Event of Default), 6.2 (permitting LandCo to terminate the Development Agreement upon an Event of Default). TPG may also terminate the Development Agreement upon a default in performance by Quantum Dev, including a failure to adhere to the Industry Standard. Ex. 4 § 6.1(c). Similarly, certain defaults under the Development Agreement allow TPG to remove Quantum Loophole as Manager of LandCo. *See* Ex. 1 § 9.6(a)(viii); *id.* § 6.14 (rights

under LandCo and Development Agreements, including removal and termination, are reciprocal).

38. The LandCo Agreement also permits removal of Quantum Loophole as Manager upon the occurrence of a “Key Person Event.” *See* Ex. 1 § 9.6(a)(i). The Agreement defines the relevant terms as follows:

“Key Person” means each of Josh Snowhorn, Sylvia Kang and Scott Noteboom, or any replacement Key Person designated by the Operating Member and approved by Investor in accordance with Section 9.6(a).

“Key Person Event” means, subject to Section 9.6(a), if, for any reason, prior to any transfer of any portion of Investor’s Membership Interest to an unaffiliated third party, either (a) Josh Snowhorn ceases to be actively involved in the business of the Operating Member and the Company or fails to commit sufficient time to the Company to effectuate the Business Plan or (b) prior to the first to occur of (i) the fifth (5th) anniversary of the Effective Date and (ii) such time as at least seven hundred fifty (750) acres of the Project Land have been sold or leased by the Project SPE pursuant to a Qualifying Sale or Lease and Investor has achieved a MOIC of 2.25, both Sylvia Kang and Scott Noteboom cease to be actively involved in the business of the Company or fail to commit sufficient time to the Company to effectuate the Business Plan.

Ex. 1 Art. I (Definitions). The LandCo Agreement permits Quantum Loophole to replace a Key Person within ninety days “after such event that would otherwise constitute a Key Person Event” to avoid triggering TPG’s termination rights. Ex. 1 § 9.6(a).

C. Quantum Loophole Fails To Execute On Project Development

39. Contrary to Quantum Loophole’s representations about its competence and capabilities, its management and development of the Project have been marred by avoidable failures.

40. Since at least June 28, 2021, Quantum Loophole has been aware that the 2,100-acre LandCo project site is governed by an Environmental Covenant that requires construction methods to be governed by an Environmental Management Plan (“EMP”) due to its historic industrial use as an aluminum smelter. In 2023, during an investigation of Quantum Loophole’s operation, MDE discovered and informed Quantum Loophole that the methods it was using to remove standing and ground water from the Project site, a process otherwise known as dewatering, were non-compliant with the approved EMP, revoked that EMP, and notified Quantum Loophole of the need for a water use and appropriation permit.

41. Dewatering is a critical aspect of the Project. To allow for the installation of critical Project infrastructure, ground water must be mitigated. Dewatering on a project of this scale requires developers to obtain a water use and appropriation permit from MDE to ensure that the amount of water removed from a site is reasonable and will not negatively impact the water resource or neighboring water users. Inexplicably, Quantum Loophole failed to obtain the necessary permit from MDE, despite the availability of experienced environmental counsel and civil

engineers to walk Quantum Loophole through the process and detailed guidelines publicly posted by MDE.

42. Before an MDE May 2023 correspondence alerting Quantum Maryland LLC to non-compliance, Quantum Loophole had taken no steps to obtain the necessary permit. Quantum Loophole subsequently represented that obtaining the necessary permit would be impractical and that the only way to keep the Project on track and close crucial land and fiber sales was to execute a redesign of the Project.

43. Thus, Quantum Loophole embarked on a [REDACTED] redesign of the LandCo project to limit the need to dewater and avoid the permitting process. This redesign involved replacing the dewatering system's steel pipes with flexible high-density polyethylene ("HDPE") piping, secant systems for deep sewer excavations, micro-tunneling between secant systems, and more. The complexity of the redesign led to nearly a year in delays and at least [REDACTED] in cost overruns.

44. Quantum Loophole's redesign utilized elements traditionally not used for dewatering. For example, secant systems are typically used for building bridges, rather than mitigating ground water. The micro-tunneling and secant systems that Quantum Loophole proposed were premised on replacing the dewatering system's steel piping with flexible HDPE piping, a technique novel to Frederick County that as a result required specific approval from the Frederick County Division of Water and Sewer Utilities ("DWSU"). All told, the approval process took eight months

and involved 750 pages of responses to DWSU requests and conditions such as special training and having spare parts on hand. DWSU demanded this documentation and special conditions because no prudent, responsible developer operating under the Industry Standard would build a dewatering system in the way Quantum Loophole decided to. Quantum Loophole knew there was a real chance that the HDPE redesign would be rejected and could have easily mitigated this risk by applying through the typical dewatering permit process simultaneously. Yet, Quantum Loophole failed to pursue the prudent course of action to dual track the redesign while applying for the customary permit, despite a recommendation from the Project's engineering team. Notwithstanding that this approval finally came just a few weeks ago, the singular pursuit of this solution resulted in substantial delays and significant additional costs.

45. TPG learned only recently that the months of delay and [REDACTED] in cost overruns caused by Quantum Loophole's re-design of the dewatering process were entirely avoidable. After Catellus stepped into its role as Construction Consultant, on or about August 23, 2024, MDE leadership informed Catellus that LandCo could have obtained a dewatering permit in a matter of weeks, as opposed to the eighteen-plus months Quantum Loophole represented.¹⁰ Moreover, MDE

¹⁰ TPG understands that a similarly-situated project in Frederick County was able to obtain a permit in just six weeks.

confirmed that the water use and appropriation permits would be perfectly reasonable for a site as large as the Project.

