

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

COMMISSIONERS OF CAMBRIDGE,

*

Plaintiff,

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v.

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Case No. C-09-cv-24-000146

CAMBRIDGE WATERFRONT
DEVELOPMENT, INC., et al.,

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Defendants.

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**MEMORANDUM IN SUPPORT OF CWDI DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants, Cambridge Waterfront Development, Inc. (“CWDI”) and CWDI Holdings, LLC (“Holdings”) (together “CWDI Defendants”), pursuant to Maryland Rules 2-311 and 2-501, submit this Memorandum of Law in support of their Motion for Summary Judgment¹ on Plaintiff, Commissioners of Cambridge’s (“City”), First Amended Complaint (“FAC”).

INTRODUCTION

Six years ago, the political leaders of this City and Dorchester County (“County”), in a laudable display of wisdom, entrusted control over efforts to develop the Cambridge waterfront to CWDI. They did so in recognition of the critical importance of this development to the community, and the inefficiencies and risks inherent in leaving the project in the hands of ever-changing political bodies that lack the development experience necessary to move the project forward—inefficiencies that had, for too long, delayed the project. And so, they conceived of CWDI, an entity with

¹ Although a Motion for Summary Judgment at this posture (before the CWDI Defendants have been served) is uncommon, the existence of this action is a threat to multiple, time-sensitive transactions. The CWDI Defendants have no choice but to seek immediate resolution of the City’s baseless claims. The longer this action lingers, the more likely it is to derail years of progress. Having now appeared, Defendants will also promptly file a response to the FAC.

continuity, independence, and experience the City and County lack, to finally shepherd the project through to completion.

Their concept worked. Under the guidance of its Board of Directors and Executive Director, CWDI is making meaningful progress in developing the waterfront consistent with guiding principles that will ensure the project benefits the local community. CWDI commissioned a hotel feasibility study and issued requests for developer proposals. After months of confidential negotiations, CDWI is ready to sign an agreement with a hotel developer and announce the deal publicly. And, as was always intended by all stakeholders, CWDI is ready to convey to Defendant Yacht Maintenance the parcel of property it leases, clearing the way for a \$25 million investment in Cambridge's working waterfront and creating 30 new jobs. CWDI obtained \$2.7 million in funding from the federal and State governments for development of a promenade that extends throughout Cambridge Harbor Phase I. Additionally, CWDI has demolished all of the existing structures and hardscape, extended existing roadbeds to define the development parcels, and advanced public infrastructure and amenity design in preparation for a second request for developer proposals for Cambridge Harbor Phase II. Finally, CWDI has explored proven options for funding of public improvements, and advised all partners—the City, State, and County—of these advances.

This lawsuit threatens to halt and even unwind CWDI's progress. It is misguided and baseless, not to mention a waste of taxpayer funds. There can be little doubt that the City's intent in filing this action is to irreparably damage the prospect of CDWI closing two pending transactions and to undermine the fundamental purposes for which the City and County formed CDWI. The City's claims are plainly pretextual. The FAC does not take issue with the substance of either transaction. Instead, the City's eleventh-hour request for Court intervention is the product of the well-publicized frustrations of the recently-departed City Manager. Those frustrations have nothing to do with the City's new feigned concerns over CWDI's RFP process, and everything to do with the

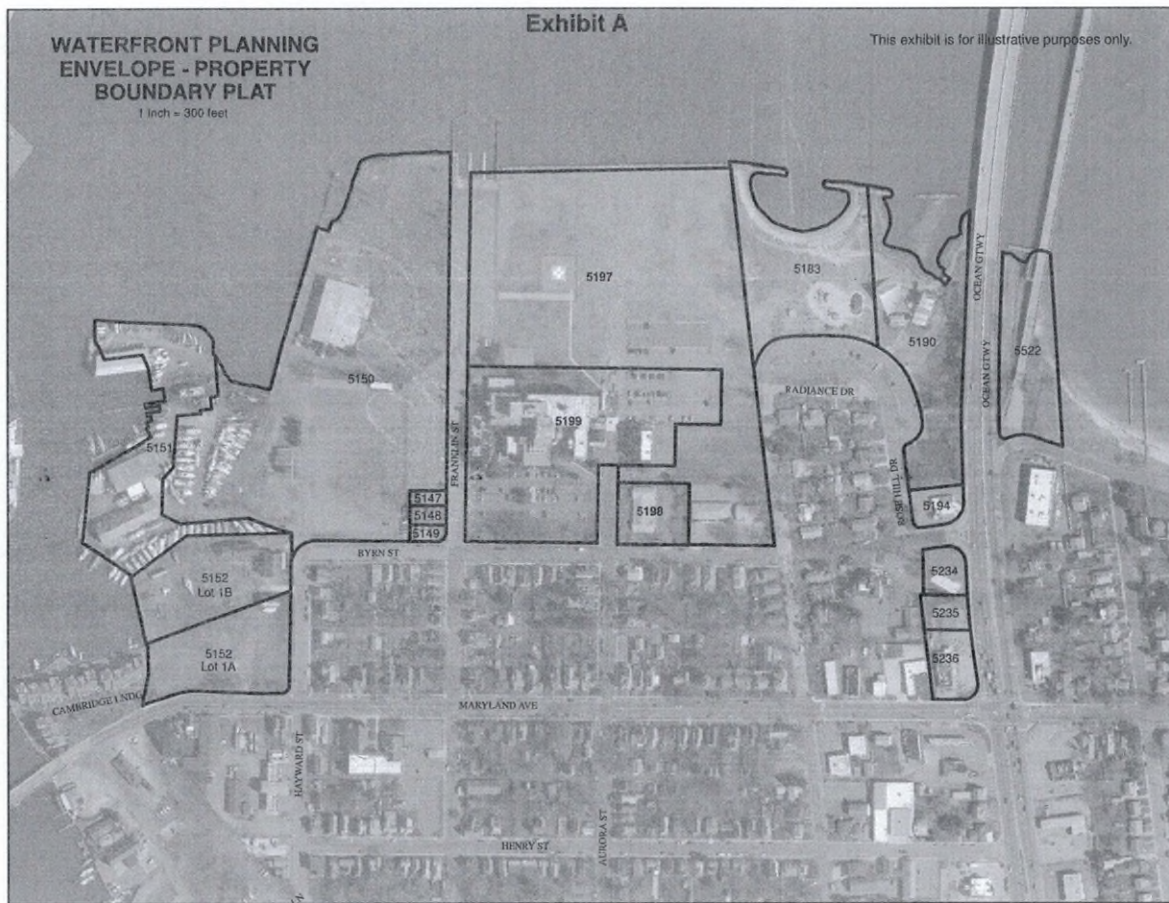
City Manager's inability to control an entity that, **by design**, is independent from the City. CWDI's separation from political process was established before Mr. Carroll was hired in April 2022 as City Manager. Mr. Carroll even participated in clarifying that insulation through June 2022 amendments to CWDI's charter. He later had a change of heart and, unhappy with his inability to control the development process, has sought to undermine CWDI at every turn for the last eight months.

The City's claims are based on a clear misstatement of facts. The City contends that CWDI did not engage in an RFP process. But it did. And it involved and updated the City every step of the way. Indeed, over the last two years, the City Manager and City Commissioners were privy to dozens of communications describing in real-time CWDI's RFP process and the status of the very transactions it now claims it to have had no knowledge of. So that CWDI can continue in its mission, it respectfully requests that this Court promptly enter summary judgment in its favor on the FAC.

STATEMENT OF UNDISPUTED FACTS

Since 1992, various stakeholders have sought to redevelop certain properties along and adjacent to the Cambridge waterfront extending from the Choptank River Bridge Fishing Pier/Gateway to the mouth of Cambridge Creek ("Cambridge Waterfront" or "Cambridge Harbor"), including many outlined in the boundary plat² below. (Ex. A, Narr Aff. ¶ 6).

² This Boundary Plat is Exhibit A to the Port Property Transfer Agreement attached as Exhibit 1 to the City's original Complaint. Today, Defendant Holdings holds title to Parcel 5150 (known as the "Port Property"), the subject of this action. (Ex. A, Narr Aff. ¶ 25; Ex. 19, 2022-01-26 Port Property Deed (Parcel 5150)). Defendant Cambridge Shipyard Facility, Inc. d/b/a Yacht Maintenance Company ("Yacht Maintenance" or "YM") holds title to Parcel 5151, shown in the above plat to the immediate left of the Port Property. (Ex. A, Narr Aff. ¶ 10; Ex. 4, 2016-03-08 Yacht Maintenance Deed (Parcel 5151)). The County also owns Parcel 5183 (hence its significant interest in the formation of CWDI). (Ex. A, Narr Aff. ¶ 11; Ex. 1, 2005-05-06 Confirmatory Deed (Parcel 5183)).



Toward that end, the community formed a non-profit grassroots organization, Sailwinds Park, Inc., (“Sailwinds”) in 1992. (Ex. A, Narr Aff. ¶ 7). Sailwinds worked in partnership with the State, County, City, and Dorchester General Hospital to develop an event hall, waterfront promenade, public beach, park, playground and visitor’s center on Parcels 5150, 5197, 5183 and 5190. (Ex. A, Narr Aff. ¶ 8). Progress toward the community’s ultimate vision—a mixed-use development (including a hotel) across the entire waterfront to draw tourism to the area and allow community water access, while maintaining a working waterfront—was slow-going, in part due to changes in public administrations, protracted efforts to reach agreement for a hotel opportunity with Hyatt, an economic downturn, and challenges in re-locating healthcare facilities from and demolishing a hospital on Parcels 5197 and 5199. (Ex. A, Narr Aff. ¶ 9).