46. Prior to Catellus's involvement, Quantum Loophole made no effort to obtain the necessary dewatering permits or inquire into the length of time it would take to obtain them.

47. Quantum Loophole's handling of the dewatering permit constitutes gross negligence, a failure to adhere to the Industry Standard, and a material misrepresentation, as it told TPG there was no other choice to meet critical Project timelines unless it undertook the costly, onerous, and lengthy redesign process. The nearly year-long delay and [REDACTED] in cost overruns Quantum Loophole has already imposed on the Project to resolve the dewatering issue are not final and could materially worsen.

D. Quantum Loophole Ignores Its Commitments To Frederick County And Violates Personal Property Rights, Resulting In Legal Action

48. Quantum Loophole failed to engage with state and local governmental officials, causing delays to critical Project elements that threaten to break Quantum

Loophole's commitments to Frederick County, and failed to properly control subcontractors, which exposed the Project to substantial legal liability.

Quantum Loophole's Environmental Violations

49. Between August 2022 and February 2024, Quantum Loophole accumulated over 80 environmental violations from MDE.

50. At least twenty-five inspections of the Project between August 2022 and October 2023 revealed numerous violations, including:

- Non-compliant dewatering activities as detailed above;
- Unauthorized impacts to wetlands and waterways from bore mud;
- Unauthorized discharges of bore mud to a Potomac River tributary;
- Four separate unauthorized bore mud and drilling additive discharges due to hydraulic directional drilling; and
- Multiple amounts of drilling fluid being released to the ground surface, two of which MDE was not notified about.¹¹

51. Specifically, MDE "allege[d] that four 'frac-outs' occurred, in which mud and drilling fluids bubbled up out of the earth near where the company's

¹¹ "Maryland Environment Dept. Rescinds Quantum Loophole Settlement" Inside Towers Digital Infrastructure News, dated July 19, 2024, available at: <https://insidetowers.com/maryland-environment-dept-rescinds-quantum-loophole-settlement/> (Ex. 11).

contractor was boring for the fiber line, sending contaminants flowing into waters that feed into the Potomac.”¹²

52. In March 2024, multiple frac-outs also released “sediment-laden water” near the Monocacy River.¹³

53. “According to MDE, Quantum [Loophole]’s contractors failed to immediately notify the state about the potential pollution, as required. Also contrary to mandated protocol, workers continued drilling.”¹⁴ In fact, one of these events occurred during a period of time when [REDACTED]

54. These incidents triggered 35 conservation groups to sign a letter to the Maryland Governor on May 7, 2024 criticizing Quantum Loophole’s “pattern of behavior” that “suggest[s] a corporate climate of disregard for environmental

¹² “Frustrations mount with developer of Maryland data center complex” J. Cox, Bay Journal, dated June 5, 2024, available at: https://www.bayjournal.com/news/energy/frustrations-mount-with-developer-of-maryland-data-center-complex/article_3af1522a-1d2b-11ef-bbbf-c727c4493083.html (Ex. 12).

¹³ *Id.*

¹⁴ *Id.*

protection.”¹⁵ As the head of one conservation group stated, “This is just an industrial activity that doesn’t care. . . or it sure looks like they don’t care.”¹⁶

55. MDE offered to settle Quantum Loophole’s environmental violations in November 2023 for \$130,000 but rescinded that offer in June 2024 due to the “ongoing nature and severity of the violations[.]”¹⁷ MDE has now referred the matter to the Maryland Attorney General for formal enforcement.

56. These violations have caused the Project reputational harm, excess costs, and delay. Although construction workstreams are slowly coming back online through Catellus’s assistance, these costs and delays cannot be reversed.

57. Despite this, in June 2024, Quantum Loophole buried its head in the sand, with its President, Scott Noteboom, stating that the Project was “past the storm of uncertainties and unpredictabilities related to reinventing our path to successful construction.”

¹⁵ “A Maryland data center project has violated environmental protections” Potomac Conservancy, dated May 7, 2024, available at <https://potomac.org/blog/2024/4/5-2024-an-open-letter-fred-county-md> (Ex. 13).

¹⁶ *Id.*

¹⁷ “State rescinds offer to settle Quantum Loophole fiber optic ring violations for \$130K” G. Lewis, Frederick News Post, dated July 15, 2024, available at: https://www.fredericknewspost.com/news/continuing_coverage/quantum_loophole/state-rescinds-offer-to-settle-quantum-loophole-fiber-optic-ring-violations-for-130k/article_e06902c0-7664-5fba-8e08-fda0ca6c2ece.html (Ex. 14).

Quantum Loophole's Failure to Complete Necessary Sewer Pump Station and Road Improvements

58. On November 15, 2021, Quantum Maryland, LLC entered into a Letter of Understanding with Frederick County requiring, in plain language, that the LandCo project make specific infrastructure improvements. The Project's preliminary site plan was approved subject to committing to build this infrastructure spelled out in the Letter of Understanding, including the construction of critical road and sewer infrastructure. One of the requirements of the Letter of Understanding was a five-million gallon pump station required to be constructed within three years from completion of the initial Phase 1 infrastructure.