I. The City's Acquisition of the Port Property.

In early 2011, the State of Maryland (“State”), through the Department of Transportation, issued a request for qualifications for redevelopment of the Port Property (Parcel 5150), which the State then owned through the Maryland Port Authority. (Ex. A, Narr Aff. ¶¶ 12-13; Ex. 2, 2014 STA). After the State selected a developer, Jerome J. Parks Companies, Inc. (“Parks Companies”), to enter into negotiations and discussions, the State and the City determined that the project was more properly characterized as a local one over which the City should have control. (Ex. 2, 2014 STA). In March 2014, the State and City entered into a Transfer Agreement (the “State Transfer Agreement” or “STA”) pertaining to the 11.826 acre Port Property. (Ex. 2, 2014 STA; *see also* FAC ¶ 12). On August 15, 2014, the State recorded a Declaration of Covenants against the Port Property (the “Declaration of Covenants”), and then issued a quitclaim deed transferring ownership of the Port Property to the City. (Ex. A, Narr Aff. ¶¶ 12-13; Ex. 5, 2014-08-15 Decl. of Covenants; Ex. 2, 2014-08-15 Port Property Quitclaim Deed; *see also* FAC ¶ 13).

The Declaration of Covenants imposes restrictions on subsequent redevelopment of the Port Property, including: (i) a requirement that any redevelopment “preserve public access to and along the [Port] Property’s waterfront with park or open space,” (ii) a prohibition against any “single-use” development (which prohibition expressly notes that it does not prevent subdivision of the Port Property into single-use lots) (iii) a requirement the City approve a comprehensive redevelopment plan prior to any redevelopment; and (iv) a requirement that the Port Property be redeveloped within 15 years. (Ex. 5, 2014-08-15 Decl. of Covenants). The 2014 State Transfer Agreement also provides for the City’s continued exclusive negotiations with the Parks Companies toward a Master Developer Agreement for the Port Property. (Ex. 4, 2014 STA at Recitals p. 2). The City did not renew or extend Jerome J. Parks Companies, Inc.’s exclusive negotiating rights nor did

the City negotiate an agreement with any other developer and, by 2018, had made little progress in redeveloping the Port Property. (Ex. A, Narr Aff. ¶ 14).

II. Formation of CWDI.

On April 2, 2018, the City and Dorchester County (the “County”), entered into a Memorandum of Understanding in connection with ongoing efforts to redevelop the Cambridge Waterfront. (Ex. A, Narr Aff. ¶ 15; Ex. 7, 2018-04-02 MOU; *see also* FAC ¶7). The MOU cites its purpose as “collaboration and cooperation in the comprehensive redevelopment . . . of the Cambridge Waterfront,” referencing in its recitals the parties’ “common goals in the redevelopment and connectivity” of the subject properties. (Ex. 7, 2018-04-02 MOU at p. 1; *see also* FAC ¶ 7). To accomplish their long-term goals and objectives, the City and County agreed to “explore” and “collaborate” to form an “independent” development entity under the joint auspices of the City and County” with “broad” authority and wherewithal to organize, oversee and implement the public-private partnership envisioned for the redevelopment of the Cambridge Waterfront.” (Ex. 7, 2018-04-02 MOU at Recital No. 4 & ¶ 2 (emphasis added)). A subsequent, undated addendum to the MOU reflects the City’s obligation to “determine the process and approvals necessary for the transfer or assignment [of the Port Property] to the Development Entity.” (Ex. 7, MOU at Addendum ¶ 2(A)).

The contemplated entity, CWDI, was incorporated as a non-stock not-for-profit Maryland corporation in July 2018. (Ex. A, Narr Aff. ¶ 16; Ex. 8, 2018-07-01 CDWI Articles of Incorporation). CWDI’s Articles of Incorporation, as amended (the “charter”), note the MOU as the “genesis” of the entity. (Ex. B, Leonard Aff. ¶ 73; Ex. 26, 2022-06-23 CWDI charter). The charter further provides that “[t]he activities to be carried on and promoted by the Corporation are to relieve the burden of the government by,” *inter alia*, “promoting and facilitating the redevelopment” of the Cambridge Waterfront “and the supporting public infrastructure to serve the

needs of the citizens of the City and County.” (*Id.* Article IV(a)). CWDI has the power to (i) “[r]eceive, administer, raise, borrow, and expend funds”; (ii) “[h]old, operate, acquire, **develop**, maintain, and sell and otherwise convey real and personal property;” (iii) “[p]artner with other organizations, governmental agencies and businesses”; (iv) “[e]nter into and perform contracts; and (v) “Do any and all things necessary or appropriate to the foregoing”. (*Id.*, Article IV(b))

CWDI’s affairs are “managed under the direction of a Board of Directors which shall exercise all corporate powers except as conferred on or reserved to the member or members of the Corporation by law or the Corporations’ Bylaws. (*Id.*, Article VI (a)). Under CWDI’s original Articles of Incorporation, of its seven directors:

- Two (2) represented the City and were appointed by the City Council;
- One (1) represented the County and was appointed by the County Council,
- One (1) represented the State and was appointed by the Governor;
- One (1) represented Sailwinds Park, Inc., was a member of its board of directors, and was agreed to by the City Council and the County Council; and,
- Finally, the incumbent City and County Managers (2) were each *ex-officio* voting directors.

(Ex. 8, 2018-07-01 CWDI Articles of Incorporation at Article IV(b)). Under CWDI’s Amended and Restated Articles, of its seven directors:

- Three (3) are appointed by the City Council,
- Two (2) are appointed by the County Council,
- One (1) is appointed by the Governor,
- One (1) is appointed by the other members of the CWDI Board; and
- All references to directors “representing” the City, County, or State have been removed.³

³ CWDI amended its Articles and Bylaws on June 23, 2022. (Ex. B, Leonard Aff. ¶ 73). Notably, at that time, then-City Manager Tom Carroll was an *ex-officio* voting member of the Board. (Ex. B, Leonard Aff. ¶ 73). Mr. Carroll failed to attend the meeting at which the Amended Articles and Bylaws were approved and their execution and filing authorized. (Ex. B, Leonard Aff. ¶ 74; Ex. 24, 2022-06-23 CWDI Board Mtg. Minutes). However, Mr. Carroll attended the prior, May 26, 2022 Board Meeting at which Mr. Leonard “provided an overview of the proposed changes to the CWDI Bylaws for the board membership and selection process,” and indicated that the proposed changes had been presented to the City and County Councils without comment. (Ex. B, Leonard Aff. ¶ 75;

(Ex. 26, 2022-06-23 charter, Article VI(b)). CWDI's Amended Bylaws further provide that no City appointee shall be an employee or duly elected official of the City, and that no County appointee shall be an employee or duly elected official of the County. (*Compare* Ex. 9, 2018-09-13 CWDI Bylaws *with* Ex. 25, 2022-06-23 CWDI Bylaws at Section 3.03).

CWDI's charter thus specifically and intentionally insulates the development process from the political process. (Ex. B, Leonard Aff. ¶ 76). The four-year terms for Board members allow for stability without political exposure. (*Id.*). While this action concerns the Port Property in particular, the State and County have significant interests in the success of Cambridge Harbor. (*Id.* ¶ 77). The State has been a major source of funding for waterfront projects, including improvements the City made to the Port Property before conveying it to CWDI. (*Id.*; *see also* Ex. 2, STA at p. 3). As noted above, the County owns Parcel 5183. (Ex. B, Leonard Aff. ¶ 77, Ex. 1, 2005-05-06 Confirmatory Deed). The County also has been a significant source of funding for waterfront projects. (Ex. B, Leonard Aff. ¶ 77). As a result, governance of CWDI is not entrusted solely to the City but shared among three stakeholders, two of whom noticeably do not join the City in bringing this action. (*Id.*)

III. CWDI Holdings' Acquisition of the Port Property

In November 2019, the City and CWDI entered into a Letter of Intent regarding transfer of ownership of the Port Property from the City to CWDI. (Ex. A, Naar Aff. ¶ 19; Ex. 11, 2019-11-12 LOI; *see* FAC ¶ 14). Over the course of 2020, CWDI conducted due diligence, and the City and CWDI negotiated a transfer agreement; however, that agreement was not executed before the then-City Commissioners' terms ended in January 2021. (Ex. A, Naar Aff. ¶ 20; Ex. 12, 2021-06-23 PPTA at Recital No. 6; *see* FAC ¶ 16). And so, in 2021, negotiations began anew with the newly elected Mayor and City Commissioners. (Ex. 12, 2021-06-23 PPTA at Recital No. 6) Finally, on June 23,

Ex. 22, 2022-05-26 CWDI Board Mtg. Minutes). After group discussion, a motion was made and approved for the changes to be made to the Bylaws; Mr. Carroll seconded the motion and it passed 5/0. (Ex. B, Leonard Aff. ¶ 75; Ex. 22, 2022-05-26 CWDI Board Mtg. Minutes).

2021, the City and CWDI entered into a Transfer Agreement for the Port Property (Parcel 5150) (“Port Property Transfer Agreement” or “PPTA”). (Ex. 12, 2021-06-23 PPTA) Under Section 6, transfer of the Port Property from the City to CWDI was subject to review and approval by the State, as well as the terms and conditions of (i) the State Transfer Agreement, (ii) the Declaration of Covenants, and (iii) Exhibit C to the PPTA, which addressed finalizing a Master Plan and preparing and issuing a Request for Proposals (“Developer RFP”) (addressed in greater detail below). (*Id.* at § 6). As to any subsequent transfer of the Port Property, “no portion of the property may be transferred unless the proposed use of the subject parcel(s) is ‘shovel ready’ (with permits, financing and groundbreaking within 90 days of closing).” (*Id.* at § 6(e)).

Although the Port Property Transfer Agreement contemplates a closing date on or before June 30, 2021 (*id.* at §14), the parties executed two addenda extending the closing date first to December 31, 2021, and then to January 31, 2022. (Ex. A, Naar Aff. ¶ 21; Ex. 13, 2021-11-15 First PPTA Addendum; Ex. 16, 2021-12-29 Second PPTA Addendum). In the interim, CWDI and the City had agreed that CWDI would create a wholly owned limited liability company to hold title to the Port Property. (Ex. A, Naar Aff. ¶ 22). Toward that end, on December 14, 2021, CWDI formed Holdings, and on December 29, 2021, CWDI, the City, and Holdings executed an Assignment of Transfer Agreement (Port Property), by which CWDI assigned its rights under the Port Property Transfer Agreement to Holdings and by which Holdings assumed the same, such that CWDI and Holdings would be co-obligors under the Port Property Transfer Agreement moving forward. (Ex. A, Naar Aff. ¶¶ 22-23; Ex. 14, 2021-12-14 Holdings Articles of Org.; Ex. 17, 2021-12-29 PPTA Assignment)

In connection with obtaining the necessary State approvals to transfer the Port Property, the State, the City, CWDI, and Holdings also entered into a January 26, 2022 First Amendment to the 2014 [State] Transfer Agreement (the “State Transfer Amendment”). (Ex. A, Naar Aff. ¶ 24; Ex. 18,

2022-01-26 State Transfer Amendment). The State Transfer Amendment noted the City's intent to convey the Port Property to Holdings and CWDI's intent, post-conveyance, "to select one or more developers and enter into an MDA or other definitive agreement(s)" which would "provide for disposition of the [Port] Property to the developer(s) to effectuate the development of the [Port] Property in accordance with the [State Transfer] Agreement." (*Id.* at Recital No. 4). Among other provisions under the State Transfer Amendment, "failure of CWDI to transfer all portions of the [Port] Property (other than the Deep Wharf and Promenade portion . . .) to one or more developers by December 31, 2036" will result in all right, title, and interest in such portions of the property "immediately, automatically, and completely revert[ing] to the City." (*Id.* at ¶ 7). On January 26, 2022, the City conveyed title to the Port Property to Holdings. (Ex. A, Narr Aff. ¶ 25; Ex. 19, 2022-01-26 Port Property Deed).

IV. Yacht Maintenance's Existing Relationship to the Port Property

As noted in both the Port Property Transfer Agreement and the Deed conveying the Port Property to Holdings, approximately 2.6 acres of the Port Property (the "Shipyard") is leased by Defendant Yacht Maintenance. (Ex. B, Leonard Aff. ¶ 6, Ex. 12, 2021-06-23 PPTA § 2(c); Ex. 19, 2022-01-26 Port Property Deed at p. 394). Specifically, on February 26, 2016, the City entered into a Lease Agreement (the "Shipyard Lease") with Yacht Maintenance Company, Inc., and its intended and approved assignee, Defendant Cambridge Shipyard Facility, Inc. (Ex. B, Leonard Aff. ¶ 7; Ex. 3, 2016-02-26 Shipyard Lease). The Shipyard Lease begins with a series of recitals pertinent to the instant dispute:

WHEREAS, in connection with the operation of the Lessee's business which is a boatyard and marina, Lessee had been leasing for approximately the past thirty (30) years 1.5 acres of unimproved land, more or less, . . . from the State of Maryland . . . and more recently . . . from [the City]; and in the interest of offering more efficient marina and boatyard services, Lessee is desirous of expanding such demised premises to approximately two (2) acres as identified on Exhibit A attached hereto (the "Demised Premises"), provided that Lessee undertakes Expanded Operations . . . to increase maritime economic development for the City of Cambridge.

WHEREAS, approximately one-third (1/3) of the operations of the Lessee's boatyard and marina business occurs on the Demised Premises and **the parties hereto recognize that Lessee's ongoing use and occupation of the Demised Premises is integral to the long-term sustainability of Lessee's boatyard and marina operations;**

WHEREAS, Lessor and Lessee agree that for purposes of local maritime economic development, **it is in the best interests of the citizens of the City of Cambridge and the best interests of the employees and independent contractors who are able to obtain employment from or through Lessee's boat yard and marina operations, that the commercial maritime operations of the Lessee continue as a Going Concern;**

WHEREAS, Lessor and Lessee agree that for purposes of re-development of the area of the City of Cambridge known as the Cambridge Marine Terminal/Port Property, **is in the best interests of the citizens of the City of Cambridge that the commercial maritime operations of the Lessee continue;**

(*Id.* at Recitals (emphasis added)). The initial term of the Shipyard Lease is 15 years (i.e., through February 28, 2031), and it grants Yacht Maintenance an option to extend the term for an additional 15 years on nine months' written notice. (*Id.* at § 2). On August 9, 2019, the City entered into an Addendum to the Shipyard Lease with Yacht Maintenance, adding an additional .6 acres of land to the Demised Premises thereunder. (Ex. B, Leonard Aff. ¶ 8; Ex. 10, 2019-08-09 Shipyard Lease Addendum).

As noted above, the Shipyard portion of the Port Property leased by Yacht Maintenance is adjacent to a parcel that Yacht Maintenance already owns outright (Parcel 5151). (*See* Ex. 4, 2016-03-08 Yacht Maintenance Deed). Regarding the prospect of Yacht Maintenance acquiring Shipyard, the City expressly acknowledged in the PPTA, that "Cambridge Yacht Maintenance [has] expressed interest in locating to a portion of the [Port] Property and that such use [is] expressly permitted under the approved Master Plan." (Ex. 12, 2021-06-23 PPTA at § 8(e)) The City assigned the Shipyard Lease to CWDI via an Assignment of Lease Agreements effective December 17, 2021. (Ex. B, Leonard Aff. ¶ 9; Ex. 15, 2021-12-17 Shipyard Lease Assignment).

V. CWDI's Post-Acquisition Development Efforts.

Exhibit C to the Port Property Transfer Agreement addresses finalizing a Master Plan and preparing and issuing a Request for Proposals (“Developer RFP”) for the Waterfront Planning Envelope (which includes properties other than the Port Property). (Ex. 12, 2021-06-23 PPTA at Ex. C). Specifically, it provides that CWDI will finalize the Draft Master Plan attached thereto as Exhibit B. (*Id.* ¶ 1). As for the Developer RFP process, Exhibit C gives CWDI the leeway to seek a “master developer and/or combination of individual project developers for all or portions of the Waterfront Planning Envelope” (excluding any portions dedicated to public use and amenities). (*Id.* ¶ 2). It provides for CWDI to use “best efforts to prepare and issue said Developer RFP on or before July 15, 2021.” (*Id.* ¶ 3). And it contemplates that the RFP will be open for 120 days, after which “CWID shall have the right in its sole and absolute discretion to select a developer(s) and to negotiate in good faith a definitive agreement for all or such portion of the Waterfront Planning Envelope.” (*Id.*)

A. CWDI Finalizes a Concept Site Plan.

Once the Port Property was transferred to Holdings, CWDI worked with BCT Design Group to finalize the Draft Master Plan (which was subsequently referred to as the Concept Site Plan). (Ex. B, Leonard Aff. ¶ 10). This process took several months as CWDI opened the existing site plan to a 30-day public comment period with a survey for community members to complete. (Ex. B, Leonard Aff. ¶ 11; Ex. 20, 2022-04-08 Concept Plan Public Input Notice). The survey was announced via press release and posted on BCT Design Group’s website so they could independently receive and report the survey results to CDWI. (Ex. B, Leonard Aff. ¶ 12). With respect to the Port Property, the resulting final Concept Site Plan shows a boutique hotel on Parcel B, as well as a “locally owned shipyard adjacent to operating waterfront” and a “locally owned shipyard expansion” in the 4.1 acre

area including and immediately adjacent to the portion of the Port Property currently leased to Yacht Maintenance:



(Ex. B, Leonard Aff. ¶ 14; see also Ex. 28, General RFP at pp. 24-25).

B. CWDI Issues a Request for Proposals from Developers, Which it then Supplements With a Request for Hotel-Specific Proposals.