59. To date, Quantum Loophole has not begun constructing this five-million gallon sewer pump station. Quantum Loophole began designing the pump station, but soon stopped, believing a five-million gallon station would take too long to construct. Quantum Loophole thus pivoted to designing and building a one-million gallon pump station despite the clear requirement that the pump station have a five-million gallon capacity. Work on the necessary five-million gallon station only resumed after Catellus took over as Construction Consultant—a year behind schedule. This delay will cause the LandCo project to incur substantial costs necessary to accelerate the pace of work to meet Quantum Loophole's commitment

to Frederick County. Quantum Loophole's approach further strained its relationship with regulatory agencies and the community.

60. In addition, the Project's consulting engineer of record, [REDACTED], informed Quantum Loophole, as early as November 2023, [REDACTED] would necessitate an acceleration of certain critical road improvements required by the LOU.

61. Despite the warning from [REDACTED], Quantum Loophole did nothing to accelerate the necessary road improvements.

62. Aware of Quantum Loophole's failure in this regard, Catellus immediately began the process to design the necessary road improvements once it was engaged.

63. Quantum Loophole, as the Manager responsible for "conduct[ing] and direct[ing] the day-to-day activities" of LandCo, exhibited gross negligence in failing to promptly act to design road improvements, causing significant additional delays, an additional [REDACTED] in avoidable costs, and potentially threatening a significant land sale.

Contractors Violate Neighboring Property Rights And Claim That Quantum Loophole's Intentional Misrepresentations are to Blame

64. [REDACTED] a Qloop, LLC contractor, allegedly encroached onto the land of a local farm, [REDACTED], causing

hundreds of thousands of dollars in crop damage and requiring significant and costly topsoil remediation. Both [REDACTED] and Quantum Loophole failed to rectify this trespass for nearly three years.

65. According to Quantum Loophole's explanation for this major failure, a survey or contractor error resulted in contractors accidentally laying conduits on [REDACTED] property.

66. Quantum Loophole admitted the surveying work was "shoddy" and led to the installation of 30 conduits on [REDACTED] land.

67. Those conduits were also laid incorrectly and were damaged during the process, causing them to be unusable.

68. [REDACTED]
[REDACTED]
[REDACTED]

69. This failure occurred despite Quantum Loophole's public representation that its "dig once strategy for Quantum Loophole ensures that all conduits are placed simultaneously[, which] protects the land along the route from repeated disturbances." Ex. 14.

70. In a separate incident, a [REDACTED] subcontractor allowed heavy equipment to enter and become trapped for months on private property near the Project site, trespassing on that land and exposing FiberCo to legal liability.

71. As further fallout from these episodes, on September 15, 2024, [REDACTED] filed a lawsuit accusing Qloop, LLC of intentionally misrepresenting specifications and geotechnical data to solicit lower bids for the FiberCo project, and failing to obtain necessary permits and an access agreement. As Manager, it was Quantum Loophole's job to provide FiberCo contractors with accurate information when soliciting bids. Quantum Loophole was aware that the geotechnical data was critical to [REDACTED] task of laying fiber optic cable—if [REDACTED] did not have accurate geotechnical data, its cost estimates could not be relied upon. These potentially false statements on behalf of the Project to counterparties and mismanagement constitute gross negligence, willful misconduct, intentional misrepresentation, and failure to meet the Industry Standard.

E. Quantum Loophole Fails to Provide TPG with Accurate Project Budgets

72. Quantum Loophole, as erstwhile Manager of FiberCo and LandCo, was required to manage millions of dollars of infrastructure investment needed to bring the Project to completion. Accurate budgeting and highly-detailed cost tracking are crucial to a project of this size and complexity. Quantum Loophole managed the Project while flying blind and failed to provide appropriate budgets, which unnecessarily cost TPG [REDACTED].

LandCo Budget Failures

73. Between December 2022 and September 2024, according to budgets prepared by Quantum Loophole, the estimated total LandCo project cost for Phase 1 alone more than [REDACTED] and the budgets show a variance of [REDACTED].

74. At the outset, the parties anticipated that the Project would require over [REDACTED] in capital contributions over two phases. Given the significant amount of money involved, budget management was and remains paramount, as the Project agreements reflect. *See* LandCo Agreement §§ 8.4(a), 8.6 (requiring annual capital and operating budgets) *id.* § 6.2(a) (“[W]ithout the prior written approval of Investor, the Manager shall not have the power” to “[t]ake any action or incur expenses inconsistent with all or any portion of the Business Plan, the Pre-Development Budget, the applicable Development Budget or the applicable Annual Budget, or vary from the limitations set forth therein.”).

75. Despite these contractual requirements, Quantum Loophole:

- failed to provide a detailed line item budget including the complete scope of hard and soft costs necessary for Phase 1 Project completion;
- lacked a job cost, reporting, and forecasting system, or any processes related to Project budgeting controls and management;
- maintained budgets on slide decks, backed-up by Excel files that did not include any detailed information on hard and soft costs, contingencies, or potential cost overruns;

- failed to consistently provide detailed breakouts of costs requested by Catellus and TPG; and
- provided forecast costs only by looking to cash flow information and a collection of miscellaneous accounting reports.

76. This gross negligence in managing the Project budget resulted in budgets and projections that have no connection to reality. In fact, Catellus analyzed the Project and prepared a new budget in early September 2024 estimating that the total Phase 1 cost will exceed the original budget by roughly [REDACTED], not including amounts budgeted for additional scopes of work that must be expedited, adding over [REDACTED] more in immediate Project spend to deliver on the commitments Quantum Loophole made to Frederick County pursuant to the Letter of Understanding.