On July 15, 2022, CWDI issued an RFP based on this Concept Site Plan, entitled “Request for Expressions of Interest for Redevelopment” (“REOI” or the “General RFP”). (Ex. B, Leonard Aff. ¶ 14; Ex. 28, 2022-07-15 General RFP). The General RFP seeks proposals from developers—defined as “Master Developers, Single Project Developers, Investors, Businesses, and Organizations that have an interest in being part of the Cambridge Harbor project”—for the entire development area, concept parcels, or subdivided concept parcels. (*Id.* at p. 6, 13). The General RFP includes the Concept Site Plan shown above, describes developer responsibilities and submission requirements,

and sets a submission deadline of November 15, 2022. (*Id.* at p. 16-17, 20-22, 24-25). It also outlines CWDI's selection process and notes CWDI's intention to treat submissions as confidential. (*Id.* at p. 23). While the General RFP was open, CDWI marketed it extensively both directly to potential respondents and through its mission partners. (Ex. B, Leonard Aff. ¶ 15; Ex. 29, 2022-07-15 General RFP Press Release). It treated the General RFP process as a collaborative and interactive one, including by engaging with prospective respondents through inbound and outbound site visits. (Ex. B, Leonard Aff. ¶ 16).

On August 2, 2022, roughly two weeks after it issued the General RFP, CWDI had RevPAR International, a consultant specializing in hospitality advisory and asset management, issue a supplemental, hotel-specific RFP entitled "RFI for Hotel Development Opportunity 1.15 Acre waterfront Site within Proposed Mixed-Use Development Cambridge, MD" (the "Hotel RFP" and, together with the General RFP, the "RFPs"). (Ex. B, Leonard Aff. ¶ 17; Ex. 31, 2022-08-02 Hotel RFP). CWDI issued the Hotel RFP alongside the General RFP for the purpose of providing additional information important to prospective hotel developers, to attract the strongest responses possible. (Ex. B, Leonard Aff. ¶ 18). CWDI worked with RevPAR International and Network Realty Partners to develop the Hotel RFP, including by commissioning a hotel feasibility study for the site. Like the General RFP, the Hotel RFP's submission deadline was November 15, 2022. (Ex. B, Leonard Aff. ¶ 19).

During this period, CWDI kept the City fully apprised of its efforts to finalize the Concept Site Plan and issue the RFPs. (Ex. B, Leonard Aff. ¶ 20). Specifically, in January 2022, CWDI's executive director, Matt Leonard, began sending periodic memoranda (roughly every two weeks) to CWDI's Board of Directors which, at the time, included Interim City Manager David Deutsch, and by April 23, 2022 then-City Manager, Tom Carroll. (Ex. Leonard Aff. ¶ 21). Even after CWDI's Articles of Incorporation and Bylaws were revised (with the support of Mr. Carroll) such that the

City Manager no longer held a CWDI Board seat, Mr. Leonard continued to include Mr. Carroll on the memoranda in the interest of transparency. (Ex. B, Leonard Aff. ¶ 22).

The April 23, 2022 memorandum, which was sent to then-City Manager Tom Carroll (among others), states:

Our current concept site plan is halfway through its 30-day public comment period . . . BCT will deliver the results to us within two weeks after that date. We'll evaluate those at our May 26th Board Meeting, and then have BCT adjust the final plan ready for our RFP release on or about June 1st. The RFP will close 120 days after release on or about September 30.

(Ex. B, Leonard Aff. ¶ 23; Ex. 21, 2022-04-23 Exec. Memo to CWDI Board). The June 4, 2022 memorandum provides an update:

The concept site plan has been revised based on community input and in consultation with BCT and NRP. Final draft of the RFP nears completion. It will include the updated site plan and new brand when finally selected. The Planning Committee will focus on completing the RFP so it can be issued ASAP in June.

(Ex. B, Leonard Aff. ¶ 24; Ex. 23, 2022-06-04 Exec. Memo to CWDI Board). The July 2, 2022 memorandum explains: "BCT is adding graphics and images to the RFP/REOI. We are working toward a July 15th issue date." (Ex. B, Leonard Aff. ¶ 25; Ex. 27, 2022-7-02 Exec. Memo to CWDI Board). And the July 16 memorandum confirmed the RFP had "been issued directly to nearly 200 email addresses for media developers, mission partners, and prospects. Out of those we anticipate it being in 2,000 inboxes by Monday." (Ex. B, Leonard Aff. ¶ 26; Ex. 30, 2022-07-16 Exec. Memo to CWDI Board). The August 13, 2022 memorandum reports: "A separate REOI tailored to and aimed directly at hotel developers has been issued with our hotel consultant RevPAR managing inquiries in conjunction with Network Realty Partners." (Ex. B, Leonard Aff. ¶ 27; Ex. 32, 2022-08-13 Exec. Memo to CWDI Board). The August 27, 2022 memorandum: "The separate Hotel REOI issued through RevPAR has generated interest among 20+/- hotel developers/investors/operators." (Ex. B, Leonard Aff. ¶ 28; Ex. 33, 2022-08-27 Exec. Memo to CWDI Board). **The foregoing memoranda (and others) were sent directly to then-City Manager Tom Carroll.**

Both RFPs closed on November 15, 2022. (Ex. B, Leonard Aff. ¶ 29). On November 22, 2022, CWDI issued a press release summarizing the proposals, noting that it had “received 27 responses from various potential partners able to help plan, develop and activate Cambridge Harbor. In broad categories, these include 3 Developers, 1 Investor -Developer Team, 1 Developer-Builder Team, 1 Marina Developer-Operator, 5 General Contractors, 3 Designers, 1 Marine Contractor, 1 Property Manager, 2 Vendor/ Subcontractors, and 9 Site Activation Entities.” (Ex. B, Leonard Aff. ¶ 30; Ex. 38, 2022-11-22 RFP Press Release). The press release also summarizes the geographic scope of the respondents and CWDI’s plan to further engage and evaluate respondents through Q1 2023, and to make final selections and terms for partnerships in Q2 2023. (*Id.*)

CWDI also continued providing updates to the City after the RFPs closed. Mr. Leonard’s December 17, 2022 report, which was sent to City Manager Tom Carroll, notes that CWDI was “more thoroughly engaging REOI respondents whose abilities align with [its] earliest project development phases.” (Ex. B, Leonard Aff. ¶ 31; Ex. 40, 2022-12-17 Exec. Memo to CWDI Board).

C. Yacht Maintenance’s RFP Response and Subsequent Negotiations.

Although CWDI was already fully aware (as was the City) that Yacht Maintenance desired to invest substantially in an expansion of its operations, on October 23, 2022, Yacht Maintenance submitted a formal response to the General RFP. (Ex. B, Leonard Aff. ¶ 32; Ex. 35, 2022-10-23 YM RFP Response). It outlines Yacht Maintenance’s proposed plan to expand its business by building concrete piers to support an 850 metric ton capacity travel lift, which would allow it to handle a multitude of vessels utilizing the deep water that Cambridge, Maryland has to offer as the second deepest port in Maryland, as well as to create jobs and ensure that the working waterfront would continue to provide jobs for generations to come. (*Id.*) It identifies the craftsmen, engineering, construction, and civil construction firms it will work with. (*Id.*) It proposes a purchase of the Shipyard in order to secure financing, and discloses the bank and loan officers with whom it will

work. (*Id.*) Additionally, it expresses interest in a future use or acquisition of an adjacent 1.5 acres of the Port Property for an inside work building and office. (*Id.*)

Once again, CWDI was transparent as to its intentions regarding Yacht Maintenance's proposal. In both an October 24, 2022 presentation to the City Council and a December 6, 2022 presentation to the City's Planning and Zoning Commission CWDI presented a Site Concept Plan that had been updated since the RFP was issued to reflect a "Proposed Yacht Maintenance Company Expansion" in the 2.6 acre Shipyard area of the Port Property and the 1.5 acre area immediately adjacent thereto. (Ex. B, Leonard Aff. ¶¶ 33-34; Ex. 36, 2022-10-24 City Council Presentation at p. 41; Ex. 39, 2022-12-06 P&Z Presentation at p. 10). CWDI also routinely updated the City on the status of negotiations to convey the Shipyard to Yacht Maintenance through Mr. Leonard's periodic memoranda to the CWDI Board, **which were also sent to City Manager Tom Carroll**. (Ex. B, Leonard Aff. ¶ 35). For example, on January 27, 2023, Mr. Leonard reported "We are moving toward sale of property to Yacht Maintenance. Closing should occur in Q1 for 2.6 acres, and Q2 for an additional 1.5 acres. We will net \$875,000 for both parcels." (Ex. B, Leonard Aff. ¶ 36; Ex. 41, 2023-01-27 Exec. Memo to CWDI Board). Mr. Leonard's memoranda in February, March, April included nearly identical updates, simply pushing back the anticipated closing dates (Ex. B, Leonard Aff. ¶¶ 37-39; Exs. 43, 44 and 45, 2023-02-25, 2023-03-11, and 2023-04-22 Exec. Memos to CWDI Board).

Throughout this period, CWDI also disclosed the contemplated Yacht Maintenance transfer to the public. The updated Site Concept Plan reflecting the proposed Yacht Maintenance expansion was included in a November 8, 2022 presentation to the Lion's Club, a February 2, 2023 presentation to the Rotary Club, and an April 25, 2023 presentation to the Maryland Economic Developers Association Young Professionals, and Maryland's Secretary of the Department of Housing and

Community Development. (Ex. B, Leonard Aff. ¶¶ 40-42; Ex. 37, 2022-11-08 Lion's Presentation; Ex. 42, 2023-02-02 Rotary Presentation; Ex. 46, 2023-04-25 Presentation).