77. Quantum Loophole's approach to budgeting also impacted cost and scheduling expectations, resulting in hasty requests for additional capital outlays, including a request for a [REDACTED] spend in February 2024 and a nearly [REDACTED] spend on September 4, 2024. Quantum Loophole made these requests without providing TPG with appropriate information, such as accurate "cost to complete" figures.

FiberCo Budget Misrepresentations and Failures

78. Before TPG agreed to enter into the FiberCo Agreement, forming FiberCo as an entity, Quantum Loophole represented that it could complete the fiber

optic cable loop with a budget of [REDACTED]. In reliance on Quantum Loophole's budget representations, on April 14, 2023, TPG executed the FiberCo Agreement and approved a [REDACTED] budget. While Manager, Quantum Loophole had the obligation to keep the Project on track and reasonably close to remaining on budget, to oversee all Project contractors, and to be aware of the line item costs for various sub-projects. Quantum Loophole failed in each of these tasks.

79. As a result, in March 2024, approximately a year after the budget was approved in April 2023, Quantum Loophole informed TPG that an amended budget was necessary and revised the FiberCo budget to [REDACTED].

80. That representation of the revised budget induced TPG to commit and invest more money in FiberCo.

81. Less than six weeks later, Quantum Loophole announced that its approved budget was incorrect. In April 2024, without any intervening events that would warrant a significant change, Quantum Loophole informed TPG that it underestimated the March budget by [REDACTED] and estimated that the budget was going to be approximately [REDACTED].

82. To date, Quantum Loophole still has not awarded all scopes necessary to complete the Project, adding the potential for additional cost increases. Quantum Loophole's statements regarding the FiberCo budget amount to material misrepresentations.

F. Quantum Loophole Commits Further Acts Of Gross Negligence, Breaches of the Parties' Agreements, and Fails to Maintain Insurance

83. A development project of this size and complexity requires that a manager have the controls, personnel, and expertise to handle the project. Quantum Loophole has none of these necessary elements. The sheer number of Quantum Loophole's project management failings makes a full list impractical, but a handful of examples illustrate Quantum Loophole's deficiencies and gross negligence in its contractual performance, thus providing TPG with the right to remove Quantum Loophole as Developer and Manager.

84. Quantum Loophole failed to conduct a competitive bid process for all major contracts—an industry standard procedure for ensuring costs remain low and quality high and an absolute requirement for a project of this scale and complexity.

85. Quantum Loophole knew that certain contractors, including procurers, engineers, and construction managers, were culpable for material mistakes and poor management in the past, yet retained these contractors anyway.

86. Quantum Loophole allowed the same vendor, [REDACTED], to functionally serve as both General Contractor and Construction Manager, because Quantum Loophole lacked a permanent on-site construction manager. [REDACTED] [REDACTED] dual role meant that the Project lacked basic oversight and independent verification of the work being done, as well as posed a risk of conflict of interest.

Typically, a project manager would award each role to a different entity so that the entity carrying out the work would not be the one signing off on contractor requests. This is a clear deviation from the Industry Standard Quantum Loophole was required to meet.

87. Because of this gross mismanagement, Quantum Loophole consistently approved change orders—changes to contractor expenses—increasing Project costs without obtaining required approval. *See* LandCo Agreement § 1.6(b) (requiring Quantum Loophole to submit change orders to LandCo’s wholly-owned subsidiary Quantum Maryland, LLC for approval prior to implementation).

88. For example, Quantum Loophole approved [REDACTED] in accelerated overtime requests without seeking approval from TPG.

89. Quantum Loophole performed only limited, if any, field verification of contractor requests for change orders and pay applications, instead approving those requests on blind faith.

90. Quantum Loophole did not maintain records of many contracts and change orders, forcing LandCo, as well as TPG and Catellus, to obtain copies of those critical documents from Quantum Loophole’s counterparties.

91. Quantum Loophole lacked a master project schedule, dynamic line-item pro forma and job cost forecasts, bid spread analysis for all Project scopes, and change order request and approval log. As a result, Quantum Loophole frequently

presented inaccurate schedules to customers and paid contractors late, allegedly to “manage cash flow.”

92. Each of these material breaches of Quantum Loophole’s contractual obligations is an independent basis for TPG terminating it as Manager. *See* Ex. 1 § 9.6(a)(ii) (TPG may terminate Quantum Loophole as Manager for “any action by the Operating Member or any of its Affiliates constituting material breach of this Agreement.”); Ex. 2 § 9.6(a)(ii) (same). Each also constitutes a deviation from the Industry Standard, permitting termination of the Development Agreement. Ex. 4 § 1.1(a); 6.1(c).

93. Quantum Loophole also did not collect insurance certificates or endorsements on vendor contracts, leaving the Project and the broader Frederick County community exposed to the risk of substantial liabilities that should properly be borne by others. This failure to collect insurance certificates and endorsements is a gross deviation from the Industry Standard, speaking to Quantum Loophole’s inexperience, gross negligence, and mismanagement.

94. More recently, despite Catellus identifying a permitting requirement related to draining retention ponds and calling a meeting between MDE, Quantum Loophole, and contractors to address that issue, Quantum Loophole stated that such a meeting would be unnecessary and further refused to allow Catellus to meet with

MDE. As a result, this permit remains outstanding and has resulted in delays to work required to facilitate a critical land sale.

95. In August 2024, Quantum Loophole still did not have the necessary permit to drain the ponds.

96. Catellus attempted to remedy this failure by preparing and submitting a workplan to MDE. But MDE informed Catellus that, due to the delays, the Project would need to containerize the water for testing before it could move forward.

97. This costly and time-consuming process was reasonably foreseeable and should have been avoided but for Quantum Loophole's gross failure to even attempt to get MDE approval.

G. Quantum Loophole's Senior Managers are Absent from the Project Site and their Contractually Obligated Positions, Triggering A Key Person Event

98. As noted above, the LandCo Agreement also permits removal of Quantum Loophole as Manager upon the occurrence of a "Key Person Event." See Ex. 1 Art. I; *id.* § 9.6(a)(i).

Quantum Loophole Managers Lack Active Involvement In the Project Site

99. For a project of this size and complexity to be successful, on-the-ground presence and leadership is required and critical. Instead, Quantum Loophole attempted to run this Project with no senior leadership onsite full-time for large portions of the Project's development.

100. In 2023, Mr. Snowhorn represented to TPG that he established part-time residency in Maryland, but that representation was false.

101. Mr. Snowhorn has resided in Texas for the duration of the Project, electing to visit the Project site only a handful of times. In addition to Mr. Snowhorn's infrequent presence, no other Quantum Loophole executive has their primary residence in Maryland, choosing instead to reside in Hawaii, Florida, Texas, and California.

102. In fact, Quantum Loophole's President, Mr. Noteboom, stated in a May 26, 2024 email to TPG and Catellus representatives that Mr. Snowhorn has done "close[] to nothing" over the course of the project—except impose "dictatorial punishment ... on his direct reports."

103. Because Mr. Snowhorn is not and has not been "actively involved in the business of [Quantum Loophole and the Project]," and "fail[ed] to commit sufficient time to the [Project] to effectuate the Business Plan," since June 3, 2023 (when Mr. Snowhorn was suspended from his position as CEO), a Key Person Event has occurred. *See* Ex. 1 Art. I (Definition of "Key Person Event"). Quantum Loophole's Board created such an event by instigating Mr. Snowhorn's suspension and requesting Mr. Snowhorn stay away from the Project and Quantum Loophole.

104. In a June 2, 2024 email to other Quantum Loophole directors discussing Mr. Snowhorn's expenditures, former Quantum Loophole director and then-

Chairman Gary Wojtaszek stated that Mr. Snowhorn “clearly” submitted some of his expenses under another Quantum Loophole employee’s expense accounts. Mr. Snowhorn himself, in a June 4, 2024 email to three Quantum Loophole directors, conceded that his use of company expenses “could be considered questionable” and then offered to pay back over \$200,000 insisting that he keep “ALL of the tequila whether used for clients or not yet used.” In a June 25, 2024 email to the full Quantum Loophole Board, Mr. Snowhorn resigned from the Quantum Loophole Board and admitted that he “cannot fix” his “sales methods or management methods.”

105. On or about June 3, 2024, Mr. Snowhorn was suspended from his position as CEO of Quantum Loophole after an internal investigation found that he used hundreds of thousands of dollars of Quantum Loophole funds for personal expenses, including a wedding ceremony in Monaco, expensive tequila, and personal hobbies such as surfing and attending car racing events.

106. Mr. Snowhorn’s resignation and suspension were in progress well before June 25, 2024, and as detailed below, he had already ceased to be involved with the Project per the Board.

107. On May 31, 2024, Quantum Loophole director Mr. Wojtaszek stated that the Board did not “want [Mr. Snowhorn] talking with customers,” that he “has many shortcomings,” and that Mr. Snowhorn could not “focus and get things done,”

and that instead he was “bounc[ing] from topic to topic.” Mr. Wojtaszek continued that employees were “euphoric and rallying together” after Mr. Snowhorn was dismissed from his CEO position, but this euphoria “emphasize[d] the broken and fragmented leadership” that characterizes Quantum Loophole.

108. The very next day, Mr. Wojtaszek spoke with Mr. Snowhorn, discussing with him “all the various issues with team, dysfunction, lack of leadership, repeated MDE issues which are constant foot faults, and [the] full personal expense review.”

109. At that time, Mr. Snowhorn was “receptive” to being removed from his role as CEO, saying that he now “understands his short comings and didn’t realize how bad it was.”

110. Former Quantum Loophole director Mr. Tom Daly requested that the Board “pull Josh on a call to ... stop making the situation worse,” while former director [REDACTED] stated that “Josh needs to be told to stop communicating with everyone as he’s creating problems among the group. ... [He is] making things worse, not better, and the board fully realizes this.”

111. Valuable customers expressed similar sentiments: on June 23, 2024, the CEO of an important data center company stated that Quantum Loophole’s dysfunction “isn’t too surprising as Josh just hired his friends [who] aren’t competent.”

112. Mr. Snowhorn’s lack of leadership and misconduct around use of Quantum Loophole funds caused the Quantum Loophole Board to ask for his resignation as Chairman and to suspend him as CEO on June 3, 2024. On that day, Mr. Wojtaszek texted the Board that he had told Mr. Snowhorn to “stand down,” and director Tom Daly “assured [Mr. Snowhorn] that the best next steps are to do absolutely nothing.”

113. In mid-September, after receiving the Removal Notice, Quantum Loophole began informing contractors and others that Mr. Snowhorn returned to his former role as Quantum Loophole CEO, despite his acknowledged misappropriation of Quantum Loophole funds.