Consistent with all of these disclosures, on July 14, 2023, Holdings entered into a Contract of Sale with Yacht Maintenance (the "YM Sale Agreement"). (Ex. B, Leonard Aff. ¶ 43; Ex. 48, 2023-07-14 YM Sale Agreement). Under the YM Sale Agreement, Yacht Maintenance agreed to purchase the 2.6 acre Shipyard portion of the Port Property for a purchase price of \$600,000. (*Id.* at ¶¶ 1, 2). The sale is subject to certain contingencies, with the date of settlement (i.e., the date the property will transfer) dependent on satisfaction of all contingencies. (*Id.* at ¶¶ 3, 6). Those contingencies include, *inter alia*, obtaining a subdivision or lot line revision. (*Id.* at ¶ 6(d)).

CWDI continued providing real-time updates to the City. (Ex. B, Leonard Aff. ¶ 44). In fact, because Mr. Leonard had learned that City Manager Tom Carroll had not been distributing his memoranda (or the information therein) to the City Commissioners, **from July 28, 2023 on, Mr. Leonard also sent the memoranda directly to all five City Commissioners.** (Ex. B, Leonard Aff. ¶ 45). Notably, in his cover email sending the July 28, 2023 memorandum, Mr. Leonard invited the Commissioners to "contact [him] to discuss the information included [in his memoranda] and **any information [they] would like to share more broadly.**" (Ex. B, Leonard Aff. ¶ 46; Ex. 49 2023-07-28 Exec. Memo to CWDI Board (emphasis added)). In Mr. Leonard's July 28, 2023 periodic memorandum (sent to Mr. Carroll and the Commissioners), he reports: "Sales of 2.6 acres to Yacht Maintenance should occur in August. This will facilitate \$25M in taxable capital investments and the addition of 30 jobs over the next five years." (*Id.*) His August and September memoranda (also sent to Mr. Carroll and the Commissioners) report that the sale to Yacht Maintenance "should occur ASAP" and "is imminent." (Ex. B, Leonard Aff. ¶¶ 47-49; Exs. 50, 51, and 52, 2023-08-11, 2023-08-25, and 2023-09-08 Exec. Memos to CWDI Board). In his October memorandum, Mr. Leonard explains the delay: "We continue working with the City's P&Z Director on property details so the

sale of 2.6 acres to Yacht Maintenance can be finalized.” (Ex. B, Leonard Aff. ¶ 50; Ex. 53 2023-10-06 Exec. Memo to CWDI Board). Later in October, and through the winter of 2023-2024, Mr. Leonard continued to report on efforts to work with City Planning and Zoning to finalize details necessary to the Yacht Maintenance Sale. (Ex. B, Leonard Aff. ¶ 51). As of April 29, 2024, the lot line revision had been finalized and executed by both parties and delivered to the Department of Planning and Zoning. (Ex. B, Leonard Aff. ¶ 52). CWDI cannot conceive of any *legitimate* explanation why, more than two weeks later, the document has not yet been signed and recorded. (Ex. B, Leonard Aff. ¶ 52).

E. Hotel Developers’ Responses and Subsequent Negotiations.

As noted above, CWDI received several promising submissions in response to the Hotel RFP. (Ex. B, Leonard Aff. ¶ 53). And, as with the Yacht Maintenance transaction, CWDI kept the City notified of its progress in selecting a hotel developer. (Ex. B, Leonard Aff. ¶ 54). In his April 22, 2023 memorandum (sent to Mr. Carroll), Mr. Leonard reported that the executive committee “will make a recommendation about which hotel developer to move forward with at our next full Board Meeting.” (Ex. B, Leonard Aff. ¶ 39; Ex. 45 2023-04-22 Exec. Memo to CWDI Board). During the May 2023 Board Meeting, CWDI’s Board of Directors selected a hotel developer with whom to continue due diligence. (Ex. B, Leonard Aff. ¶ 55). In his July 28, 2023 memorandum (sent to Mr. Carroll and the Commissioners), Mr. Leonard reported: “Our hotel developer is updating site and building designs to better incorporate CWDI’s community development goals and economic development goals.” Estimated outcomes include: \$25-30M in taxable capital investments and 75 new jobs created in the next three years.” (Ex. B, Leonard Aff. ¶ 46; Ex.49, 2023-07-28 Exec. Memo to CWDI Board). He made similar reports in August 2023. (Ex. B, Leonard Aff. ¶¶ 47-48; Exs. 50, 51, 2023-08-11, 2023-08-25 Exec. Memos to CWDI Board). In a September 18, 2023 closed session update to the City Commissioners, CWDI gave a presentation highlighting its selected developer’s

experience and noting the developer's progress in schematic design and due diligence activities. (Ex. B, Leonard Aff. ¶¶ 49, 56; Ex. 52, 2023-09-18 Presentation to City).

CWDI has selected this hotel developer and has every hope and intention of moving forward with a transaction to convey part of the Port Property to this developer. (Ex. B, Leonard Aff. ¶ 57). As such, it must keep certain details (all of which are immaterial to the City's claims) confidential. (*Id.*). However, insofar as the City's Complaint implies that signing this agreement will result in an **immediate** conveyance of property (FAC ¶ 34), that implication is false. Rather, as is standard in commercial agreements to sell real property, CWDI's proposed agreement with the hotel developer is an agreement to convey property **in the future**, following a due diligence period and only after certain conditions are satisfied. (Ex. B, Leonard Aff. ¶ 57).

VI. This Action is the Latest Episode in City Manager Tom Carroll's Baseless Personal Vendetta Against CWDI.

Following CWDI's September 18, 2023 closed session update to the City Commissioners, the relationship between the City and CWDI rapidly and inexplicably deteriorated. (Ex. B, Leonard Aff. ¶ 59). On October 24, 2023, Cambridge City Manager, Tom Carroll, sent CWDI's Executive Director, Mr. Leonard, a letter expressing the City's "serious concerns about the current direction and governance" of CWDI. (Ex. B, Leonard Aff. ¶ 60; Ex. 54, 2023-10-24 Carroll Ltr. to Leonard). Relevant to the allegations in the FAC, Mr. Carroll's letter stated that "CWDI seems determined to serve as its own site developer instead of finding a capable master developer," noting his assessment that a "redevelopment of a site this size and complexity requires a private sector development partner with a proven track record of success in similar projects." (*Id.*) Mr. Carroll also complained that CWDI "is acting without transparency, accountability, and responsiveness to the City Council." (*Id.*) Notably, the letter expresses no actual concerns with the contemplated sale of the Shipyard to

Yacht Maintenance or the contemplated agreement with the hotel developer.⁴ That same day, presumably at the instigation of the City Manager, Cambridge Mayor Stephen Rideout, sent the President of (and one of the City’s appointees to) CWDI’s Board, Richard Zeidman, a letter requesting his resignation from the CWDI Board. (Ex. B, Leonard Aff. ¶ 61; Ex. 55, 2024-10-23 Rideout Ltr. to Zeidman).

When Mr. Zeidman did not resign in response to this request, the City promptly introduced an ordinance regarding appointment and removal of individuals to represent the City on the governing boards of non-profit organizations, which provided, *inter alia*, that “[a]ny person who acts as a representative of the City or holding themselves out as a representative of the City on such a governing board after having been removed from the appointment under this section shall be guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, and a sentence of incarceration not exceeding one year.”(Ex. B, Leonard Aff. ¶ 62; *See* Ex. 56, 2023-11-13 Excerpt of City Commission Meeting Agenda at Item No. 11). The Ordinance was obviously targeted at CWDI’s Board Members, and after CWDI pointed out to the City the many ways in which the proposed ordinance exceeded the City’s authority and otherwise violated the law and was invalid, the City stood down and indefinitely tabled the ordinance. (Ex. B, Leonard Aff. ¶ 63).

The City also has refused to disburse to CWDI \$200,000 in funding that it owes to CWDI under an American Rescue Plan Act of 2021 Subrecipient Agreement (“ARPA Agreement”). (Ex. B, Leonard Aff. ¶ 64; Ex. 34, 2022-10-18 ARPA Agreement). Under the ARPA Agreement, the City is to provide CWDI with \$500,000 in three (3) payments; the first on October 18, 2022, with an additional \$100,000 to be disbursed in July 2023, and the final \$100,000 in January 2024. (*Id.*) The City unilaterally declined to “process” CWDI’s July 2023 and January 2024 disbursement requests,

⁴ Perhaps Mr. Carroll was unhappy that the CWDI board members appointed by the City were acting in the best interests of CWDI (as is their legal obligation) and not being sufficiently responsive to the City Manager.

citing a number of conditions not found in the ARPA agreement. (Ex. B, Leonard Aff. ¶ 65; Ex. 47, 2023-07 Emails regarding ARPA Disbursement Request; Ex. 57, 2024-01 Emails regarding ARPA Disbursement Request). And to make matters worse, the City is misappropriating the same \$200,000 it owes to CWDI under the ARPA by spending it “to pay for the City’s outside legal counsel regarding Cambridge Harbor matters, as well as other consultants.” (Ex. B, Leonard Aff. ¶ 66; Ex. 63, 2024-04-25 Budget Transmittal Memo at pp. 6-7 (emphasis added)).