114. Mr. Snowhorn’s lack of leadership, resignation, suspension, and absence have triggered a Key Person Event under the LandCo Agreement—an independent justification for Quantum Loophole’s removal from the role of Manager. *See* LandCo Agreement at 6–7 (A “Key Person Event” occurs “if, for any reason ... Josh Snowhorn ceases to be actively involved in the business of [LandCo] or fails to commit sufficient time to [LandCo] to effectuate the Business Plan.”); *id.* § 9.6(a) (if after ninety days the Key Person has not been replaced by Quantum Loophole and approved by TPG, Quantum Loophole “may be removed as the Manager by [TPG] ... upon the occurrence of a Key Person Event.”). Over ninety days passed since June 3, 2024, when Mr. Snowhorn was suspended, and September

19, 2024, when Plaintiff has reason to believe that Mr. Snowhorn returned as both a Quantum Loophole director and as CEO.

115. Following Mr. Snowhorn's resignation, Quantum Loophole's Board of Directors has lost four other directors—leaving only one of the six directors that made up the Board before Mr. Snowhorn's resignation.

116. Mr. Wojtaszek, Mr. Snowhorn's successor as Chairman, and Mr. Daly both resigned on August 22, 2024, leaving the Board incapable of calling a meeting or achieving a quorum.

117. Shortly before TPG sent the Removal Notice to Quantum Loophole, Mr. Ty Newell—TPG's appointed director to the Quantum Loophole Board—also resigned.

118. Finally, [REDACTED], Quantum Loophole's only director local to Frederick, Maryland, resigned after Mr. Newell's resignation.

119. [REDACTED] resignation left the Quantum Loophole Board with one director at that time.

120. Only after its removal, Quantum Loophole now represents that it is improving its management and oversight with new independent directors and advisors. Even still, Quantum Loophole has not notified TPG that it has named sufficient directors to reach a quorum, despite the fact that TPG is also an investor

in Quantum Loophole. This representation is too little too late to correct the Quantum Loophole Board's dysfunction.

121. The net result of these resignations is that LandCo and FiberCo do not have, and for over a month have not had, a functioning counterparty and that, before TPG's termination of Quantum Loophole, the Project did not have a functioning Manager or Developer.

H. Catellus Development Corporation is Appointed De-Facto Developer

122. In June 2024, after numerous project delays, environmental violations, violations of private citizens' property rights, total work stoppages, and cost overruns that led to at least a [REDACTED] budget increase, TPG turned to a proven developer in Catellus to step in as TPG's representative to evaluate the current state of affairs of the Project, per TPG's rights under the Agreements. Quantum Loophole's repeated missteps meant that both Quantum Loophole and TPG knew that Catellus's help was needed. In fact, Quantum Loophole publicly announced and lauded Catellus's help with the Project.

123. After Catellus was on the ground for just over one month, TPG and Quantum Loophole agreed to have Catellus lead the development of the project. TPG's hand was forced by a chorus of disdain from actual and potential customers with Quantum Loophole's efforts. Those customers expressed their dissatisfaction with Quantum Loophole and their lack of confidence in Quantum Loophole's ability

to manage the Project, meet timelines, and come in under budget. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

124. Mr. Noteboom shed more light on the rationale to appoint Catellus as Developer and clarified that Quantum Loophole was not acting as the Developer and could not do so efficiently or effectively as of July 14, 2024:

With Catellus coming in as [D]eveloper, I believe that Quantum Loophole as [M]anager can operate more effectively and economically with a much smaller team of professionals. To speak frankly, there remain a number of Quantum Loophole employees that were hired due to a legacy reason that do not operate to the same levels of productivity as others—so this can also act as a clean up and re-establishment of a healthy base.

What [I’m] proposing reflects an end-result base team that can act as manager of QMaryland only (*because that’s all we are right now.*) Should we determine a broader strategy in the future, we can hire accordingly.

125. Mr. Noteboom continues to express support for Catellus. On August 2, 2024, as a result of the outcry from Frederick County and customers regarding Quantum Loophole, Quantum Loophole issued a public press release (which it has since scrubbed from the internet) stating it was “pleased to announce” that Catellus was appointed to lead development of the Project.¹⁸ And in an August 15, 2024

¹⁸ A true and correct copy of the press release is attached hereto as Exhibit 15.

email, Mr. Noteboom stated that Catellus had “stellar experience in developing [environmental] remediation projects nationally.” Even Mr. Noteboom—at that point in time effectively in charge of the Project because of Mr. Snowhorn’s absence—knew that change was necessary.

126. Catellus evaluated Quantum Loophole’s shortcomings and instituted robust project management practices to improve oversight and efficiency. Key stakeholders such as the administration of Frederick County, customers, and Project contractors and vendors have expressed a sense of optimism as a result of Catellus’s involvement.

127. Since July 14, 2024, Catellus has acted as the Developer. Catellus interfaces with contractors, restructured the Project budgets, conducts meetings with government entities, and instituted new project management oversight processes—including a system for accepting and rejecting change orders.

128. Catellus has also requested and obtained required approvals for any major Project decisions.

I. TPG Exercised Its Right to Terminate Quantum Loophole as Manager Under the LandCo Agreement, Development Agreement, and FiberCo Agreement

129. Despite Catellus’s involvement, Quantum Loophole’s continued involvement as official Manager and Developer was still imperiling the Project. On August 15, 2024, TPG put Quantum Loophole on notice of Quantum Loophole’s

numerous defaults under the LandCo, FiberCo, and Development Agreements. In that letter, TPG's counsel notified Quantum Loophole of reasons it was in default and of the beginning of the thirty-day notice and cure period required for certain of Quantum Loophole's breaches under the Agreements.

130. Despite receiving the notice of default letter, Quantum Loophole did not respond at all and made no effort to cure or mitigate the defaults.

131. Thus, on September 17, 2024, TPG notified Quantum Loophole of its termination of Quantum Loophole as Manager under both the LandCo and FiberCo Agreements and its termination of Quantum Dev as Developer under the Development Agreement. TPG requested Quantum Loophole's cooperation in the transition as required of Quantum Loophole under Section 9.6(a) of the LandCo and FiberCo Agreements ("At the request of Investor, the Operating Member will reasonably and in good faith cooperate with any efforts to obtain lender, banker and other third-party consents and approvals necessary in connection with such removal (including the transfer of signature authority over any bank accounts of the Company or the Project SPE)"). As the majority owner of both entities, TPG also appointed itself as Manager of LandCo and FiberCo, and appointed Catellus to the role of Developer.

132. On the same day, TPG notified vendors and necessary third parties of the Project's continuation of services and provided notice of its termination of Quantum Loophole as Manager of the LandCo and FiberCo Agreements.

133. Rather than cooperate as required by the contracts, Quantum Loophole went rogue, undercutting TPG's authority and TPG's efforts to get the Project on track. On September 20, 2024, Quantum Loophole sent letters to involved third parties stating, with no explanation or justification, that Quantum Loophole had *not* been terminated as Manager or Developer and claiming that Quantum Loophole continues to manage and control the Project. [REDACTED]

[REDACTED], and has cut TPG and Catellus out of key meetings with stakeholders, including [REDACTED] and MDE. Quantum Loophole has even revoked Project site access from a key land customer.

134. As recently as last week, Quantum Loophole even signed a roughly [REDACTED], purportedly acting as the Manager of LandCo and FiberCo without authority to do so, [REDACTED]. Not only does Quantum Loophole not have the authority to bind the Project, having been removed as Manager, [REDACTED]

[REDACTED]

135. This misconduct by Quantum Loophole has led to further chaos and confusion, leaving key parties unsure of who is the rightful Manager and with whom to conduct business, paralyzing the Project and jeopardizing its prospects of success.

136. Each of these steps is nothing more than tools for Quantum Loophole to hold TPG's solicited capital hostage as the Project fails to move forward due to Quantum Loophole's disruption and places the Project and TPG's investment's success at risk.

137. Therefore, Court intervention is necessary to resolve the uncertainty, confirm the propriety of TPG's termination of Quantum Loophole, and permit the competent parties—TPG and Catellus—to get the Project back on the path to success.

COUNT I
**(Declaratory Judgment Under 6 *Del. C.* §§ 18-110–11 And
10 *Del. C.* § 6501 That Plaintiff’s Removal Of Quantum Loophole
As Manager Of LandCo And FiberCo And Plaintiff’s Termination
Of The Development Agreement Were Valid)**

138. Plaintiff repeats and realleges all of the allegations above as if fully set forth herein.

139. This claim is brought pursuant to the terms of the LandCo, FiberCo, and Development Agreements, and Sections 18-110 and 18-111 of the Delaware Limited Liability Company Act and 10 *Del. C.* § 6501.

140. Section 18-110(a) empowers this Court to “hear and determine the validity of any . . . appointment [or] removal . . . of a manager of a limited liability company.” A manager includes “a person . . . [w]hether or not a member of a limited liability company, who, although not a ‘manager’ as defined in § 18-101 of this title, participates materially in the management of the limited liability company.” 6 *Del. C.* § 18-110(c).

141. Section 18-111 empowers this Court to “interpret, apply or enforce the provisions of a limited liability company agreement” as well as the “duties, obligations or liabilities among members or managers.” 6 *Del. C.* § 18-111.

142. Section 6501 empowers this Court to “declare rights, status and other legal relations whether or not further relief is or could be claimed.” 10 *Del. C.* § 6501.

143. Under 6 *Del. C.* § 18-101(12), Quantum Loophole was the Manager of LandCo and FiberCo, as it was initially appointed to the role of Manager pursuant to the LandCo and FiberCo Agreements.

144. The removal of Quantum Loophole as Manager of LandCo and FiberCo was and is a valid exercise of Plaintiff's rights under Section 9.6(a) of the LandCo and FiberCo Agreements.

145. The appointment of TPG as Manager of LandCo and FiberCo was and is a valid exercise of Plaintiff's rights under Section 9.6(a) of the LandCo and FiberCo Agreements.

146. Termination of the Development Agreement was and is a valid exercise of Plaintiff's rights under Section 9.6(d) of the LandCo Agreements and Sections 6.1 and 6.2 of the FiberCo Agreements.

147. An actual controversy exists between Plaintiff and Defendants relating to the validity, scope, or interpretation of the terms of the LandCo, FiberCo, and Development Agreements, including with respect to Plaintiff's September 17, 2024 removal of Quantum Loophole as Manager pursuant to Section 9.6(a) of the LandCo Agreement and Section 9.6(a) of the FiberCo Agreement and TPG's termination of the Development Agreement pursuant to Section 9.6(d) of the LandCo Agreement and Sections 6.1 and 6.2 of the Development Agreement.

148. The issues raised in this action are ripe for resolution. Defendants are refusing to comply with their obligations pursuant to Section 9.6(a) of the LandCo Agreement and Section 9.6(a) of the FiberCo Agreement by undermining and interfering with Plaintiff's attempts as Manager and Developer to manage and develop the Project.