On March 18, 2024, City Manager Tom Carroll submitted his resignation, citing his deep (but unspecified) concerns about the direction of the Cambridge Harbor project as the reason he was stepping down. (Ex. B, Leonard Aff. ¶ 67; Ex. 58, 2024-03-18 Carroll Resignation Ltr). Despite this decision, Mr. Carroll devoted much of his final month as City Manager to continued efforts to attack CWDI and undermine its progress. Specifically, he sent an April 12, 2024 Council Agenda Report to the Mayor and Commissioners, which was Agenda Item No. 14 from the City Commission’s April 22, 2024 Meeting, in which he claimed to have recently learned of CWDI’s breach of the PPTA. (Ex. B, Leonard Aff. ¶ 68; Ex. 62, 2024-04-22 City Commission Meeting Agenda Item No. 14). This Memorandum largely parrots the demonstrably false allegations in the FAC—i.e., that CWDI did not issue a RFP, did not select a developer(s), and did not issue a public summary of the RFP. (*Id.*). That Mr. Carroll is the source of these allegations is incredible, if not surprising, given that he personally received notice of CWDI undertaking each and every one of those actions. At best, Mr. Carroll’s memorandum reflects a remarkably short memory and demonstrates why non-attorneys should not attempt the practice of law; at worst, it is a gross abuse of his authority and influence.⁵

⁵ Mr. Carroll’s April 12, 2024 Council Administrative Report to the Mayor and Commissioners set forth incorrect legal conclusions about the construction of covenants that Mr. Carroll appears not to have read. Further, Mr. Carroll portrays CWDI’s negotiation of the hotel development transaction and proposed sale of land to Yacht Maintenance as a “gross breach of trust” or “gross incompetence” (or both) on the part of CWDI. His preference for name-calling over articulating

On April 15, 2024, Mayor Rideout, sent a “notice” that “the Mayor of Cambridge, as sole member of the Cambridge Waterfront Development, Inc. (CWDI) will be conducting a meeting on the 16th day of April 2024 at 9:30 a.m. . . . The purpose of this meeting is to review and act upon proposed amendments to the Amended Articles of Incorporation of CWDI.” (Ex. B, Leonard Decl. 69; Ex. 59, 2024-04-15 Notice of CWDI Charter Amendment Meeting). Mayor Rideout wisely stood down after CWDI pointed out the many reasons why the Mayor’s attempt to unilaterally amend CWDI’s charter without Board involvement would be legally ineffective, but not before presenting the proposed amended charter at the noticed meeting. (Ex. B, Leonard Decl. ¶ 70; Ex. 60, 2024-04-16 Mayor’s Proposed Amended CWDI Charter). Among other provisions, the proposed amended charter would give the sole member new and exclusive rights (e.g., audit rights, exclusive right to amend the charter), and it also gives the City, County, and State the “exclusive right to remove and/or replace their own appointees as directors.” (*Id.*)

Rather than continuing to pursue this second, legally doomed attempt to strip CWDI’s City-appointed Board members of their seats, just five days later, the City changed course yet again. On April 20, 2024, the City’s counsel in this action sent a letter to CWDI’s counsel expressing concerns with “two major transactions.” (Ex. B, Leonard Aff. ¶ 71; Ex. 61, 2024-04-20 Maloney Ltr. to Webb). In the letter, the City requested that CWDI provide certain information and documents related to the Yacht Maintenance and hotel transactions no later than May 3, 2024. (*Id.*) Despite this request, on May 1, 2024, before CWDI had responded, the City filed this action against CWDI, Holdings, and Yacht Maintenance. Initially the City’s Complaint (like Maloney’s letter) included false allegations regarding the circumstances through which Holdings came to hold title to the Port Property.⁶ (See

substantive issues with the proposed transactions suggests a desire to unwind a governance process he could not control.

⁶ Given that (i) the City is a party to the Holdings Assignment of PPTA (Ex. 17), by which CWDI assigned its rights under the Port Property Transfer Agreement to Holdings, (ii) the City is a party to

Compl. ¶¶ 26-28). Apparently, the City quickly realized that its allegations were incorrect and the claims based thereon meritless, and just two days later, on May 3, 2024, it filed its FAC, correcting certain inaccuracies in its original pleading.

In Count I of the FAC, for breach of contract, the City now alleges that CWDI and Holdings have breached the Transfer Agreement “by failing to undertake a RFP process for selecting a master developer and following the requirements for that process,” and that “as a proximate result” it “has suffered and will continue to suffer substantial and irreparable harm, including but not limited to harm to its planning and redevelopment plans and opportunities.” (FAC ¶¶ 57, 59). In Count II of its Complaint, for declaratory judgment, the City asserts that Holdings cannot convey any portion of the Port Property to Yacht Maintenance or any other entity “because no definitive agreement has been executed with a developer resulting from a public RFP process,” and seeks declaratory and injunctive relief to that effect.

LEGAL STANDARD

Under Maryland Rule 2-501 “[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.” Md. Rule 2-501(a). In reviewing a motion for summary judgment, a court considers: “(1) whether a dispute of material fact exists and (2) if not, whether the movant is entitled to judgment as a matter of law.” *Cty. Comm’rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 92 (2000).⁷ “A genuine dispute of material fact exists when there is evidence ‘upon which the jury could reasonably find for the plaintiff,’” with reasonable

the State Transfer Amendment (Ex. 18), which likewise lays out in detail the plan for the City to convey the Port Property to Holdings; and (iii) the City the Grantor in the publicly available deed through which it (not CWDI) conveyed the Port Property directly to Holdings (Ex. 19), the fact that these allegations made their way into the City’s original Complaint is stunning.

⁷ Unless otherwise noted, citations are generally omitted from and any emphasis is generally added to case authorities cited herein.

inferences construed against the moving party. *Windesheim v. Larocca*, 443 Md.312, 326 (2015). However, “the mere existence of a scintilla of evidence in support of the plaintiffs’ claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff. *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738-39 (1993).

ARGUMENT

I. The City’s Claims Are Barred by the Doctrine of Equitable Estoppel.

First, the City’s claims related to Yacht Maintenance are barred by the doctrine of equitable estoppel, insofar as the City affirmatively “acknowledged” in the PPTA that a subsequent conveyance to Yacht Maintenance is “expressly permitted under the approved Master Plan.” (Ex. 12, 2022-06-23 PPTA § 8(e)). Further, the City had previously stated in the Shipyard Lease, that it “recognize[s] that Lessee’s ongoing use and occupation of the Demised Premises is integral to the long-term sustainability of Lessee’s boatyard and marina operations,” that “it is in the best interests of the citizens of the City of Cambridge and the best interests of the employees and independent contractors who are able to obtain employment from or through Lessee’s boat yard and marina operations, that the commercial maritime operations of the Lessee continue as a Going Concern,” and that “[it] is in the best interests of the citizens of the City of Cambridge that the commercial maritime operations of the Lessee continue.” (Ex. 3, 2016-02-26 Shipyard Lease at Recitals). The City did not disavow any of these recitals when assigning the Shipyard Lease to CWDI or at any other juncture.

“The doctrine of equitable estoppel stands upon the broad ground of public policy and good faith; it is interposed to prevent injustice, and to guard against fraud, by denying to a party the right to repudiate his admissions, when those admissions have been acted upon by persons to whom they were directed, and whose conduct they were intended to influence.” *Carroll Springs Distilling Co. of Baltimore City v. Schnepfe*, 111 Md. 420, 74 A. 828, 830 (1909).

The definition of equitable estoppel that has been consistently applied in Maryland is as follows: “Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.”

Cunninghame v. Cunninghame, 364 Md. 266, 289 (2001) (citation omitted). And “[a]lthough wrongful or unconscionable conduct is generally an element of estoppel, an estoppel may arise even where there is no intent to mislead, if the actions of one party cause a prejudicial change in the conduct of the other.” *Knill v. Knill*, 306 Md. 527, 534 (1986).

This case presents a textbook application for the doctrine. In the PPTA, the City represented and warranted to the CWDI Defendants that a subsequent conveyance of the Port Property to Yacht Maintenance was “expressly permitted”; the CWDI Defendants relied in good faith on this representation when Holdings altered its legal position with respect to the Shipyard portion of the Port Property by entering into the YM Sale Agreement, under which it now has a legal obligation to convey the subject property to Yacht Maintenance once all conditions precedent are satisfied. The City cannot dispute Holdings’ reliance on this representation, particularly insofar as Section 24(j) of the PPTA provides that “[a]ny representation, warranty, covenant or agreement made herein shall be deemed material **and to have been relied upon by the party to whom it is made.**” (Ex. 12, 2022-06-23 PPTA § 24(j)). Holdings’ obligations under the YM Sale Agreement are to the CWDI Defendants’ detriment, if the City is now permitted to obtain injunctive relief declaring “illegal” the very conveyance it previously acknowledged was “permitted.”