149. Plaintiff has no adequate remedy at law.

150. Plaintiff is therefore entitled to a declaratory judgment that (i) as of September 17, 2024, Quantum Loophole was removed as Manager of LandCo and FiberCo for cause; (ii) as of that date, TPG became Manager of LandCo and FiberCo; (iii) as of that date, the Development Agreement was terminated; (iv) as of that date, Catellus became Developer of the Project; and (v) as Manager and Developer of the Project, TPG and Catellus have the sole right and authority to act with the powers of the Manager and Developer pursuant to the LandCo and FiberCo Agreements.

COUNT II
(Injunctive Relief Against Defendants)

151. Plaintiff repeats and realleges all of the allegations above as if fully set forth herein.

152. Defendants have interfered with the management of LandCo and FiberCo and the business affairs of the Project by misrepresenting to third parties

that Quantum Loophole is the Manager of LandCo and FiberCo, and that Quantum Dev is the Developer of the Project.

153. Defendants have refused to cooperate with Plaintiff's efforts to effectuate [REDACTED]

[REDACTED] of FiberCo, LandCo, and the Project generally.

154. Defendants have also purported to act as LandCo Manager and attempted to sign [REDACTED] on behalf of LandCo.

155. Defendants' actions constitute a violation of Section 9.6(a) of the LandCo Agreement and Section 9.6(a) of the FiberCo Agreement, each requiring the Operating Member to "reasonably and in good faith cooperate with any efforts to obtain lender, banker and other third-party consents and approvals necessary with such removal (including the transfer of signature authority over any bank accounts of the Company or the Project SPE)."

156. Plaintiff has no adequate remedy at law.

157. Therefore, Plaintiff is entitled to injunctive relief ordering Defendants to comply with their contractual requirements to cooperate in good faith with the transition and permanently restraining and enjoining Defendants from: (i) interfering with the management of LandCo and FiberCo and business affairs of the Project;

and (ii) taking any actions inconsistent with TPG's role as Manager of LandCo and FiberCo or Catellus' role as Developer of the Project.

COUNT III
(Breach Of Contract Against Defendants)

158. Plaintiff repeats and realleges all of the allegations above as if fully set forth herein.

159. The LandCo Agreement, FiberCo Agreement, and Development Agreement are valid and enforceable agreements.

160. Pursuant to Sections 6.1(b) of the LandCo Agreement and Section 6.1(b) of the FiberCo Agreement, Defendants are required to "conduct and direct the day-to-day activities of the Company in accordance with this Agreement and the approved Business Plan, the Pre-Development Budget, the Development Budgets and the Annual Budgets and consistent with the performance standard."

161. Defendants breached Section 6.1(b) of the LandCo Agreement and Section 6.1(b) of the FiberCo Agreement by making knowing misrepresentations, particularly with respect to redesigning the dewatering system and providing TPG with budget estimates, and by acting with gross negligence in day-to-day management of the Project, resulting in substantial delays and cost overruns.

162. Pursuant to Sections 9.6(a) of the LandCo Agreement and 9.6(a) of the FiberCo Agreement, Defendants are required to cooperate in good faith with the transition following their removal as Manager and Developer.

163. Defendants breached Section 9.6(a) of the LandCo Agreement and Section 9.6(a) of the FiberCo Agreement by, *inter alia*, misrepresenting to third parties their Manager and Developer status under the Agreements.

164. Pursuant to the Development Agreement, Defendants are required to adhere to the Industry Standard, which requires them to “perform the duties and undertake the responsibilities set forth in this Agreement in accordance with the degree of professional care, skill, judgement and diligence expected of developers regularly engaged with comparable projects, consistent with sound business practices.”

165. Defendants breached Section 6.1(c) of the Development Agreement by failing to adhere to the Industry Standard.

166. As a result of Defendants’ breaches of the LandCo, FiberCo, and Development Agreements as well as Defendants’ material misrepresentations regarding the FiberCo budget, Plaintiff is entitled to damages in an amount to be determined at trial.

167. Plaintiff is also entitled to attorneys’ fees incurred resulting from Defendants’ pursuit of this Action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Enter a status quo order in the form accompanying the [Motion for Order Maintaining the Status Quo] filed simultaneously with this Complaint;
- B. Enter an order for expedited proceedings to adjudicate promptly the identity of the Manager of LandCo and the Manager of FiberCo;
- C. Grant Plaintiff a declaration pursuant to 6 *Del. C.* §§ 18-110 and 18-111 and 10 *Del. C.* § 6501 stating that (i) as of September 17, 2024, Quantum Loophole was removed as Manager of LandCo and FiberCo for cause; (ii) as of that date, TPG became Manager of LandCo and FiberCo; (iii) as of that date, the Development Agreement was terminated; (iv) as of that date, Catellus became Developer of the Project; and (v) as Manager and Developer of the Project, TPG and Catellus have the sole right and authority to make all decisions relating to the Project;
- D. Impose injunctive relief ordering Defendants to comply with their contractual requirements to cooperate in good faith with the transition and permanently restraining and enjoining Defendants from: (i) interfering with the management of LandCo and FiberCo and business affairs of the Project; and (ii) taking any actions inconsistent with TPG's role as Manager of LandCo and FiberCo or Catellus' role as Developer of the Project;

E. Grant Plaintiff monetary damages in an amount to be determined at trial for its breach of the LandCo and FiberCo Agreements;

F. Award Plaintiff its fees, costs, and expenses, including attorneys' fees and costs, incurred in connection with this Action; and

G. Grant Plaintiff any other relief the Court deems just and proper.

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Dated: September 26, 2024

/s/ Michael A. Barlow

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