What’s more, the City engaged in a prolonged period of acquiescence with respect to CWDI’s issuance of the General and Hospital RFPs, its press release reporting the results thereof, and its repeated reports regarding its intent to convey the Shipyard portion of the Port Property to Yacht Maintenance. See *Union Tr. Co. of Maryland v. Mullineaux*, 173 Md. 124, 194 A. 823, 826 (1937)

(finding that a party’s “prolonged period of apparent acquiescence” in transactions “prove[d] conclusively their assent”). The City should be equitably estopped from seeking any relief preventing Holdings’ contemplated conveyance of the Shipyard to Yacht Maintenance.

II. The City’s Breach of Contract Claim Fails Because CWDI Issued an RFP.

“To prevail in an action for breach of contract, a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation.” *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001). Here, on its claim for breach of contract, the City alleges that CWDI breached the Port Property Transfer Agreement by “failing to undertake a[n] RFP process for selecting a master developer and following the requirements for that process.” (FAC ¶ 57).

A. The PPTA Does not Require the CWDI Defendants to Solicit Proposals From, or Select, a *Master* Developer.

As for the alleged contractual obligation, the CWDI Defendants do not dispute that Exhibit C of the PPTA obligates them to issue a “Developer RFP.” However, the CWDI Defendants do dispute the City’s repeated mischaracterization of what a “Developer RFP” is. Specifically, in FAC Paragraph 57, the City states that the RFP process was for the purpose of selecting a “**master** developer.” (*See also* FAC at Introduction (“the Transfer Agreement . . . requires a public request for proposal (“RFP”) process to select a **master** developer for the property”), ¶ 32 (alleging the proposed sale to Yacht Maintenance is improper because it “is being done without a definitive agreement being entered into with a **master** developer”), ¶ 41 (“The covenants are unambiguous that CWDI must issue a public request for proposals for a **master** developer.”), ¶ 42 (“[N]either CWDI nor CWDI Holdings has administered an RFP for a **master** developer for the Waterfront Planning Envelope.”), and at ¶ 43 (“In October 2023, the City raised with CWDI its failure to . . . begin the RFP process to select a master developer.”)). The City’s focus on issuing an RFP for (and

selecting) a **master** developer conflicts with the plain language of Exhibit C to the PPTA, under which CWDI is not required to issue an RFP for or select a **master** developer.

Maryland courts employ the objective theory of contract interpretation, under which the clear and unambiguous language of a document governs, regardless of the parties' actual intent. *See Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019); *Myers v. Kayhoe*, 391 Md. 188, 198 (2006). Courts should “interpret a contract’s plain language in accord with its ‘ordinary and accepted meaning.’” *Credible Behav. Health, Inc.*, 466 Md. at 394. Contract interpretation is a question of law for the Court. *Id.* at 392. The Paragraph of PPTA Exhibit C in which the term “Developer RFP” is defined provides:

The parcels within the Waterfront Planning Envelope will be subject to a Request for Proposals (“Developer RFP”) process seeking a **master developer and/or combination of individual project developers** for **all or portions** of the Waterfront Planning Envelope, exclusive of any portions dedicated to public use and amenities under the Master Plan, which Master Plan shall be incorporated in the Developer RFP.

(Ex. 12, 2022-06-23 PPTA at Ex. C ¶ 2 (emphasis added)). The PPTA is clear and unambiguous. It was within CWDI’s discretion to choose whether to seek proposals from (i) a master developer,⁸ (ii) a combination of individual project developers, or (iii) both. Further, it was within CWDI’s discretion to choose whether to issue the RFP for (i) all of the Waterfront Planning Envelope or (ii) only portions thereof. Similarly, regarding the post-RFP selection process, PPTA Exhibit C states in pertinent part that, following a 120-day issuance period:

CWDI shall have the **right** in its **sole and absolute discretion** to select a developer(s) and to negotiate in good faith a definitive agreement for **all or such portion** of the Waterfront Planning Envelope, provided that such selected developer(s) submission is substantially consistent with the approved Master Plan and the uses described therein.

(Ex. 12, 2022-06-23 PPTA at Ex. C ¶ 2 (emphasis added)). The PPTA is again clear and unambiguous. After issuing the RFP, it was CWDI’s right (not its obligation) (i) select one or more

⁸ The PPTA does not define the term “master developer.”

developers, and (ii) move forward in negotiating agreements for the entire Cambridge Waterfront, or only a portion thereof. And that in exercising that right, CWDI's sole and absolute discretion was limited only by the requirement that any submission it selected be substantially consistent with the Master Plan. In sum, as a matter of law, the City is incorrect in its repeated assertion that CWDI was obligated to issue an RFP for, and select, a "master developer."

Although this distinction is insignificant for purposes of the City's breach of contract claim (both because the City simply alleges CWDI did not issue an RFP *at all*, and also because the RFP the CWDI Defendants issued sought proposals from master developers), it is significant to the resolution of the City's claim for declaratory judgment and, so, worth noting. In any event, as stated previously, the CWDI Defendants do not dispute that Exhibit C of the PPTA obligates them to issue a "Developer RFP", defined as a request for proposals from developers (master, individual, or both) for the Waterfront Planning Envelope (in its entirety or in part).

B. CWDI Issued a Developer RFP

As for the CWDI Defendants' alleged breach, the City's allegation that CWDI did not issue a Developer RFP is demonstrably and indisputably false.

To be clear, despite one vague reference in Paragraph 57 to the CWDI Defendants' failure to "follow[] the requirements for that process," the FAC does **not** take issue with some ***aspect*** of CWDI's RFP ***process***; rather, it alleges repeatedly that CWDI did not undertake a Developer RFP process ***at all***. (See FAC ¶ 36 ("no public RFP was issued."), ¶ 41 ("CWDI must issue a public request for proposals for a master developer and to [sic] make public a summary of the RFP. CWDI has done neither."), ¶ 42 ("in the nearly three years since the Transfer Agreement was executed, neither CWDI nor CWDI Holdings has administered an RFP for a master developer for the Waterfront Planning Envelope."), ¶ 43 ("In October 2023, the City raised with CWDI its failure to . .

. begin the RFP process to select a master developer.”)). Count I of the FAC therefore rises and falls with the City’s allegation that CWDI did not issue an RFP.

As noted above, and as the City is well aware, on July 15, 2022, CWDI issued the General RFP which seeks proposals from developers—defined therein as “Master Developers, Single Project Developers, Investors, Businesses, and Organizations that have an interest in being part of the Cambridge Harbor project”—for the entire development area, concept parcels, or subdivided concept parcels. (Ex. 28, 2022-07-15 General RFP). The General RFP depicts the Concept Site Plan (i.e., the final Master Plan required to be “incorporated” in the Developer RFP), describes developer responsibilities and submission requirements, and sets a submission deadline of November 15, 2022 (i.e., more than 120 days later). (*Id.*) Roughly two weeks later, CDWI supplemented the General RFP with the additional, hotel-specific information in the Hotel RFP. (Ex. 31, 2022-08-02 Hotel RFP).

The City cannot possibly dispute the foregoing facts. Based on these facts, no finder of fact could possibly conclude that CWDI did not issue a Developer RFP under the PPTA. The CWDI Defendants are entitled to judgment as a matter of law on the City’s claim for breach of contract in Count I of the FAC.

III. The Court Should Declare that CWDI Is Free to Transfer the Port Property for any Proposed Use that is “Shovel Ready” and Consistent with the Master Plan.

On Count II of its Complaint, its claim for declaratory judgment, the City seeks a declaration that it is “illegal” for Holdings “to transfer the [Port] Property to Defendant Yacht Maintenance Company or any other entity.” The precise basis for the City’s request is difficult to decipher. But the City appears to assert that such a conveyance is “illegal” because the PPTA prohibits the CWDI Defendants from making any conveyance of the Port Property unless and until it reaches a “definitive agreement” with a “master developer.”⁹ (*See, e.g.*, FAC ¶ 32 (alleging that

⁹ In fact, this is the only plausible explanation for the City’s fixation on whether CWDI has declared itself or Yacht Maintenance

CWDI's anticipated conveyance to YM "violates" the PPTA because "it is being done without a definitive agreement being entered into with a master developer following an RFP Process"). To the extent that the City's claim for a declaratory judgment is predicated on such an interpretation of the PPTA, it fails as a matter of law, the Court should issue a declaration to that effect. *See GPL Enter., LLC v. Certain Underwriters at Lloyd's*, 254 Md. App. 638, 663 (2022), *cert. denied sub nom. GPL Enter. v. Certain Underwriters at London*, 482 Md. 538, 288 A.3d 1233 (2023) (explaining that where a party is not entitled to the declaration it seeks, so long as it has identified an actual controversy, the court still must declare the rights of the parties in light of the issue raised, rather than dismissing the claim).

As noted in Section II(A), above, there is no basis for the City's suggestion that CWDI must issue an RFP for or select a "**master** developer." Rather, the PPTA unambiguously gives CWDI the discretion to structure development of the property as it sees fit, including by seeking individual project developers for portions of the Cambridge Waterfront. Similarly, there is no basis for the City's suggestion that CWDI must enter into a "**definitive agreement**" with a master developer (or any other kind of developer) before it can convey all or part of the Port Property. Rather, although Holdings is effectively required to transfer all non-public areas of the Port Property to one or more developers before December 31, 2036,¹⁰ the only conditions precedent to Holdings' transfer of all or part of the Port Property are:

"master developer." (*See, e.g.,* FAC ¶ 41 ("CDWI must issue a public request for proposals **for a master developer**"), ¶ 42 ("neither CWDI nor CWDI holdings has administered an RFP **for a master developer**"); ¶ 43 ("In October 2023, the City raised with CDWI its failure to comply with the covenants and begin the RFP process **to select a master developer.**") ¶ 45 ("Instead CDWI has recently either selected itself master developer or selected Yacht Maintenance Company as the master developer for that portion of the property involving boat maintenance")).

¹⁰ As required by the 2022 State Transfer Amendment, the Deed in which the City conveyed the Port Property to Holdings provides that, with the exception of the Deep Wharf and Promenade, any portions the Port Property that CWDI has not conveyed to a developer by the end of 2036 will automatically revert to the City. (*See* Ex. 18, State Transfer Am. ¶ 7, Ex. 19, 2022-01-26 Port Property Deed).

- (i) CWDI must enter into a definitive agreement with an initial selected developer(s) resulting from the Developer RFP process **or** the “Outside Date” must pass.¹¹
- (ii) The “proposed use of the subject parcel(s)” must be “‘shovel ready’ (with permits, financing and groundbreaking within 90-days of closing)”; and
- (iii) The proposed use of the subject parcel must be consistent with the approved Master Plan, “as amended with the passage of time, advancements in knowledge and wherewithal.”

(Ex. 12, PPTA at ¶(6)(e), Ex. C ¶ 4). Regarding the “Outside Date,” the PPTA provides:

Once a developer(s) is selected (the “Developer Selection Date”), CWDI shall announce publicly the selection with a summary of the proposal and enter into negotiations for a definitive final agreement with the selected developer(s) for a period not to exceed sixty (60) days from the Developer Selection Date (the “Outside Date”). CWDI shall have the right to terminate any developer negotiations if a final definitive agreement is not reached on or before the Outside Date.

(Ex. 12, PPTA Ex. C ¶ 3). Thus, under the plain language of the PPTA, if the Outside Date has passed (and if a proposed use is shovel ready and consistent with the Master Plan), CWDI may transfer, subdivide, or encumber all or any portion of the Port Property, regardless whether it has entered into a “definitive agreement with an initial selected developer(s).”

Here CWDI announced publicly on a number of occasions in late 2022 and early 2023 (and to the City) that it had selected Yacht Maintenance as the developer for the Shipyard portion of the Port Property. (Ex. B, Leonard Aff. ¶¶ 40-42; Ex. 37, 2022-11-08 Lion’s Presentation; Ex. 42, 2023-02-02 Rotary Presentation; Ex. 46, 2023-04-25 Presentation). It thereafter entered into negotiations with YM, and on July 14, 2023, Holdings entered into an agreement with YM for the sale of the property. (Ex. 48, YM Sale Agreement). Insofar as CWDI had publicly announced selection of YM

¹¹ The PPTA provides, “CDWI will not transfer, subdivide, or encumber all or any portion of the Property until a definitive agreement with the initial selected developer(s) resulting from the Developer RFP process is entered into or the Outside Date, **whichever shall first occur.**” (Ex. 12, PPTA at Ex. C, ¶ 4 (emphasis added)).

to develop the Shipyard portion of the Port Property more than 60 days before the YM Sale Agreement, the Outside Date had indisputably passed even before the parties executed that agreement. Moreover, insofar as YM was a developer who submitted a response to the General RFP, the YM Sale Agreement itself constitutes a “definitive agreement” with an “initial selected developer” that “result[ed] from the Developer RFP process.” In sum, based on the undisputed facts, the condition precedent to transfer set forth in PPTA Exhibit C Paragraph 4 was satisfied. The City does not allege (nor could it prove) that Yacht Maintenance’s proposed use of the subject property is not shovel ready or that it is not consistent with the approved Master Plan. Based on these undisputed facts, there is no legal basis for the Court to declare the proposed Yacht Maintenance conveyance “illegal.”

Accordingly, the Court should issue a declaration that CWDI’s contemplated conveyance of the Shipyard portion of the Port Property to Yacht Maintenance is permitted under the Port Property Transfer Agreement, as is any other conveyance for a project that is “shovel ready” and consistent with the Concept Site Plan.

IV. The City Is Not Entitled to Injunctive Relief Prohibiting the CWDI Defendants From Conveying the Port Property.

If, for any reason, the Court does not enter summary judgment in favor of the CWDI Defendants on Counts I and II of the City’s Complaint, then the CWDI Defendants respectfully request that the Court enter partial summary judgment on the City’s request on both counts for “permanent injunctive relief enjoining Defendant CWDI Holdings, LLC from conveying the Property or any part of the Property to Defendant Yacht Maintenance Company or any other entity.”¹²

¹² The *ad damnum* clause in Count I also requests temporary and preliminary injunctive relief, but insofar as the City has not moved for entry of a temporary restraining order or preliminary injunction, the CWDI Defendants address only the City’s request for entry of a permanent injunction. See *Maloo v. State, Dep’t of Env’t*, 136 Md. App. 682, 692 (2001) (“[A] permanent

First, insofar as they seek equitable relief, based on the undisputed facts, the City's claims are barred by the doctrine of laches. "All claims for purely equitable remedies, including claims for injunctive relief, are potentially subject to laches. Laches is the limit equity places on stale claims."

Murray v. Midland Funding, LLC, 233 Md. App. 254, 260 (2017). As the Court in *Murray* explained:

There is no firm time limit for laches: rather a judge sitting in equity considers plaintiff's delay in asserting the claim and its causes and weighs that against the prejudice to the defendant caused by the late assertion of the equitable claim. "Laches bars an action where there has been both an inexcusable delay and prejudice to the party asserting the defense."

Murray, 233 Md. App. at 260. Although courts often look to the analogous statute of limitations for a claim at law, *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 407 (2007), "a lapse of time shorter than the period of limitations may be sufficient to invoke the doctrine; and, where the delay is of less duration than the statute of limitations, the defense of laches must include an unjustifiable delay and some amount of prejudice to the defendant." *Buxton v. Buxton*, 363 Md. 634, 645-46 (2001). "In determining what will constitute laches so as to bar relief in equity, the court has no inflexible rule as to length of time, but must decide the question from all the facts and circumstances of each particular case." *Stoewer v. Porcelain Enamel & Mfg. Co. of Baltimore*, 199 Md. 146, 151-52 (1952). In determining whether a delay is unreasonable, courts "analyze (i) when, if ever, the claim became ripe (i.e., the earliest time at which [a plaintiff was] able to bring their claims); and (ii) whether the passage of time between then and when the [the plaintiff] filed the complaint was unreasonable." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 590 (2014).

Under the facts and circumstances of this particular case, the City sat silent for more than a year—all the while fully aware of CWDI's intentions with respect to the Port Property—and it would be manifestly inequitable to permit the City to wait until the eve of closing for one transaction and the eve of execution for another, to bring claims that could have been raised more

injunction is not "permanent" in the sense that it must last indefinitely. Rather, it "is one granted by the judgment which finally disposes of the injunction suit.")

than a year ago. Had the City raised its concerns in a timely fashion, the parties could have resolved these issues before CWDI invested significant resources in reviewing responses to the General and Hotel RFPs and pursuing the transactions in question. As it is, the City's conduct is likely to kill both transactions and undo two years' worth of progress. The prejudice to CWDI resulting from the City's delay cannot be overstated.

Second, the City is not entitled to the injunctive relief it seeks because it does not allege and cannot demonstrate that it will suffer irreparable harm as a result of CWDI's conveyance of the Shipyard to Yacht Maintenance. An "injunction" is "a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience." *Maloof*, 136 Md. App. at 692 (citation omitted); *see also* Md. Rule 15-501(a) ("Injunction' means an order mandating or prohibiting a specified act."). To obtain a permanent injunction, the City "must allege and prove facts 'that it will sustain substantial and irreparable **injury** as a result of the alleged wrongful conduct.'" *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 457 (2012) (citation omitted). Most cases focus on whether an alleged injury is of an irreparable nature:

Injury is irreparable when it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice—in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily adequately, and completely compensated for with money.

Id.

Here, the City cannot prevail on its claim for injunctive relief because it has not alleged and cannot prove that it would suffer **any** injury, let alone an irreparable one, if Holdings conveys the Shipyard portion of the Port Property to Yacht Maintenance. The only harm the City even attempts to articulate in the FAC is "harm to its planning and redevelopment plans and opportunities" (FAC ¶ 59). The City does not allege what those plans and opportunities are or how a conveyance to Yacht

Maintenance would disrupt them. Regardless, insofar as the City represented that conveyance of the Shipyard to Yacht Maintenance is “expressly permitted under the approved Master Plan,” it is inconceivable that the City could actually articulate a way in which that very conveyance would harm its planning and redevelopment opportunities.

CONCLUSION

For the foregoing reasons, Defendants Cambridge Waterfront Development, Inc. and CWDI Holdings, LLC respectfully request that the Court grant their motion and enter summary judgment in their favor on Plaintiff’s First Amended Complaint.

Date: May 14, 2024

Respectfully submitted,

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